

Draft 1/29/09
NEW YORK STATE
INSURANCE DEPARTMENT

REGULATION NO. xx
(11 NYCRR 30)

PRODUCER COMPENSATION TRANSPARENCY

I, Eric R. Dinallo, Superintendent of Insurance of the State of New York, pursuant to the authority granted by sections 201 and 301 and Articles 21 and 24 of the Insurance Law, do hereby promulgate a new Part 30 to Title 11 of the Official Compilation of Codes, Rules, and Regulations of the State of New York (Regulation No. xx), to take effect upon publication in the State Register.

(ALL NEW MATTER)

A new Part 30 is added to read as follows:

§ 30.1 Purposes.

The purposes of this Part are:

(a) to implement the New York Insurance Law by regulating the acts and practices of insurers, insurance producers and other Insurance Department licensees with respect to transparency of compensation paid to insurance producers and their role in insurance transactions; and

(b) to protect the interests of the public by establishing minimum disclosure requirements relating to the role of insurance producers and the actual or potential conflicts of interest created by compensation paid to insurance producers.

§ 30.2 Definitions.

For purposes of this Part:

(a) *Compensation* means anything of value, including money, credits, loans, interest on premium, forgiveness of principal or interest, vacations, prizes, gifts or the payment of employee salaries, benefits or expenses, whether paid as commission or otherwise.

(b) *Purchaser* means the person or entity to be charged under an insurance contract or a group policyholder and may include the named insured, policyholder, owner of a life insurance policy or annuity contract, principal under a bond, or other person to be charged, including an applicant for insurance, bond or annuity; but does

not include a certificate holder or member under a group or blanket insurance contract unless the certificate holder or member has direct contact with the insurance producer, or the certificate holder or member pays the whole premium.

(c) *Insurer* means any person doing insurance business in this State, or its affiliate, parent corporation, or subsidiary.

(d) *Insurance contract* means an insurance policy, surety bond, contract of guarantee, or annuity contract.

(e) *Insurance producer* means any insurance producer as defined by Insurance Law section 2101(k) or its affiliate, parent corporation, or subsidiary.

§ 30.3 Disclosure of producer compensation, ownership interests and role in the insurance transaction.

(a) Except as provided in section 30.5 of this Part, prior to the issuance or renewal of any insurance contract, an insurance producer selling the insurance contract shall give the purchaser a prominent written disclosure that includes:

(1) a description of the nature and amount of compensation to be received by the producer in connection with the sale;

(2) a description of any material ownership interest the insurance producer has in the insurer issuing the insurance contract;

(3) a description of any material ownership interest the insurer issuing the insurance contract has in the insurance producer; and

(4) the following notice:

“You are purchasing a(n) [insurance policy, annuity contract, guarantee contract, surety bond] from an insurance producer.

An insurance producer is often paid by the insurance company based on the [insurance policies, annuity contracts, guarantee contracts, surety bonds] the producer sells.

The compensation that insurance companies pay to insurance producers varies from company to company and from [insurance policy to insurance policy, annuity contract to annuity contract, guarantee contract to guarantee contract, surety bond to surety bond]. Therefore, an insurance producer may have incentives to recommend a particular [insurance policy, annuity contract, guarantee contract, surety bond] to you based on the amount of compensation paid in connection with that [policy, contract, bond].

The insurance producer is required to provide you with information about his or her compensation in connection with the [insurance policy, annuity contract, guarantee contract, surety bond] you are purchasing. You also have a right to receive information from the insurance producer about any quotes or alternative [policies, contracts, bonds] the insurance producer considered and the relative amounts of compensation the insurance producer would have received in connection with those quotes or alternatives.

If you would like such information about quotes and alternatives, just ask the insurance producer. If you are not satisfied with the information you receive, you may contact the New York State Insurance Department.

(b) If the amount or value of any compensation to be received by the insurance producer is not known at the time of the sale, then the insurance producer shall describe to the purchaser in writing the method of calculating the compensation, including the factors on which compensation is based such as volume, profitability and retention, and a reasonable estimate of the amount or value. The insurance producer may state the amount as a percentage of premium.

(c) An insurance producer shall not make statements to a purchaser contradicting the disclosures required by this section or any other misleading or inaccurate statements about the role of the insurance producer in the sale.

(d) Upon a purchaser's request, an insurance producer shall provide comprehensive information about quotes solicited and received and alternative insurance contracts considered, including but not limited to a description of coverage, the premium and the compensation the insurance producer would have received in connection with those quotes or alternatives.

(e) If at the initial issuance of an insurance contract, the disclosure provided pursuant to subdivision (a) of this section expressly applies to future renewals of the insurance contract, then no additional disclosure shall be required upon renewal except if there has been a material change in the information required to be disclosed pursuant to subdivision (a) at the time of renewal.

§ 30.4 Retention of disclosures.

An insurance producer shall retain a copy of the disclosure required by section 30.3(a) for not less than three years after the disclosure is given.

§ 30.5 Exceptions.

This Part shall not apply:

(a) to the placement of reinsurance;

- (b) to the placement of insurance with a captive insurance company; or
- (c) to an insurance producer that has no contact with the purchaser, which may include wholesale brokers or managing general agents.

§ 30.6 Obligations of an authorized insurer.

The amount of any compensation that an authorized insurer or its agent pays to an insurance producer, and the reasons for the compensation, shall be included in a producer file maintained by the insurer in accordance with Part 243 of this Title (Regulation 152).

§ 30.7 Conformity with other laws.

Nothing in this Part shall be construed in a manner inconsistent with, or in violation of, Insurance Law sections 2119, 2324, 4224, or other provisions of the Insurance Law and regulations promulgated thereunder.

§ 30.8 Unfair trade practice.

A contravention of this Part shall be deemed to be an unfair method of competition or an unfair or deceptive act and practice in the conduct of the business of insurance in this State; and shall be deemed to be a trade practice constituting a determined violation, as defined in Insurance Law section 2402(c), in violation of section 2403 of such law.