Regulatory Impact Statement for the Adoption of 11 NYCRR Part 30 (Regulation 194)

1. Statutory authority: The Superintendent's authority for the promulgation of this Part derives from Insurance Law Sections 201 and 301, and Article 21 of the Insurance Law.

Insurance Law Sections 201 and 301 authorize the Superintendent to effectuate any power accorded to the Superintendent by the Insurance Law, and to prescribe regulations interpreting the Insurance Law. Section 201 says that the "...superintendent shall possess the rights, powers, and duties, in connection with the business of insurance in this state, expressed or reasonably implied by this chapter or any other applicable law of this state." Article 21 establishes the requirements, including standards of competency and trustworthiness, for obtaining and renewing certain licenses, including agents (Section 2103), brokers (Section 2104), adjusters (Section 2108), consultants (Section 2107), and intermediaries (Section 2106). It also provides for the investigation and disciplining of the licensees (Sections 2110 and 2127). Provided that the regulation is not inconsistent with some specific statutory provision, the Superintendent may broadly interpret, clarify and implement legislative policy and effectuate any powers that the Insurance Law reasonably implies.

In order to protect all insurance customers, the proposed regulation exercises the Superintendent's broad authority under Section 201, by requiring Article 21 licensees to disclose the potential conflict that arises due to the differences in the amount of compensation an insurer pays to its producers.

2. Legislative Objectives: The Legislature vested in the Superintendent the authority to regulate the conduct, trustworthiness, and competence of insurance producers (insurance agents, insurance brokers and excess line brokers, reinsurance intermediaries, and limited lines licensees) to protect all insurance customers, whether for personal or commercial insurance.

3. Needs and benefits: Insurers compensate insurance producers for their role in placing and selling insurance by paying compensation, including commissions and other items or benefits of monetary value. Compensation arrangements typically differ from insurer to insurer, with some insurers paying not only commissions by the policy, but also by the total volume generated by a producer or the profitability of the insurance contracts the producer provides to the insurer. Individual consumers and commercial interests typically rely on insurance producers to assist them with obtaining information about available insurance policies and evaluating those policies to determine which are best suited to the customer's needs.

There is nothing inherently improper about an incentive-based compensation arrangement between an insurer and the producer, but due to the differences in each insurer's compensation arrangement, a potential conflict of interest may arise when an insurance policy that would earn the producer the greatest compensation for its sale is not the most appropriate insurance for the customer in terms of coverage, service or price. This may create an incentive for the producer to recommend that policy to the customer. This could arise not only with respect to policies offered by competing insurers, but even with respect to different policies offered by one insurer, where the nature and extent of the compensation may vary depending upon the particular policy form or type of policy.

Indeed, the New York State Attorney General and the New York State Insurance Department commenced a joint investigation in 2004 that uncovered instances of criminal bid rigging by a large insurance broker and several large insurers, as well as steering schemes involving a number of major insurers and other insurance producers. The investigation culminated in settlements between 2005 and 2006 under which producers and insurers paid more than $1 billion to recompense customers for harm resulting from bid rigging and steering.

The issue also goes beyond the large brokers and insurance companies investigated by the Attorney General and the Department. Consumer representatives have told the Department repeatedly that insurance purchasers (particularly individual consumers of personal lines products like auto, homeowners and life) do not understand the role of the insurance producer in the insurance transaction, (i.e. whose interests the producer is required to represent). Consumer representatives also pointed out that consumers often do not understand that producers receive incentive-based compensation that may affect the recommendations the producers make, and therefore rarely ask for such information. The Department believes that the marketplace will function better for purchasers, producers and insurers if purchasers have access to information about producer compensation arrangements.

The proposed regulation is intended to provide a means to address the potential conflict that arises due to the differences in the amount of compensation an insurer pays to its producers in the least invasive manner possible – by requiring that insurance producers make certain disclosures about their role in the insurance transaction and compensation arrangements with insurers to insurance customers. Specifically, the regulation would require an insurance producer to disclose whom the producer represents in the transaction, that the producer will receive compensation from the insurer based upon the sale of the policy, that the compensation paid by insurers may vary, and that the purchaser may obtain from the producer, upon request, information about the compensation the producer expects to receive from the sale of the policy. The regulation also requires that upon the customer's request, the producer disclose the amount of compensation for the policy selected and any alternative quotes presented. The required disclosures would minimize the potential conflicts that arise from producer compensation because it allows insurance customers to request information about the compensation for the insurance policy and alternative policies quoted.

Empowering customers with this information makes it more difficult for an insurance producer to succumb to an incentive to place the policy with the insurer paying the greatest compensation, or one type of policy with an insurer over another with the same insurer, rather than offering the best policy in terms of price, coverage or service. Overall, all insurance consumers in the state, whether personal or commercial, are likely to benefit from the regulation because transparency and a better understanding of the role of the insurance producer is likely to lead to better-informed selection among available insurance options.

4. Costs: The amendments will not impose any compliance costs on local governments. The Insurance Department does not anticipate any added cost to the Department associated with the regulation. Enforcement of the regulation will be integrated into the Department's ongoing efforts to address consumer complaints, license insurance producers and insurers and licensee compliance with the trustworthiness standards set forth in the Insurance Law.

Insurance producers, many of whom are small businesses, may incur additional costs of compliance, but they should be minimal. The cost to producers will be associated primarily with developing and providing a brief initial disclosure to purchasers either orally or in writing. Once developed, this initial disclosure will be a short boilerplate statement a few sentences long. There will also be some cost to producers and insurers to maintain the records as required under the regulation, but these can be maintained electronically or otherwise, thereby reducing maintenance costs. The only additional record keeping required by the regulation is maintaining the disclosures for each purchaser. Producers are not required to keep any additional information that they do not already maintain in the ordinary course of business. The regulation does not regulate the amount, nature or amount of compensation; it simply requires disclosure of compensation practices.

Producers will also have to spend a small amount of time gathering the compensation information they have on hand and presenting it to the purchaser when requested. The regulation, however, does not require the producer to collect or maintain any more information than the producer already has on hand in the ordinary course of business. The regulation will require insurers to maintain records relating to the payment of compensation to producers, but will not dictate the manner in which those records are kept, thereby reducing any potential compliance cost.

5. Local government mandates: This regulation does not impose any program, service, duty or responsibility upon a city, town or village, or school or fire district.

6. Paperwork: The Department has designed the proposed regulation to minimize the paperwork required to the extent possible. The producer must make the disclosure required prior to the sale of an insurance policy either in writing or orally. If the producer makes the disclosure orally, the producer must either prepare a certification stating that the producer made the oral disclosure or make a recording of the disclosure. If the producer elects to provide oral disclosure, the producer must follow up with a written disclosure statement (which could be boilerplate) prior to issuance of the insurance policy. An insurance producer who chooses to satisfy the initial disclosure requirement with a written disclosure may prepare a boilerplate form to use with each disclosure. Also, to the extent that the insurance producer is required to disclose additional information about its compensation, the producer is only required to provide information that it has at that time, or to make a reasonable estimate. There would also be some time and cost associated with preparing a more detailed, substantive disclosure statement when a purchaser requests it. That time and cost would depend on the number of consumers who make such requests

There will also be some cost to producers and insurers to maintain the records as required under the regulation, but these can be maintained electronically or otherwise, thereby reducing maintenance costs. The regulation, however, does not require the producer to collect or maintain any more information than the producer already has on hand in the ordinary course of business. The regulation will require insurers to maintain records relating to the payment of compensation to producers but will not dictate the manner in which those records are kept thereby reducing any potential compliance cost.

7. Duplication: The proposed regulation will not duplicate any existing state or federal regulation.

8. Alternatives: Insurance producers generally receive compensation from insurers or other

producers by one of two types of methods. The first is a flat percentage commission based on premium volume, paid at the time of sale. There may be different flat rates paid for new and renewal business. The second is a contingent commission, which may be paid in addition to flat percentage commissions, and which typically is based on profit, volume, retention, and/or business growth. Contingent commissions are not payable on a per policy basis, but are allocated based on the performance of the entire portfolio of business placed with a particular insurer. The contingent commission schedule is known to producers at the beginning of a given period of time (usually one year), but contingent commissions actually earned are calculated some period after business is placed and loss experience is observed. The amount of compensation paid may also vary from producer to producer, depending upon the relationship between the producer and the insurer or other producer, though the compensation paid usually will not change the actual premium to the consumer.

Defenders of incentive-based producer compensation argue that competition in the marketplace can address any conflicts because consumers can comparison shop among producers. Producers that do not offer insurance providing the best combination of coverage, service and price will lose business to those that do. However, consumer representatives emphasized in discussions with the Department that consumers who purchase insurance through an insurance producer may not comparison shop for the most favorable coverage, service and price because they are often encouraged to rely on the producer to comparison shop the market for them.

From 2005 to 2007, the Attorney General and the Superintendent entered into enforcement settlement agreements and regulatory stipulations concerning allegations of improper steering in response to incentive-based compensation with a number of major brokers and insurers. The allegations underlying the settlements and stipulations included undisclosed conflicts of interest and improper steering by small, medium and large producers. The investigation also made it clear that insurers pay contingent commissions and other types of incentive-based compensation in order to influence producers' recommendations to their clients. The agreements and stipulations prohibited the receipt of contingent commissions by certain insurance brokers; prohibited the payment of contingent compensation by certain insurers for certain lines of insurance; provided a mechanism for expansion of the prohibition of contingent compensation to additional lines of insurance; and required substantial improvements in the disclosure of all producer compensation by certain large producers.

In response to the New York investigation, the National Association of Insurance Commissioners in 2004 amended its Producer Licensing Model Act to include requirements that brokers (but not agents) disclose compensation to purchasers. The New York Insurance Department also circulated a draft disclosure regulation in 2007. The work done on that draft and the comments received have been incorporated into the current draft.

In July 2008, the New York State Insurance Department in cooperation with the Attorney General's Office held public hearings in Buffalo, Albany and New York City and conducted extensive outreach to consumer groups, industry and other stakeholders for more than a year. The Department has publicly exposed two informal draft regulations (in January 2009 and July 2009) and sought comment on each. The Department has also held six "working group" meetings with stakeholders in various lines of insurance and dozens of other formal and informal meetings and phone calls with consumer and industry representatives. Through this process, the Department has considered a number of different courses of action including (1) banning or limiting certain types of producer compensation; (2) full disclosure of

all producer compensation for every insurance transaction; (3) requiring disclosure only for producers who are paid directly by the purchaser and by the insurer; (4) requiring disclosure of producer compensation only upon the request of the purchaser; (5) requiring that producers disclose only their role in the transaction and the source of their compensation with no disclosure of the compensation amount; and (6) taking no regulatory action and/or promoting voluntary disclosure of compensation by producers.

After this exhaustive process, the Department has determined that the draft regulation is the best way to ensure that consumers better understand the role that insurance producers play in the insurance transaction, the compensation they receive and any potential conflicts of interest that may arise, while imposing as little cost as possible on the producers and insurers.

Below is a summary of the input provided to the department by various stakeholders and the alternatives considered at each stage of the outreach process: (1) the July 2008 public hearings; (2) responses to the January 2009 informal draft regulation; and (3) responses to the July 2009 informal draft regulation.

2008 PUBLIC HEARINGS:

The public hearing notice asked participants to address the following issues: whether contingent commissions or other types of compensation create inherent conflicts of interest for insurance producers; whether the payment of contingent commissions or other compensation leads producers to steer clients to less favorable insurance products; whether disclosure of producer compensation is necessary; whether disclosure requirements should apply to all agents and brokers; whether disclosure should be required when the amount of producer compensation cannot be ascertained at the outset of the customer/producer relationship; whether there are certain categories of transactions that should be exempted from some or all disclosure requirements; whether certain types of compensation should be permissible and whether steering associated with contingent commissions should be considered an unfair act or practice within the meaning of Article 24 of the Insurance Law.

The Independent Insurance Agents of New York ("IIABNY") highlighted the differences in "market clout" between the "typical" agent or broker represented by IIABNY and the "mega brokers" that entered into settlements with the Insurance Department and the Attorney General’s Office. IIABNY does not believe incentive compensation arrangements create any conflicts of interest for producers and supports their use. IIABNY pointed out that giving producers incentives based on the profitability of the insurance policies provided to an insurer reinforces "the agent/broker’s role in educating supporting and training customers and their employees on appropriate risk control and risk management practices." IIABNY also stated that producers often do not know what the compensation will be for a particular policy until long after the policy is placed. Moreover, IIABNY argued that compensation is generally too small to influence the producers and that competitive pressures prevent producers from making recommendations that are not in the best interest of their clients. IIABNY also pointed out that incentive-based compensation is prevalent for sales people in many industries. IIABNY expressed support for "voluntary" disclosure by producers of "the extent and nature of all compensation received." IIABNY stressed that the form of disclosure should be flexible and not dictated by the Department.

The Council of Independent Agents and Brokers ("CIAB") testified that the "optimal approach

for all stakeholders is to let the free market determine the form and amount of compensation." CIAB also recognized the potential for conflicts of interest created by incentive-based compensation structures and supported transparency concerning the role of the producer and any compensation received as the best way to cure any real or perceived conflict. CIAB also supported removing New York's anti-rebating laws to allow fully-informed consumers to negotiate commissions and fees with their producers.

A past president of the Buffalo Association of Insurance and Financial Advisors, Past President of the Buffalo Chapter Society of Financial Service Professionals and Trustee of the National Association of Insurance and Financial Advisors ("NAIFA") submitted written comments after attending the Department hearing in Buffalo. The Past President stated that he understood the Department's concerns about steering but did not understand how disclosure would address it. He expressed the belief that if a financial advisor does not provide optimal products for his/her clients the "market will take care of our ability to survive in this industry."

Utica First Insurance Company submitted written comments expressing the view that there should not be a "one size fits all approach" to the issue of producer compensation. Utica First emphasized that most industry participants have not done anything wrong, have not been the subject of regulatory action and should not be subjected to a ban on contingent commissions. Utica First would support disclosure of the nature of compensation but not the specific dollar figure because that "will play directly into the hands of those direct writers and web writers who are broadcasting daily on the radio and TV that agents have no value."

NAIFA and NAIFA – New York State stated that the marketplace for life insurance, disability insurance and annuities is much different than the property and casualty marketplace where most of the problems were found during the Department and Attorney General investigation. NAIFA pointed out that producer compensation for these products is strictly regulated by the Department under Section 4228 of the Insurance Law. NAIFA expressed support for the National Association of Insurance Commissioners amendment to the Producer Licensing Model Act adopted at the end of 2004. NAIFA stated that it supports disclosure of all compensation received by a producer only when some portion of the producer compensation is coming directly from the customer. NAIFA supports "total cost disclosure" that would include disclosure of other marketing costs such as advertising, not just producer compensation.

The Professional Insurance Agents of New York ("PIANY") advocated for the existing producer compensation system, stating that it ensures that producers are fairly compensated, and consumers are fairly treated. PIANY pointed out that the insurance marketplace is already highly regulated and highly competitive. PIANY argued that there should be no controls placed on contingent commissions or any other type of compensation arrangement and no mandatory disclosure because consumers already understand that their insurance agents get paid commissions. PIANY also stated that it would be unfair to apply a disclosure requirement only to producers and not to insurers who sell policies directly to consumers. Finally, PIANY argued that disclosure of producer compensation would encourage illegal rebating.

The Property Casualty Insurers Association of America ("PCI") opined that incentive-based compensation does not represent an inherent conflict of interest between producers and their clients. PCI testified that contingent commissions should not be banned and that there

is nothing improper or illegal about contingent commissions or other incentive-based compensation structures. PCI argued that it is clear to consumers that insurance agents represent the insurer in the insurance transaction and are paid by the insurer. On the other hand, PCI said that when a broker receives compensation from someone other than the customer, there is a conflict of interest that should be disclosed. PCI generally supported transparency surrounding producer compensation but not overly burdensome or over-reaching regulations.

The Executive Vice President of United Insurance Agency of Amherst, New York testified that (1) contingent commissions do not create conflicts of interest; (2) incentive-based compensation does not lead to steering; and (3) producers should voluntarily disclose their compensation when asked by consumers. The Executive Vice President opposed mandatory disclosure and argued that producers are forced by competitive pressures to always get the best coverage and price for their customers because if they don't, the customer will go elsewhere.

A concerned citizen provided written comment, stating that every business person is compensated and that "[f]or anyone to have to disclose their compensation to the general public seems obscene and should not be imposed as law."

Willis North America expressed support for full transparency for all compensation structures. Willis stated, however, that transparency alone is not enough and advocated a complete ban (phased in over several years) on contingent commissions for all producers. Willis also pointed out that Willis and other brokers who settled with the Department and the Attorney General are disadvantaged by an "unlevel playing field" because brokers who are allowed to accept contingent commissions are receiving a subsidy from insurers.

Aon Risk Services testified in favor of "mandatory, clear and consistent disclosure of the compensation of brokers and agents." Aon stated that if all producers fully disclose their compensation, clients can make informed choices, and the marketplace will determine what forms of compensation survive. Aon also pointed to the bifurcated marketplace that currently exists between one small group of brokers and the rest. Aon advocated mandatory disclosure for all producers of (1) whom the producer represents; (2) all quotes sought and received, including coverage and compensation terms; and (3) the types of relationships the producer has with the insurers approached. Aon also proposed that producers be required to obtain their clients' consent to the total compensation. Aon does not believe that contingent commissions represent an irreconcilable conflict of interest, but suggested that the department create detailed disclosure requirements surrounding contingents. Aon is "agnostic" as to whether contingent commissions are banned as long as the same regulations apply to all market participants.

Allstate Insurance Company sought to distinguish Allstate's business model which relies for the most part on exclusive agents from the rest of the marketplace. Allstate pointed out that the vast majority of insurers provide incentive-based compensation to sales personnel in order to reward sales. Allstate also stated that in the personal lines property and casualty market "a high degree of competition and readily available competitor rate information discourages" the practices that the Department and the Attorney General uncovered in commercial lines. Allstate supports general disclosure explaining the relationship between the producer and the insurer but not detailed financial information about compensation structures. Allstate also does not believe that producers should have to obtain written

consent from its customers.

The Life Insurance Council of New York ("LICONY") expressed support for the NAIC Model Act Amendment. The NAIC Model Act Amendment requires all producers to disclose that they represent the insurer and will be paid by the insurer if that is the case. If a producer receives compensation from the customer, the model prohibits the producer from accepting compensation from an insurer unless the producer obtains the customer's written acknowledgment. LICONY stated that disclosure of the amount of compensation life insurance producers receive would inappropriately impede the sale of individual life insurance products. LICONY pointed out that life insurance is usually "sold not bought" meaning that people do not often seek out life insurance even though they need it to protect their families. LICONY took the position that disclosure of the amount of compensation would not be meaningful for individual consumers and could be counterproductive because consumers will be distracted from more important issues like coverage terms. According to LICONY, this distraction problem is particularly acute for life insurance because a significant portion of the compensation paid for a long-term life insurance products is usually "front-loaded" in the first year or few years of a policy to compensate the producer for the substantial investment of time to find customers and make sales. LICONY also opposed any type of restriction on particular types of incentive-based compensation such as contingent commissions or profit-sharing arrangements. Finally, the LICONY pointed out that life insurance producer compensation is already strictly regulated by the Department under Insurance Law Section 4228.

The Council of Insurance Brokers of Greater New York ("CIB") testified that former Attorney General Eliot Spitzer and former Insurance Superintendent Greg Serio both testified in a New York Assembly Insurance Committee Hearing that contingent commissions are not illegal. CIB favors voluntary compensation disclosure by brokers as set forth in the Department's Circular Letter 22 (1998) and pointed out that mandatory disclosure of compensation could lead to illegal rebating. CIB also stated that contingent commissions are beneficial to brokers, consumers and insurers and stated that competition protects consumers from improper practices. He also argued that existing licensing requirements that producers act in a trustworthy fashion are sufficient to ensure that consumers are protected.

The Managing Director of CBS Coverage Group pointed out that for most small and medium sized producers it is impossible to know at the time of sale what the profit sharing or contingent commission will be. Therefore, there is little opportunity for improper steering to occur. The Managing Director also testified that CBS merely breaks even on the up-front commissions it receives and finds its profit margin in the contingent commissions. CBS therefore disfavors any type of ban on contingent commissions or any other type of incentive-based compensation. The Managing Director also spoke in favor of mandating that producers provide a "clear description of what [the consumers'] rights and responsibilities are" but not detailed information about compensation and profit-sharing arrangements.

The Risk and Insurance Management Society ("RIMS") testified in favor of banning all contingent commissions for any producer "acting on behalf of a buyer." RIMS also stated its support for mandatory disclosure of "all sources of compensation, direct and indirect" to clients without their request at the time quotes and alternatives are presented. RIMS believes that contingent commissions do create an inherent conflict of interest between producers and their clients. RIMS also pointed out that producers, unlike sales persons in other industries, often act as trusted advisors, recommending complex products that are

difficult for insurance purchasers to understand: "The commercial insurance purchase process is not a simple one. The advice and guidance of a qualified professional is critical to proper coverage." RIMS also stated that in commercial lines, it is often impossible to comparison shop from producer to producer because insurers will only provide a quote to one producer for each potential purchaser.

The Professional Insurance Wholesalers Association of New York ("PIWA") stated that contingent commissions do not create inherent conflicts of interest and do not lead producers to steer their customers to less favorable insurance products. PIWA does not favor banning contingent commissions and does not think disclosure is necessary. If disclosure is required PIWA thinks that wholesale producers should be exempted from the requirement.

The American Association of Managing General Agents ("AAMGA") opined that wholesalers and managing general agents should be exempted from any regulations addressing contingent commissions or disclosure of producer compensation. AAMGA stated that managing general agents and wholesalers clearly represent the insurer and do not deal directly with the insured and therefore their compensation does not create any potential conflict of interest. AAMGA supports full disclosure of compensation by retail producers to their customers.

The ACE Group of Insurance Companies testified that the commercial market should be separated from the retail market for purposes of producer compensation issues because commercial brokers are exclusively the agent of their policyholder clients, whereas independent agents selling commercial lines represent the insurer. ACE also advocated a system where brokers are paid only by their clients with all other sources of compensation prohibited by law. ACE also proposed requiring commercial lines brokers to undergo a formal quoting process that is completely transparent to the client before binding coverage.

The President of Pachner & Associates, a small specialty insurance broker, testified that brokers should be compensated only by their clients because they represent the client in a complex placement and negotiation process similar to a contract lawyer's representation. He proposed eliminating retail agents and moving to a system where all policyholders are represented by brokers to whom the policyholder pays a fee. The only agents would be managing general agents appointed by the insurers to interface with the brokers.

Travelers Insurance testified that Travelers provides a toll-free telephone number and website address with each policy offering the consumer access to more information about agent compensation. The website discloses the nature and ranges of compensation for different product lines. Travelers also has a fixed value-based compensation program that is easy to communicate and understand at point of sale. Travelers stated that contingent commissions could be used without creating an irreconcilable conflict of interest.

The Excess Lines Association of New York ("ELANY") testified that Section 2119 of the New York Insurance Law already requires that excess lines broker fees or other charges be fully disclosed to the insured and that the insured consent to the total cost of placement in writing. ELANY does not believe that contingent commissions create a conflict of interest and is not aware of any evidence that producers steer clients to less favorable insurance products. ELANY pointed out that contingent commissions are legal under several court decisions and argued that current disclosure requirements are sufficient for consumers.

Joseph M. Belth, a professor emeritus of insurance in the Kelley School of Business at Indiana University and editor of *The Insurance Forum* testified that "the insurance market is characterized not only by an absence of competition because of the complexity and lack of price transparency, but also by the presence of 'reverse competition.'" Reverse competition is when the effect of competition is to increase rather than decrease prices. According to Mr. Belth producers are really in competition with each other to provide the most business to insurers. Mr. Belth stated that when insurers want to increase business, they often increase the inducements offered to producers and must therefore increase prices for insurance creating reverse competition. Mr. Belth favored prohibiting contingent compensation because (1) contingent compensation creates a material conflict of interest for producers and causes unacceptable practices; (2) disclosure of contingent compensation is not viable; and (3) the argument that contingent compensation has been common practice in the industry is not persuasive. Mr. Belth also testified in favor of requiring disclosure of all producer compensation at the time of sale as well as requiring the producer to certify that the insurance recommended is in the best interests of the purchaser.

The National Association of Professional Surplus Lines Offices ("NAPSLO") testified that wholesalers should not be subject to any limitation on contingent commissions or producer compensation disclosure requirements because wholesalers have not direct contact with the consumer.

The National Association of Mutual Insurance Companies ("NAMIC") testified that it is important to maintain the distinction between insurance agents and brokers because they play different roles in an insurance transaction. NAMIC also testified that contingent commissions should not be banned because they may be beneficial to producers, insurers and producers.

Unum US supported a producer compensation disclosure regulation but stressed that the regulation must be flexible enough to apply to a wide array of insurance products and customers. Unum US also emphasized that brokers as well as insurers must be responsible for disclosure and that any regulation must apply to all market participants.

JANUARY 2009 DRAFT COMMENTS

The Department released an informal discussion draft of a producer compensation transparency regulation in January 2009 and conducted extensive outreach. The January 2009 draft was based on the extensive testimony described above as well as the experience and expertise in producer compensation issues that the Department has gained through its extensive investigations surrounding these issues since 2004. The Department determined that it was best to let the market determine appropriate compensation structures and therefore did not seek to restrict or ban contingent commissions or any other type of compensation. Instead the Department focused on transparency and arming consumers with relevant information about the role that producers play in insurance transactions and the compensation they receive. Therefore, the January 2009 draft required all producers to provide every consumer with (1) a "role disclosure" describing the producer's role in the transaction and how the producer is compensated, and (2) a detailed disclosure of all compensation received as well as any ownership relationships between the producer and the insurer. Below is a summary of the comments received in response to the January 2009 Draft.

Amica Mutual Insurance Company commented that direct writers such as Amica should not have to provide disclosure because customers understand that Amica's producers are working for Amica. Amica also commented that the written disclosure requirement would impede sales made over the phone. The Department has addressed Amica's concerns by (1) allowing oral disclosures, and (2) providing an exception for insurance company employees who are not acting as insurance producers, i.e., are not receiving incentive-based compensation.

Marsh provided suggested disclosure language that explained the producer's role in the insurance transaction and how the producers is compensated and offered the customer more information about compensation upon request. The Department addressed these concerns by moving to a two-step disclosure requirement in the July 2009 draft.

A number of producers and producer representatives commented that the regulation must allow oral disclosure at least for sales that occur over the phone and for sales where insurance must be placed immediately in order to cover an auto or home purchase. Producer representatives also objected strongly to the disclosure language that would have stated "Therefore, an insurance producer may have incentives to recommend a particular insurance policy to you based on the amount of compensation paid in connection with that policy" because it unfairly highlighted only one of the producer's incentives during the insurance transaction. The Department addressed these concerns by allowing for oral disclosure in later drafts and by removing the language that producers objected to.

Daniel Schwarcz, an NAIC Funded Consumer Representative and Associate Professor at the University of Minnesota commented that disclosure alone is not sufficient to deal with the conflicts of interest inherent in producer compensation. Mr. Schwarcz stated that the very reason people seek insurance producers is because they have limited capacity to assess the available market options and merely telling them that their producer may be conflicted does not help them. Mr. Schwarcz argued for a ban on contingent compensation and opined that disclosure is only effective if it occurs earlier in the purchasing process. The Department determined that it was better to let the market determine appropriate compensation structures and focus on providing complete information to consumers. The Department did move the required disclosure to an earlier point in the sales process in subsequent drafts.

PIANY commented that the draft does not provide flexibility to fit different business models and instead requires rote compliance with a detailed set of criteria. PIANY also opined that the "clear implication" of the draft is that "one distribution model [independent agents] (which offers the greatest variety of market access, options and choices) is singled out for the imputation of conflict through the prejudicial wording of the proposed disclosure." The Department removed language that PIANY was concerned about and clarified that the regulation applies to all producers, not just independent agents. PIANY also commented that the regulation is very onerous and costly for small producers to comply with. The Department has streamlined the regulation in subsequent drafts to reduce the costs of compliance. For example, the proposed regulation only requires producers to provide an initial boilerplate disclosure and more detailed information only upon the request of the client. Finally, PIANY criticized the draft because it is inconsistent with requirements in other jurisdictions. The Department believes that while the new New York requirements will be inconsistent with other jurisdictions, it is important to ensure that New York consumers are fully informed about all relevant information in the insurance transaction.

The Managing Director of CBS Coverage Group noted that producers should be allowed to give a single disclosure relating to compensation where there is a program of multiple insurance policies. She also criticized the regulations implication that incentive-based compensation would be the only motivating factor in the producer's recommendation. The Department has made it clear that only a single disclosure is required and removed the language that the Managing Director found problematic.

Utica First proposed adding the following disclosure to every policy: "WE PAY THE AGENT A COMMISSION AND THEY ALSO HAVE THE ABILITY TO EARN PROFIT-SHARING IF THEIR ENTIRE BOOK OF BUSINESS WITH THE COMPANY IS PROFITABLE. IF YOU WOULD LIKE SPECIFIC INFORMATION, PLEASE CONTACT YOUR AGENT." While the Department continues to believe that it must be the duty of the producer to provide compensation disclosure, later drafts moved toward a two-step disclosure substantially similar to what Utica First proposed.

IIABNY expressed concern that it would be impossible to calculate the compensation to be received in profit-sharing arrangements at the time of the sale. IIABNY continued to advocate for voluntary disclosure and no mandatory requirements. The Department believes that the requirement in later drafts that producer's provide only a "reasonable estimate" of compensation that is not known at the time of disclosure addresses IIABNY's concerns.

CIB expressed "deep concerns" that the proposed regulation would pose serious burdens on independent brokers. CIB criticized the draft as overly prescriptive because it dictated exactly what the producer must say to every customer and required a detailed disclosure in every transaction. CIB opined that it was unfair to "level the playing field" between Main Street and mega brokers by imposing new restrictions because Main Street brokers never did anything wrong and requiring detailed compensation disclosure only in instances when customers request it. In later drafts the Department has made the regulation less prescriptive by not requiring a scripted disclosure. The Department also believes that it is critical for all Main Street consumers to have complete and accurate information about the role of the insurance producer and (if requested) the compensation the producer receives.

The New York Insurance Association ("NYIA") commented that the draft's section 30.6 "Obligations of an authorized insurer" was too burdensome because it required insurers to keep separate paper files tracking compensation for every producer. NYIA also contended that personal lines or lower premium insurance should be exempted from the regulation. NYIA commented that the language "in connection with the sale" in section 30.3(a)(1) of the draft is too vague. NYIA also inquired whether the section 30.5 exemption for "captive insurance companies" was intended to exempt captive insurance agents. The Department has streamlined the record-keeping requirements of 30.6 in later drafts by allowing data on producer compensation to be maintained by insurers in a form of their choosing. The Department agrees that "in connection with" was not precise and has changed the language to read "based in whole or in part on the sale." Finally, the Department has clarified that the exemption only applies to captive insurance companies, not captive insurance agents.

USAA argued that any salaried employee of an insurance company who does not receive incentive-based compensation should not be subject to the regulation. The Department has exempted such employees in later drafts.

CIAB applauded the Department's decision not to ban or restrict particular forms of producer

compensation. CIAB supported the Department's efforts to bring transparency to producer compensation, although it advocated for moving the Department's draft closer to the NAIC Model Act Amendment which recognizes a strong distinction between brokers (who represent insurance purchasers) and agents (who represent insurers) and requires disclosure only for brokers. The Department believes that producer compensation transparency is critical for all segments of the insurance marketplace and that it would be a perverse result for more sophisticated commercial purchasers (who for the most part use brokers) to receive more disclosure than less sophisticated personal lines purchasers (who for the most part use agents). Therefore, the Department has not changed the regulation as CIAB suggested.

NAIFA objected to commission disclosures for life insurance products stating that (1) life insurance producer compensation is already controlled by Insurance Law Section 4228, and (2) the amount of commission the producer receives has no effect on the premium paid. The Department believes that although 4228 sets maximum producer compensation for life insurance products, incentive-based compensation can still vary among insurers and products, creating potential conflicts of interest. Even if the incentive-based compensation does not have a direct impact on premium (and it does have an indirect impact), it is still important to highlight potential conflicts for consumers.

H.R. Keller & Co., Inc. suggested that the regulation should exempt smaller brokers and independent agents because it is too burdensome and because small business and personal lines clients do not need or care about the information the regulation requires. The Department has dramatically reduced the compliance burdens associated with the regulation in subsequent drafts by requiring only an initial boilerplate role disclosure in every transaction with more detailed compensation information provided only to purchasers who request it. Moreover, it is at least as important, if not more important, for consumers at the lower end of the marketplace to understand the producer's role in the insurance transaction and any potential conflicts of interest as it is for high-end commercial consumers.

The Consumer Federation of America ("CFA") urged that in addition to the requirements of the January 2009 draft, the Department (1) ban all contingent compensation in order to make compensation simpler; (2) limit compensation to 25% of first-year premium. The Department has determined that the draft regulation's focus on transparency is a better way to balance the interests of consumers against the business interests of insurers and producers than restricting the type and amount of compensation that producers receive. The Department's approach allows a more transparent marketplace to determine the type and amount of producer compensation.

The Association for Advanced Life Underwriting ("AALU") commented that (1) the Department has not shown any need for the regulation; (2) the draft would create a false implication of conflict of interest between producers and customers; (3) by requiring producer compensation disclosure, the regulation would elevate that consideration over other more important factors; (4) the draft would decrease sales of life insurance; and (5) the NAIC Model Act Amendment provides sufficient consumer protection. As discussed above, the Department continues to believe that there is a great need for consumers to understand the role of insurance producers, the compensation they receive and the potential for conflicts of interest. The Department expects that producers will continue to emphasize other product features and considerations in the placement and sales process. The draft regulation merely requires producers to disclose additional information that they might not otherwise mention.

Moreover, subsequent drafts of the regulation have reduced the initial information that must be provided to a boilerplate role disclosure. The Department has addressed AALU's concerns about decreased life insurance sales in subsequent drafts by moving to a less invasive two-step disclosure process and by allowing life insurance producers to describe their compensation in terms of the expected life of the policy. Finally, as discussed above, the Department does not believe the NAIC Model Act Amendment provides sufficient consumer protection because it does not require insurance agents to make any compensation disclosure.

An anonymous property and casualty insurer that writes group travel and accident products urged the Department to provide an exception to the regulation for travel and accident insurance products because the commissions provided are very small and are paid to an affiliate of the credit card company that makes the insurance sale. According to the insurer, the costs of compliance are too high when compared with the potential benefit. The Department does not see the need for such an exemption, considering the move to a less invasive two-step disclosure process.

IIABNY suggested a two-step disclosure regulation. First, the producer would be required to disclose the producer's role in the transaction, the fact that the producer will be paid by the issuing insurer and that there the consumer may obtain more information by asking the producer. Second, if the consumer asks for more information, the producer must provide the source and amount of any compensation, a description of the factors that will affect any further compensation that is unknown at the time of sale, a description of any material ownership interest between the producer and insurer, and an explanation that the producer is prohibited by law from lowering the commission. The Department has accepted this suggestion by moving to a two-step disclosure process in subsequent drafts.

New York Life Insurance Company commented that the regulation should only require producers to provide the source of the compensation without providing the dollar amount of compensation. The Department has addressed this concern in part by moving to a two-step disclosure process. The Department feels it is important, however, to require all producers to provide the amount of compensation upon request.

RIMS expressed disappointment that the Department was not banning all contingent commissions, but called the draft regulation a good first step in bringing transparency to the marketplace. RIMS stated that the timing of disclosure must be as early in the placement process as possible. RIMS also recommended that the definition of compensation be expanded to include compensation that goes to affiliates, subsidiaries or parents of insurance producers. As discussed above, the Department has decided not to ban contingent commissions because it is best for compensation structures to be determined in a transparent free market. The Department has also moved the required disclosure to a time earlier in the process in subsequent drafts and expanded the requirement to include compensation received by a producer's affiliates, subsidiaries and parents.

USAA, GEICO and Liberty Mutual recommended that salaried employees of insurance companies who receive no incentive-based compensation be exempted from the regulation because their compensation does not create any conflict of interest with the customer. The Department has clarified that such employees are exempt from the draft regulation.

PCI opined that the Department does not have legislative authority to impose a disclosure

obligation on insurance producers and there is no demonstrated need for such a regulation. PCI also noted that the draft regulation is not "principles-based." As discussed above, the Department believes there is strong statutory authority for the draft regulation. Later drafts have moved to a more principles-based approach, providing more flexibility in the manner in which disclosure is provided and the manner in which records are maintained.

The New York Health Plan Association ("HPA") commented that employees of health plans should not be subject to the regulation. HPA also objected to a definition of purchaser that included certificate holders in health plans who do not select the coverage. HPA also criticized the broad definition of compensation included in the regulation and pointed out that even de minimis items would be included. The Department has clarified in subsequent drafts that employees of insurers who do not receive incentive-base compensation (and are therefore not licensed producers) are exempt from the regulation. The Department has also narrowed the circumstances in which certificate holders would be defined as purchasers to instances where the producer has "sales or solicitation" contact with certificate holders. Finally, the Department has excepted certain de minimis items of compensation from the regulation.

PIANY continued to object to any mandatory disclosure because in its view producer compensation does not lead to potential conflicts of interest, steering or any other problem in the marketplace. PIANY also commented that getting compensation information will only confuse consumers by giving them something they do not want. The Department has addressed most of PIANY's concerns by moving to a two-step disclosure process that informs consumers initially merely about the producer's role in the transaction, the sources of the producer's compensation and the availability of more information and limiting the requirement to disclose compensation amounts or estimates to instances in which the customer requests the information.

PIWA argued that the regulation should only apply in markets where there is limited competition and certain producers have undue influence over their clients. The Department continues to believe that even in competitive marketplaces transparency is of the utmost importance. Moreover, the Department has noted that many insurance consumers do not comparison shop among independent agents or brokers because they rely on the producer to shop the market of available coverage for them. It is therefore critically important that consumers understand the role of the producer and any potential conflicts of interest.

Aon suggested that prior to binding every producer be required to provide (without the customer's request) a statement setting forth (1) whom the producer represents; (2) all quotes sought and received, including the terms of each and the compensation the producer expects to receive; (3) the terms of any arrangements the producer has with other entities concerning each quote. The Department has incorporated most of Aon's suggestions into subsequent versions of the regulation but continues to believe the two-step disclosure process is the best way to balance the interests of consumers and producers.

Liberty Mutual commented that the regulation should only apply to brokers, not insurance agents who represent insurers in personal lines. The Department has determined that disclosure and transparency regarding producer compensation is critical for all segments of the insurance marketplace, particularly personal lines where sales are made mostly by agents, because personal lines consumers are the least likely to understand the producer's role in the transaction.

CIB suggested a mandatory, simple notice and disclosure of the nature of compensation arrangements with more information to consumers who request it. The Department has incorporated this suggestion in subsequent drafts.

JULY 2009 DRAFT COMMENTS

In July 2009, the Department publicized a revised producer transparency draft regulation. As discussed above, the draft incorporated the two-step disclosure process advocated by many industry participants. The July 2009 draft required producers to first disclose: (1) whether the producer represents the insurer or the purchaser for purposes of the transaction; (2) that the producer will receive compensation from the selling insurer based on the sale; (3) that the compensation paid to producers varies from insurer to insurer and product to product; and (4) that the purchaser may obtain more detailed compensation information by asking the producer. The July 2009 draft also moved the disclosure requirement earlier in the sales process, exempted all renewals and clarified and tweaked a number of other aspects of the regulation. The Department received extensive commentary on the July 2009 draft as summarized below.

AALU proposed stating the timing of disclosure as prior to "application" rather than "binding" and stated that the document retention requirements would be onerous for small producers. The Department has changed the language relating to timing as AALU proposed and reduced the document retention requirements in response to AALU’s (and other stakeholders’) comments by moving to a two-step disclosure process where detailed disclosure is only required when the purchasers asks.

The Consumer Credit Industry Association ("CCIA") requested that the Department exempt credit insurance from the regulation asserting that licensed agents who sell credit insurance make most of their income from other aspects of the credit transaction. The Department does not find CCIA’s arguments persuasive because it is important for the regulation to apply in all consumer contexts, including credit insurance. For this reason the regulation was not changed.

Wellpoint commented that customers who ask for additional compensation should not be given information about the compensation for the other policies the producer quotes unless the customer specifically asks for that information. Wellpoint also objected to the Department’s exemption of all renewals because the considerations made by policyholders are the same at renewal. The Department has determined that in order for consumers who actively ask about compensation to receive a complete and accurate picture of the compensation at play in the insurance transaction, they must also receive information about alternatives and any compensation associated with them. The Department agrees with Wellpoint about renewals and in the proposed regulation has exempted only renewals where there is no sales or solicitation contact between the producer and purchaser.

CIAB expressed concern that there is no "de minimis" exception to the broad definition of compensation in the draft. The Department has now added a de minimis exception. CIAB suggested limiting the producer contact that triggers disclosure to certificate holders on a group policy to "sales or solicitation contact" because producers may also be in contact with certificate holders for policy servicing reasons and that should not trigger disclosure. The Department has incorporated this suggestion in the proposed regulation. CIAB also objected to the open ended timing in allowing purchasers to request additional compensation

information at "any time during the relationship" because it requires producers to potentially maintain records for many years. The Department determined that mandating disclosure upon request after the purchase decision has been made provides little additional value to consumers and adds additional compliance burdens to insurance producers. Therefore, the Department has limited the time period to thirty days in the proposed regulation. Finally, CIAB suggested exempting managing general agents and wholesalers when they have no "sales and solicitation" contact with the purchaser. The Department has incorporated this suggestion in the proposed regulation.

Hanover Insurance Group suggested eliminating 30.3(b), which requires disclosure of compensation amounts or an estimate upon customer request, from the regulation because such detailed information is unnecessary for consumers. Hanover pointed out that it will be difficult for producers to comply with the 30.3(b) disclosure requirements because there are so many different complex compensation structures. The Department has determined that eliminating 30.3(b) would undermine the central regulatory goal of providing information to consumers who need and want it. Moreover, 30.3(b) and (c) allow producers to make reasonable estimates when they do not have all the disclosed information available. Hanover also suggested eliminating the requirement that insurers maintain compensation records "in the producer file" because it is burdensome. The Department has addressed this concern in the proposed regulation by allowing insurers to maintain the information in the manner they choose.

IBANY commented that it is difficult for producers to state with precision whom they represent for purposes of a particular sale. Many brokers, for example, also have agency agreements with certain insurers. The Department believes that it is important for producers to state clearly whom they legally represent in each transaction and has not changed the draft as a result. IBANY commented that requiring producers to disclose all alternate quotes "obtained or considered" is too broad and burdensome. The Department has addressed this concern by removing the words "or considered" from the proposed regulation.

IIABNY also criticized the provision requiring producers to state whom they represent in the transaction. For the reasons stated above, the Department has not changed this provision. IIABNY also objected to the word "detailed" in the description of the compensation statement that producers must provide to consumers upon request. The Department agrees with IIABNY that the statement does not necessarily have to be detailed and has removed that word from the proposed regulation. IIABNY advocated for a "de minimis" compensation exception, and the Department has made that change. IIABNY and several other industry groups objected to section 30.8 which states that a violation of the regulation is deemed an unfair trade practice in violation of section 2403 of the Insurance Law. The Department has removed section 30.8 in the proposed regulation.

NAIFA strongly objected to section 30.3(a)(4) of the July 2009 draft which requires producer to disclose to customers that they have the right to obtain more information about the source and amount of the producer's compensation. NAIFA believes that this "prompt" will encourage consumers to ask for more information which will disrupt the sales process. The Department has decided that the "prompt" language is necessary to advise the consumer of the availability of more compensation information and is critical to achieving the regulatory goal of full transparency for consumers who want compensation information.

PCI commended the Department for making a number of constructive changes in the July

2009 draft. PCI suggested that personal lines be excluded from the scope of the regulation. As discussed above, the Department does not believe it is appropriate to promulgate a transparency regulation that provides more protection to sophisticated consumers at the upper end of the commercial insurance market than it does for less sophisticated consumers at the lower end of the market. PCI also asked for a broad exclusion from the regulation for "direct writers." The Department has already excluded from the regulation employees of direct writers who do not receive incentive-based compensation. Employee-producers of direct writers that do receive incentive-based compensation may have potential conflicts of interest when the incentives for one product are greater than the incentives for another. Therefore, the Department has not broadened the exception.

LICONY objected strongly to the "prompt" language in section 30.3(a)(4) that informs consumers that they may obtain more information about compensation by asking. LICONY continues to believe that any disclosure of the amount of producer compensation will impede the sale of life insurance in New York. As discussed above, the Department believes that the "prompt" language is necessary to advise the consumer of the availability of more compensation information and is critical to achieving the regulatory goal of full transparency for consumers who want compensation information. LICONY made a number of other suggestions tweaking the language of the role disclosure in 30.3(a), and the Department has implemented most of them. LICONY (and other industry groups) also argued that that requiring a producer to provide information concerning all alternative quotes "obtained" may discourage producers from obtaining as many quotes as possible in order to find the best insurance coverage and price for the purchaser. In some lines of business, producers may obtain ten or more alternatives quotes for a purchaser. Potentially having to prepare compensation information for each of those alternative quotes may cause some producers to limit the number of quotes they obtain which would not be good for purchasers. Moreover, producers often obtain quotes that end up not being appropriate or available for the purchaser because the mix of coverage and price does not fit the purchaser's needs or the purchaser does not meet certain underwriting criteria. Therefore, the Department determined that it makes little sense to require the producer to provide compensation information to the purchaser concerning these inappropriate or unavailable alternatives and changed "obtained" to "presented" in the final version of the regulation.

The NYS Association of Health Underwriters ("NYSAHU") commented that disclosure of complex contingent commissions would lead to confusion. The regulation, however, allows for a brief description of the factors that affect contingent commissions and will not confuse consumers. Therefore, the Department has not changed the regulation.

CIB suggested moving disclosure to a page on the actual insurance policy. The Department agrees with numerous consumer representatives that in order to be effective, the disclosure must occur before the purchase decision is final. Therefore, the Department has required disclosure at or before the time of application. CIB and other industry representatives suggested that when the consumer requests additional information, the producer should only be required to disclose the alternatives "presented" to the client. The Department, however, has determined that this narrows the scope of disclosure too much, especially considering that this disclosure is only required when the consumer asks. Such a narrow definition might also encourage producers to "present" fewer options to the consumer in the first instance.

NYIA reiterated its belief that the regulation should exclude captive or exclusive insurance agents. As discussed above, the Department has determined that incentive-based

compensation structures for captive or exclusive insurance agents may raise potential conflicts of interest. First, many captive insurance agents are also permitted to place consumers with other insurers when their main insurer does not provide the needed coverage. Second, incentives may vary from insurance product to insurance product creating potential conflicts even for captive or exclusive agents. Therefore, the regulation continues to include captive and exclusive agents. NYIA also pointed out that the statement in section 30.3(b)(5) concerning filed commission rates is misleading because many rating plans are filed on commission averages. The Department has changed the language of 30.3(b)(5) to address this concern and more accurately state the anti-rebating principle.

RIMS complimented the Department for its leadership in promulgating this regulation. RIMS and the Public Risk Management Association ("PRIMA") expressed disappointment that the two-step disclosure process in the July 2009 draft does not provide mandatory producer compensation disclosure to every consumer because it shifts the burden to the consumer to ask for more information. RIMS also advocated for moving disclosure earlier in the purchasing process and allowing oral disclosure only if there is a follow on disclosure later in writing. RIMS and PRIMA also strongly opposed the broad exemption for all renewals. The Department has moved the disclosure earlier to at or before application in the proposed regulation. The Department has also narrowed the exemption for renewals to cover only renewals where the producer does not have sales or solicitation contact with the consumer. PRIMA also suggested that in instances where oral disclosure is provided, the producer should be required to follow up with written within ten business days. The Department agrees that follow-up written disclosure and has required such disclosure no later than issuance of the insurance contract.

The American Insurance Association ("AIA") requested that the Department expand the availability of oral disclosures because many of its members sell insurance policies over the phone. The Department has addressed this concern by allowing the first layer role disclosure to be oral at the option of the producer and required that the producer follow up the oral disclosure with a written disclosure at or before issuance of the policy. AIA also objected to the requirement that written disclosure under section 30.3(b) occur "prior to" issuance of the insurance contract because such a requirement will interfere with call center sales. The Department has addressed this concern by allowing disclosure "no later than" issuance in the proposed regulation.

HPA opined that section 30.3 may apply to broadly and suggested that it only apply to the insurance producer "primarily responsible for" selling an insurance contract. Consumers, however, should be able to get information about any producer involved in the sales process with which the producer has contact. Therefore, the Department has not accepted HPA's suggested change.

AAMGA suggested changing the language of section 30.5(c) to extend the exemption to all wholesale brokers and managing general agents. The Department's rationale for exempting these producers is that they generally do not have direct contact with the purchaser and are therefore not making recommendations to the purchaser. On occasion, however, managing general agents or wholesalers may have direct contact with the purchaser and in those instances it is important for the regulation to apply. The Department has therefore not taken AAMGA's suggestion.

Marsh proposed adding a materiality threshold to the definition of compensation. The

Department has addressed this issue by providing a de minimis exemption in the definition. Marsh has also proposed removing the language from the definition that refers to "interest on premium" arguing that such amounts are difficult to calculate and insignificantly small. Interest on premium can be significant, however, if producers are allowed to collect it for extended periods of time. Therefore the Department has not accepted the proposed change. Marsh also suggested allowing producers to maintain recorded evidence of oral disclosures rather than certifications, and the Department has made that change.

PIANY advocated strongly for the inclusion of direct writers in the disclosure requirements so that the regulation does not provide a competitive disadvantage to independent agents. As discussed above, exclusive or captive agents are included in the draft as are employees of direct writers who receive incentive-based compensation (and therefore must be licensed as producers). Employees of direct writers who do not receive incentive-based compensation are the only ones excluded from the draft because there is little or no confusion about their role in the transaction and little or no potential for conflicts of interest to arise. PIANY and other producer representatives suggested expanding the option for producers to provide oral disclosure, and the Department has done so. PIANY also objected to the requirement that producers disclose whom they represent in the transaction. For the reasons discussed above, the Department has not changed this requirement.

CFA suggested that the regulation require disclosure of agent-owned reinsurance companies and other arrangements that make the producer a partner with the insurer. While the Department recognizes that agent-owned reinsurers can give rise to potential conflicts of interest, this is a relatively rare occurrence, and the burden of requiring the producer to determine which reinsurer the insurer will use is too great. Therefore, the Department has not taken this CFA suggestion. CFA proposed requiring producers to disclose whether or not they have a fiduciary duty to the purchaser. Under New York law, however, fiduciary duties arise depending on a fact-specific inquiry into the circumstances of each individual transaction. It would therefore be impractical for producers to make this disclosure. CFA also stated that the regulation should apply to renewals. As discussed above, the Department has addressed this issue by narrowing the exemption to situations where the producer is not involved in the renewal. CFA also critiqued the "two-step" disclosure process. As discussed above, the Department has determined that the two-step process provides sufficient information to consumers.

9. Federal standards: There are no applicable federal standards.

10. Compliance schedule: Once the regulation is adopted, regulated parties will be given a phase-in period of six months.