COMPLIANCE UPDATE

New York: New Compensation Disclosure Requirements for Producers; Regulation 194 and Circular Letter No. 18

- Effective January 1, 2011, New York has promulgated regulation 194 which requires licensed insurance producers conducting business in New York to make disclosures about their role in insurance transactions to their insurance customers. Obligation for fulfilling Regulation 194 requirements rests solely upon the producer, not the insurers with whom producers are appointed.

- Circular Letter No. 18 provides guidance to producers to help them implement and comply with Regulation 194 requirements.

- Producers are encouraged to consult with the State of New York Insurance Department about any method of compliance being considered not provided under Circular Letter No. 18.

- Regulation 194 and Circular Letter No. 18 are included in this field notification for your convenience.

- Please direct all questions you may have regarding compliance with Regulation 194 to the State of New York Insurance Department:
    - Paul A. Zuckerman
      Assistant Deputy Superintendent and Counsel
      New York State Insurance Department
      25 Beaver Street
      New York, NY 10004
      212-480-5286 or email at pzuckerm@ins.state.ny.us

American General Life Companies, www.americangeneral.com, is the marketing name for the insurance companies and affiliates comprising the domestic life operations of American International Group, Inc., including American General Life Insurance Company and The United States Life Insurance Company in the City of New York.
FOR PRODUCER USE ONLY – NOT FOR DISSEMINATION TO THE PUBLIC

NEW YORK STATE
INSURANCE DEPARTMENT
REGULATION NO. 194
(11 NYCRR 30)

PRODUCER COMPENSATION TRANSPARENCY

I, James J. Wrynn, Superintendent of Insurance of the State of New York, pursuant to the authority granted by sections 201 and 301 and Article 21 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. 194), to take effect on January 1, 2011.

(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 and insurance producers with respect to transparency of compensation paid to insurance producers and their role in insurance transactions in this State; and

(b) to protect the interests of the public by establishing minimum disclosure requirements relating to the role of insurance producers and the 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, trips, prizes, or gifts, whether paid as commission or otherwise. Compensation does not mean tangible goods with the insurer name, logo or other advertisement and having an aggregate value of less than $100 per year per insurer.

(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 insurance producer has direct sales or solicitation contact with the certificate holder or member, and the certificate holder or member pays all of the premium.

(c) *Insurer* means any person or entity doing an insurance business in this State.

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

(e) *Insurance producer or producer* means any insurance producer as defined by Insurance Law section 2101(k).

§ 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, an insurance producer selling an insurance contract shall disclose the following information to the purchaser orally or in a prominent writing at or prior to the time of application for the insurance contract:

(1) a description of the role of the insurance producer in the sale;

(2) whether the insurance producer will receive compensation from the selling insurer or other third party based in whole or in part on the insurance contract the producer sells;

(3) that the compensation paid to the insurance producer may vary depending on a number of factors, including (if applicable) the insurance contract and the insurer that the purchaser selects, the volume of business the producer provides to the insurer or the profitability of the insurance contracts that the producer provides to the insurer; and

(4) that the purchaser may obtain information about the compensation expected to be received by the producer based in whole or in part on the sale, and the compensation expected to be received based in whole or in part on any alternative quotes presented by the producer, by requesting such information from the producer.

(b) If the purchaser requests more information about the producer's compensation prior to the issuance of the insurance contract, the producer shall disclose the following information to the purchaser in a prominent writing at or prior to the issuance of the insurance contract, except that if time is of the essence to issue the insurance contract, then within five business days:

(1) a description of the nature, amount and source of any compensation to be received by the producer or any parent, subsidiary or affiliate based in whole or in part on the sale;

(2) a description of any alternative quotes presented by the producer, including the coverage, premium and compensation that the insurance producer or any parent, subsidiary or affiliate would have received based in whole or in part on the sale of any such alternative coverage;

(3) a description of any material ownership interest the insurance producer or any parent, subsidiary or affiliate has in the insurer issuing the insurance contract or any parent, subsidiary or affiliate;

(4) a description of any material ownership interest the insurer issuing the insurance contract or any parent, subsidiary or affiliates has in the insurance producer or any parent, subsidiary or affiliate; and

(5) a statement whether the insurance producer is prohibited by law from altering the amount of compensation received from the insurer based in whole or in part on the sale.

(c) If the purchaser requests more information about the producer's compensation after issuance of the insurance contract but less than thirty days after issuance, then the insurance producer shall disclose to the purchaser in a prominent writing the information required by subsection 30.3(b) of this Part within five business days.

(d) If the nature, amount or value of any compensation to be disclosed by the insurance producer is not known at the time of the disclosure required by subdivision 30.3 (b) or (c) of this section, then the insurance producer shall include in the disclosure:

(1) a description of the circumstances that may determine the receipt and amount or value of such compensation, and

(2) a reasonable estimate of the amount or value, which may be stated as a range of amounts or values.

(e) If the disclosure required by subdivision (a) of this section is provided orally, then the insurance producer shall also disclose the information required by subdivision (a) of this section to the purchaser in a prominent writing no later than the issuance of the insurance contract.

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

§ 30.4 Retention of disclosure.

The insurance producer shall retain a copy of any written disclosure provided to the purchaser pursuant to section 30.3 of this Part for not less than three years after the disclosure is given, unless the insurance producer has a written agreement with the insurer that the insurer shall retain such a copy .

§ 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 pursuant to Article 70 of the Insurance Law;

(c) to an insurance producer that has no direct sales or solicitation contact with the purchaser, which may include wholesale brokers or managing general agents;

(d) to a sale of insurance by a person who is not required to be licensed as an insurance producer under Insurance Law section 2102(a)(1) for the purposes of that sale; or

(e) to renewals, except that if the purchaser requests more information about the producer's compensation less than 30 days prior to a renewal or less than 30 days after a renewal, the insurance producer shall disclose to

the purchaser in a prominent writing the information required by subsection 30.3(b) of this Part within five business days.

§ 30.6 Obligations of an authorized insurer.

The amount of any compensation that an authorized insurer or its agent pays to an insurance producer shall be 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.

I, James J. Wrynn, Superintendent of Insurance of the State of New York, do hereby certify that the foregoing is the new Part 30 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Regulation No. 194), entitled "Producer Compensation Transparency", promulgated by me on January 25, 2010 pursuant to the authority granted by Sections 201 and 301 and Article 21 of the Insurance Law, to take effect on January 1, 2011.

Pursuant to the provisions of the State Administrative Procedure Act, prior notice of the proposed regulation was published in the State Register on December 2, 2009. No other publication or prior notice is required by statute.

James J. Wrynn
Superintendent of Insurance

Dated: January 25, 2010

STATE OF NEW YORK
INSURANCE DEPARTMENT
25 BEAVER STREET
NEW YORK, NEW YORK 10004

David A. Paterson
Governor

James J. Wrynn
Superintendent

Circular Letter No. 18 (2010)
November 5, 2010

TO: **All Licensed Insurance Producers and Authorized Insurers**

RE: **Implementation of and Compliance with 11 NYCRR 30 (Regulation 194)**

STATUTORY REFERENCES: N.Y. Ins. Law §§ 201 and 301 and Article 21; 11 NYCRR § 30 (Regulation 194)

The purpose of this Circular Letter is to set forth the Department's expectations regarding compliance by insurance producers and authorized insurers with 11 NYCRR 30 (Regulation 194 - *Producer Compensation Transparency*). Regulation 194 takes effect on January 1, 2011. In promulgating Regulation 194, the Department was committed to achieving the appropriate balance between informing purchasers as to the role and compensation of producers, while not unduly burdening producers, hindering the sales process, or imposing significant, additional costs on the sale and distribution of insurance[1] in New York. The Department is committed to providing appropriate and useful guidance to aid implementation of Regulation 194's requirements. Producers are encouraged to provide the Department information or evidence of any adverse effects of Regulation 194, and to submit any additional questions that they may have.

The Department expects licensees to comply fully with Regulation 194. In the first six months after the regulation's effective date, however, the Department's enforcement efforts will focus primarily on violations that are willful or egregious or demonstrate a pattern or practice of wrongdoing.

Identified below are certain methods of compliance that fulfill the requirements of Regulation 194. The list is not prescriptive or exhaustive. Other methods of compliance that producers choose to utilize may be equally reasonable and compliant with the Regulation. Though not required to do so, producers may wish to consult with the Department about any other method of compliance that they are considering.

General

No particular format is required for the disclosures required under § 30.3(a), (b) and (d) of Regulation 194.

For annuity or other contracts also regulated by the Securities and Exchange Commission ("SEC"), any disclosure required under Regulation 194 may be incorporated into the federal prospectus disclosure required by the Securities Act of 1933 and SEC rules provided that the disclosure required under Regulation 194 is prominent. However, SEC disclosures may not be sufficient to comply with Regulation 194 and producers should be cognizant of any additional requirements imposed by the regulation.

A producer may incorporate any disclosure required by Regulation 194 into other written materials provided to the purchaser, as long as the disclosure is prominent.

Regulation 194 does not apply where an existing policy or contract is modified or otherwise amended. The regulation applies only upon the issuance of a new policy or contract.

A producer may combine all disclosures required by Regulation 194 into one document provided to the purchaser at or prior to the time of application for an insurance contract.

Section 30.2 - Definitions

A producer is required under Regulation 194 to disclose compensation (as defined in the Regulation) only if the receipt of the compensation is based in whole or in part on the sale of an insurance contract or contracts.

Section 30.3(a) - Mandatory Initial Disclosure

A producer that is a business entity, such as a corporation or partnership, and that sells insurance contracts through its employees or sublicensees, is the producer "selling an insurance contract" for purposes of § 30.3(a) of Regulation 194. Such a producer is therefore required to provide disclosure pursuant to Regulation 194. Such a producer need not disclose the compensation it pays to its individual employees (whether licensed or not) or sublicensees. Only one set of disclosures per transaction is required.

Initial disclosure required under this section may be made at or prior to the time of application for binding of an individual insurance contract. A producer's use of an application form to merely solicit multiple quotes does not trigger the disclosure requirements under Regulation 194.

No particular format is required for the disclosures mandated by § 30.3(a) of Regulation 194. A producer may satisfy the initial disclosure requirement with a "boilerplate" form to use for each written disclosure. An initial disclosure may be, but is not required to be, a statement a few sentences long.

In addition to the disclosures required by § 30.3(a), a producer may disclose other information such as: (1) if applicable, that the producer is prohibited by law from rebating commission or other compensation to the insured or potential insured or otherwise providing an inducement to the insured or potential insured in order to make the sale; (2) if applicable, that compensation is limited by New York law and a general description of those limits; (3) additional information about the producer, the kind of insurance for which application is made, or the insurer; and (4) that compensation received for various sales may not be readily comparable due to differences in insurers' distribution systems and compensation structures.

The disclosures required by § 30.3(a) must be prominent.

Section 30.3(b) - Disclosure Upon Request

In order to meet the requirement in § 30.3(b)(1) that the producer disclose the "amount" of compensation to be received, the producer may state the amount in a number of different ways. For example:

- A producer's known compensation may be described as the total dollar amount expected to be received based in whole or in part on the sale.
- A producer's known compensation may be described as the total amount expected to be received based in whole or in part on the sale stated as a percentage of one year of premium.
- Unlike other kinds of insurance, life insurance policies, annuity contracts, long-term care insurance policies and disability income insurance policies last for a number of years, but compensation is typically greater in the early years that the policy is in effect. Accordingly, a producer may disclose the known compensation as a percentage of the total premium paid over the expected duration of the policy or contract. For such a disclosure to be acceptable, it must state (1) the expected duration used (which must take account of appropriate mortality and termination rates for the kind of policy being sold), and (2) that most compensation is paid in the first year if such is the case, or that most of the compensation is paid in the first 5 years if such is the case. Example: "I expect to receive from the insurer 8% of the total premium you pay on this

policy if you keep the policy in place for 13 years which is the expected average duration of this type of policy. Most of that compensation will be paid in the first year."

A producer may explain the § 30.3(b) compensation information orally and in an abbreviated form when a request is made so long as the information required to be disclosed is subsequently provided in a prominent writing at or prior to the issuance of the insurance contract.

A producer is not required to provide separate disclosures for multiple lines of coverage provided at the same time so long as the disclosure contains total compensation for each of the multiple lines.

Material ownership interest under § 30.3(b)(3) does not include shares of mutual funds or other substantially similar indirect ownership vehicles.

Section 30.3(d) - Disclosure of Reasonable Estimate of Compensation

Compensation is "not known at the time of disclosure" when it is contingent upon some future occurrence such as meeting sales volume, profitability or retention targets.

Compensation that may not be paid, or that the producer may be required to return to the insurer, merely because the policyholder cancels or ceases paying premiums on the policy (e.g., commissions subject to chargeback) does not constitute compensation "not known at the time of disclosure."

A producer is not required to disclose detailed compensation structures but must provide a description of the circumstances that may determine the receipt and amount or value of any compensation not known at the time of disclosure. For example: "I may also be eligible for additional compensation depending upon a number of factors including premium and policy volume, losses and profitability."

In order to meet the requirement in § 30.3(d)(2) that the producer disclose "a reasonable estimate" of the amount or value of unknown compensation to be received, the producer may estimate the amount in a number of different ways. For example:

- A producer may estimate the unknown compensation as a reasonable range of percentages of premium based on the amount of such compensation the producer has received on the sale of similar policies in prior years.
- A producer may estimate the unknown compensation as a reasonable range of dollar amounts based on the amount of such compensation the producer has received on the sale of similar policies in prior years.
- When a producer's unknown compensation received based on the sale of similar policies in prior years is not readily available or calculable, the producer may use an estimate provided by the insurer and based on the average amount of such compensation paid to producers per dollar of premium for similar policies in prior years.
- For life insurance policies, annuity contracts, long-term care insurance policies and disability income insurance policies, a producer may estimate the unknown compensation as an additional range of percentages of the total premium paid over the average duration of the policy or contract in accordance with the paragraph discussing life insurance policies and annuity contracts under Section 30.3(b) above.
- A producer who works exclusively for one insurer may estimate unknown compensation by stating all such compensation the producer receives in a given year as a percentage or range of percentages of the producer's total yearly compensation.

Section 30.5 - Exceptions

For purposes of the disclosure requirement in § 30.5(e), the payment of premium installments does not constitute a renewal. However, as a practical matter, the producer should be prepared to provide additional information about compensation if the purchaser requests it.

Subject to the exceptions set forth in § 30.5, any producer that is acting as a producer (i.e., requires a producer license for the activity at issue) must comply with Regulation 194.

Section 30.3 provides that the insurance producer selling an insurance contract has the disclosure obligations required by the regulation. The disclosure requirements of the regulation do not apply to:

- a salaried, licensed employee representative whose activities do not require a producer's license and who does not receive compensation based in whole or in part on the sale of insurance. Such a salaried employee may receive compensation for meeting criteria that are not based in whole or in part on insurance sales, such as number of applications taken by phone, payments made by phone and obtaining customer feedback surveys; or

- a producer, such as a wholesaler or managing general agent, whose primary contact is with the selling agent or broker, and who has no contact with the purchaser that involves sales or solicitation. A producer, such as a wholesaler or managing general agent, does not have "direct sales or solicitation contact" with the purchaser under § 30.5(c) solely because the selling producer provides the name and contact information of the wholesaler, managing general agent or other producer to the purchaser.

Section 30.6 - Obligations of an Authorized Insurer

An insurer may delegate to a licensed insurance agent its obligation under § 30.6 to maintain records regarding the amount of compensation paid to the agent, provided that the agent maintains the records in accordance with 11 NYCRR 243 (Regulation 152).

Please direct any questions or comments regarding the contents of this Circular Letter to:

Paul A. Zuckerman
Assistant Deputy Superintendent and Counsel
New York State Insurance Department
25 Beaver Street
New York, NY 10004
212-480-5286 or email at pzuckerm@ins.state.ny.us.

Very truly yours,

James J. Wrynn
Superintendent of Insurance

[1] Throughout this circular letter, the terms "insurance", "insurance policy", and "insurance contract" also include bonds and annuity contracts.