TECHNICAL ADVISORY

TA 134 **March 18, 1999**

SUBJECT: LDI Emergency Regulation 69
Year 2000 Endorsements

BACKGROUND: Insurance Services Office (ISO) filed a number of Year 2000 endorsements nationwide to allow insurance companies to clarify, limit or eliminate their exposure to Year 2000-related losses under insurance policies. The Louisiana Department of Insurance (LDI) and the Louisiana Insurance Rating Commission (LIRC) had some concerns about the impact of these endorsements on insurance coverage for policyholders. LDI/LIRC observed that many insurance companies were using Y2K limitations and exclusions on a blanket basis, and in many instances, using very broad exclusions on insureds which appear to have limited Y2K exposure.

LDI/LIRC held hearings and studied the issue in depth and prepared to issue a regulation to limit the application of Year 2000 endorsements. Insurance companies had an extremely negative reaction to the first draft of the proposed LDI/LIRC regulation. Many companies expressed concern that they would be forced to nonrenew large numbers of Louisiana policies as the result of the limitation on Y2K endorsements.

IIAL played a critical role in discussions between LDI/LIRC and the insurance industry. IIAL Technical Committee Chairman **Joe O'Connor** and IIAL EVP Jeff Albright were involved in numerous discussions which ultimately resulted in the enclosed Regulation 69. The regulation provides significant protection to policyholders, but also accommodates the legitimate concerns of insurance companies. We cannot overstate the difficulty or importance of reaching this balance which resulted in the continued availability of appropriate insurance coverage without unacceptable Y2K limitations nor a restriction in market availability.

Commissioner Jim Brown and the staff of the Louisiana Department of Insurance did an excellent job of resolving this issue while protecting all of the relative interests of the parties involved.

Emergency Regulation 69 will take effect in March 1999, upon publication in the *Louisiana Register.* LDI/LIRC will proceed with the necessary steps to have the regulation approved as a permanent regulation. IIAL will assist in appropriate ways to help gain approval of the permanent regulation.

MAIN POINTS: A copy of Regulation 69 is attached. Here are highlights of some of the more important points. The required Notice to Policyholders has not been promulgated at this time.

Section 8705. The regulation applies to all admitted insurance companies, as well as surplus lines, brokers and reinsurers.

Section 8711. Prior approval of Y2K exclusion forms by the Louisiana Department of Insurance (LDOI) is waived in favor of a "file and use" approach (see definition in ***Section 8709***). However, rate and rule filings must still be approved by the Louisiana Insurance Rating Commission (LIRC).

Section 8713. The LDOI feels strongly that use of Y2K exclusions be risk-specific, reasonable and justifiable. Widespread, blanket usage is prohibited.

For <u>Personal Lines</u>, the only permitted use is for policies in which there is a *business pursuits* exposure. In those cases, the insurer must document that a "realistic risk of exposure" exists, and such documentation must be maintained in the insured's file for five years. One additional requirement is that the exclusion must still cover certain ensuing perils, as well as on premises bodily injury.

For <u>Commercial Lines - Property</u>, approved form language must track the ISO standard IL 09 35, which provides coverage for certain ensuing perils. Any filing which is substantially different must justify the impact on premium. No Y2K exclusion will be approved which does not cover ensuing perils.

For <u>Commercial Lines - Liability</u>, the LDOI's position is that Y2K exclusions are "strongly discouraged," with a few narrow exceptions. Use of the "total" exclusion in CG 21 60 is limited to "high risk insureds." For other risks,

endorsements which have an exception for bodily injury, or which contain specific schedules of exposures, such as CG 21 63 and CG 21 64, are suggested.

In addition, several classes of risks (mercantile and restaurants, lodging and habitational, or institutional, such as churches and schools), may **not** have a Y2K exclusion attached. However, if a "subclass" of one of the exempted classifications has a justifiable exposure, an exclusion which schedules the specific exposure (using CG 21 63 or CG 21 64, or similar language), may be used. The justification must documented, and maintained in the insured's file for five years.

For Surplus Lines, failure to comply with this regulation could cause removal from the list of approved unauthorized insurers.

Section 8715. Admitted insurers must file a list of classifications which will be the subject of Y2K exclusions, with appropriate underwriting criteria.

The LDOI must be notified by an insurer within 15 days of any coverage denials, or reservations of rights letters, involving Y2K .

The LDOI will closely monitor all "market conduct" involving Y2K, including underwriting, claims, cancellation and nonrenewal, availability of "buy back" coverage, and other issues.

Section 8717. The use of Y2K "questionnaires" will be monitored, and claims denials based on such information will be limited to specific circumstances, such as providing false or intentionally deceptive information.

Section 8721. Guidelines are provided for exempting certain lines of insurance, and/or certain individual insureds, from this regulation.

NECESSARY ACTION: This Technical Advisory and attached Regulation 69 should be distributed to, and reviewed in detail by, all Commercial Lines agency staff, as well as those Personal Lines staff who handle accounts with a business pursuits exposure.