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TA 304

October 9, 2012

**SUBJECT:** **LDI Advisory Letter 2012-03 Producer Compensation;  
Placement of Commercial Property and Casualty Insurance**

**BACKGROUND:** On August 9, 2010, the Louisiana Department of Insurance (LDI) issued Advisory Letter No. 2010-01 regarding issues concerning producer compensation. Specifically, Advisory Letter No. 2010-01 addressed producer compensation agreements between producers and insureds that utilized flat fees in lieu of commissions set by an insurer and the act of providing or soliciting quotes "net of commission." The term "net of commission" refers to a commission whereby the quoted premium is reduced by an amount proposed to be the insurance producer's or insurance broker's commission.

Please be advised that some of the issues presented in Advisory Letter No. 2010-01 were directly addressed by the enactment of LSA-RS. 22:1567. In the limited arena of property and casualty insurance, LSA-RS. 22: 1567 authorizes producers and certain insurers or policyholders to negotiate any combination of commissions, fees, or fees in lieu of commission for the placement of commercial property and casualty insurance, including a governmental entity pursuant to LSA-R.S. 42: 1123(37)(b). The purpose of Advisory Letter No. 2012-03 is to acknowledge and explain the exception created by LSA-RS. 22: 1567 and to reemphasize in all other aspects the LDI's legal opinion regarding producer compensation agreements between insurers, producers and policyholders as set forth in Advisory Letter No. 2010-01 .

**MAIN POINTS:** Pursuant to LSA-RS. 22:1567, an insurance producer may negotiate with both or either a property and casualty insurer or a commercial policyholder, including a governmental entity, to compensate the insurance producer for the placement of commercial property and casualty insurance coverage by any combination of commissions, fees, or fees in lieu of commission if the commercial insurance policyholder or governmental entity meets one of the following criteria:

1. Has total annual property and casualty insurance premiums in excess of \$500,000.
2. Obtains insurance coverage with a per occurrence or per claim deductible or self-insured retention of \$50,000 or more for workers' compensation, general liability, or automobile insurance coverages.
3. Has a net worth in excess of \$25,000,000.
4. Qualifies as a self-insurer with the state of Louisiana.

5. Is a governmental entity that had a contract prior to August 9, 2010, with an insurance producer on a stipulated fee basis for the placement of commercial property and casualty insurance coverages.

As stated in Advisory Letter No. 2010-01, the LDI has concluded that such fee arrangements are not permitted because by definition such fees and commissions are considered premium and subject to all relevant provisions in the Louisiana Insurance Code regarding premium. The only exceptions are those specifically set forth in LSA-RS. 22:46(13) which defines premium and those exceptions found in LSA-RS. 22:855 regarding premium disclosure.

However, it appears that the intent of the LSA-RS. 22: 1567, enacted subsequent to the issuance of Advisory Letter No. 2010-01, is to create specific and limited exceptions to several statutes discussed in Advisory Letter No. 2010-01 including but not limited to statutes regarding the definition of premium and commission, rebating, unfair discrimination, and disclosure. Under certain criteria, LSA-RS. 22:1567 permits a producer to negotiate compensation by utilizing any combination of commissions, fees, or fees in lieu of commissions without such compensation being considered part of the premium.

**NECESSARY  
ACTION:**

Please review LDI Advisory Letter 2012-03 (attached) to make certain that agency procedures related to producer compensation comply with Louisiana law as outlined. Review LDI Advisory Letter 2012-03 and appropriate agency procedures with insurance producers and appropriate agency personnel.



LOUISIANA DEPARTMENT OF INSURANCE  
JAMES J. DONELON  
COMMISSIONER

**ADVISORY LETTER NO. 2012-03**

**TO: ALL INSURERS, BROKERS AND PRODUCERS**

**FROM: JAMES J. DONELON, COMMISSIONER OF INSURANCE**

**RE: PRODUCER COMPENSATION; PLACEMENT OF COMMERCIAL  
PROPERTY AND CASUALTY INSURANCE**

**DATE: OCTOBER 4, 2012**

On August 9, 2010, the Louisiana Department of Insurance (LDI) issued Advisory Letter No. 2010-01 regarding issues concerning producer compensation. Specifically, Advisory Letter No. 2010-01 addressed producer compensation agreements between producers and insureds that utilized flat fees in lieu of commissions set by an insurer and the act of providing or soliciting quotes "net of commission." The term "net of commission" refers to a commission whereby the quoted premium is reduced by an amount proposed to be the insurance producer's or insurance broker's commission.

Please be advised that some of the issues presented in Advisory Letter No. 2010-01 were directly addressed by the enactment of LSA-R.S. 22:1567. In the limited arena of property and casualty insurance, LSA-R.S. 22:1567 authorizes producers and certain insurers or policyholders to negotiate any combination of commissions, fees, or fees in lieu of commission for the placement of commercial property and casualty insurance, including a governmental entity pursuant to LSA-R.S. 42:1123(37)(b). The purpose of Advisory Letter No. 2012-03 is to acknowledge and explain the exception created by LSA-R.S. 22:1567 and to reemphasize in all other aspects the LDI's legal opinion regarding producer compensation agreements between insurers, producers and policyholders as set forth in Advisory Letter No. 2010-01.

Pursuant to LSA-R.S. 22:1567, an insurance producer may negotiate with both or either a property and casualty insurer or a commercial policyholder, including a governmental entity, to compensate the insurance producer for the placement of commercial property and casualty insurance coverage by any combination of commissions, fees, or fees in lieu of commission if the commercial insurance policyholder or governmental entity meets one of the following criteria:

1. Has total annual property and casualty insurance premiums in excess of \$500,000.
2. Obtains insurance coverage with a per occurrence or per claim deductible or self-insured retention of \$50,000 or more for workers' compensation, general liability, or automobile insurance coverages.

3. Has a net worth in excess of \$25,000,000.
4. Qualifies as a self-insurer with the state of Louisiana.
5. Is a governmental entity that had a contract prior to August 9, 2010, with an insurance producer on a stipulated fee basis for the placement of commercial property and casualty insurance coverages.

As stated in Advisory Letter No. 2010-01, the LDI has concluded that such fee arrangements are not permitted because by definition such fees and commissions are considered premium and subject to all relevant provisions in the Louisiana Insurance Code regarding premium. The only exceptions are those specifically set forth in LSA-R.S. 22:46(13) which defines premium and those exceptions found in LSA-R.S. 22:855 regarding premium disclosure.

However, it appears that the intent of the LSA-R.S. 22:1567, enacted subsequent to the issuance of Advisory Letter No. 2010-01, is to create specific and limited exceptions to several statutes discussed in Advisory Letter No. 2010-01 including but not limited to statutes regarding the definition of premium and commission, rebating, unfair discrimination, and disclosure. Under certain criteria, LSA-R.S. 22:1567 permits a producer to negotiate compensation by utilizing any combination of commissions, fees, or fees in lieu of commissions without such compensation being considered part of the premium.

Insurers, producers and policyholders should be aware that aside from these new specific and limited statutory exceptions, all other producer compensation agreements shall be consistent with Advisory Letter No. 2012-03. The Commissioner hereby reiterates in part and amends in part the previous legal opinions set forth in Advisory Letter No. 2010-01 regarding producer compensation agreements in accordance with the enactment of LSA-R.S. 22:1567 as follows:

#### Producer Compensation

For each separate product line of insurance that an insurer writes other than for commercial property and casualty policyholders meeting the criteria in LSA-22:1567, the insurer shall use one scheme that establishes either a commission based on a percentage of the premium or a commission based on a flat fee. The scheme must be available to all producers authorized to write this insurance program for the insurer. The insurance program must be a well-defined program within each specific line of business.

Insurers that establish a producer's compensation based on either a percentage of the premium or based on a flat fee may utilize a graduated method of compensating producers based on the total price of the insurance or the premium. Again, any graduated method utilized must be made available to and shall be applied to all appointed producers.

Disclosure

The LDI reminds personal lines and commercial lines insurers and producers that the imposition of any fee or charge for insurance or the procurement thereof shall be considered premium unless specifically exempted by statute. The Louisiana Insurance Code broadly defines the term premium to encompass all consideration given for the purchase or continuance of insurance unless specifically exempted by statute. In pertinent part, LSA-R.S. 22:46(13) states that:

“Premium” means all sums charged, received, or deposited as consideration for the purchase or continuance of insurance for a definitely stated term, and shall include any assessment, membership, policy, survey, inspection, service or similar fee or charge made by an insurer as a part of the consideration for the purchase or continuance of insurance.

This comprehensive definition is an integral part of each statutory requirement under LSA-R.S. 22:855 and is particularly important in its application. Compliance with each requirement under LSA-R.S. 22:855 cannot be understated considering the potential penalties for violating any provision under the statute.

In pertinent part, LSA-R.S. 22:855(A) requires that the premium quoted by the insurer...shall be inclusive of all fees, charges, premiums or other consideration charged for the insurance or for the procurement thereof. Additionally, LSA-R.S. 22:855(C) mandates that each policy delivered to the insured shall have the full and accurate dollar amount of the premium disclosed on the policy, which shall be inclusive of all fees, charges, premiums, or other consideration charged for the insurance or for the procurement thereof.

Under both LSA-R.S. 22:855 (A) and (C), it is not only the consideration paid for the insurance that must be included in the premium quoted and the premium disclosed on the policy, but also the consideration paid to procure such insurance. That is, any fee, charge or consideration, by whatever name called, that must be paid by an insured as a prerequisite to acquire or obtain the insurance must be clearly described and itemized by the insurer or producer in both the quote to the insured and on the policy delivered to the insured. It is insufficient for an insurer or producer to include such charges in an insurance quote but omit them in the policy delivered to the insured or vice-versa. LSA-R.S. 22:855 (A) and (C) are independent requirements and the omission of any fees or charges for the insurance or the procurement thereof under either one is prohibited.

Moreover, LSA-R.S. 22:855(B) prohibits any insurer or producer from charging or receiving any fee, compensation or consideration unless it is included in both the premium quoted to the insured and the policy delivered to the insured. However, LSA-R.S. 22:855.B(2)(a) sets forth an exception for expenses incurred by a producer directly related to the insurance coverage and a reasonable agency fee related to the services provided by the producer. The reimbursement for expenses and agency fees are not

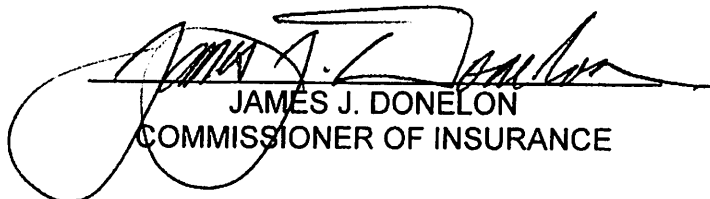
considered premium for any purpose, but shall be itemized separately on an invoice statement. The agency fee shall not exceed twenty-five dollars for homeowners insurance or personal automobile insurance that are standard risks. This cap does not apply to surplus lines insurance and risks that are not insurable at standard rates and those compensation agreements meeting the criteria under LSA-R.S. 22:1567.

"Net of Commission" Quotes

With the exception of commercial insurance policyholders that meet the specific and limited criteria set forth in LSA-R.S. 22:1567, no insurer, producer or broker shall quote a premium that is "net of commission". Providing or soliciting an insurance quote that is "net of commission" does not accurately reflect the total cost of the insurance. Moreover, it can create an environment between insurers, producers and policyholders that is conducive to committing improper activities that may result in violating numerous provisions of the Louisiana Insurance Code. Such violations include but are not limited to rebating (LSA-R.S. 22:1964(8)), unfair discrimination (LSA-R.S. 22:34), and disclosure violations (LSA-R.S. 22:855).

Questions regarding Advisory Letter No. 2012-03 should be directed to the Deputy Commissioner, Office of Licensing and Compliance, at the Louisiana Department of Insurance at 225-342-0814.

Baton Rouge, Louisiana, this 4<sup>th</sup> day of October 2012

  
JAMES J. DONELON  
COMMISSIONER OF INSURANCE