

NAIC QUESTIONS & NAMIC MEMBER SUPPLEMENTAL RESPONSES
March 21, 2005

1. What additional requirements or safeguards should be in place to prohibit a producer from placing its own financial or other interests ahead of its customer's interests in an insurance transaction?

NAMIC Response: Current state contract, tort and regulatory law already provide the consumer with safeguards against a producer placing his/her own financial interest ahead of the consumer's interest in an insurance transaction. Specifically, in most states, a consumer would have the right to file a lawsuit against a producer for said conduct under the legal theory of breach of contract and/or a professional tort. Moreover, the consumer would have the right to file a complaint with the state Division of Insurance, which could then conduct an investigation into the producer's professional practices and sanction him/her accordingly for any such transgression.

NAMIC believes that the threat of civil and/or criminal prosecution, and the adverse licensure implications associated with engaging in said unprofessional and unethical conduct is enough to protect and safeguard the consumer. This method of "policing" the industry has been utilized by most states in a host of different professional communities, i.e. regulating doctors, lawyers and accountants, who are all in a professional relationship that is rife with opportunity to place his/her own financial interest ahead of the consumer's interest. There is no statistical evidence to support the conclusion that this manner of regulation has failed to safeguard the vast majority of consumers in the insurance industry or in any of these other professional communities. Thus, NAMIC does not believe that any further regulation is necessary to protect the consumer.

Although NAMIC does not believe that any further regulation is necessary to safeguard the consumer from aberrational acts of a few bad actors, NAMIC prefers the March 5, 2005, NCOIL Producer Compensation Disclosure Model Amendment to the Producer Licensing Model Act (hereinafter "NCOIL Model Act"). The NCOIL Model Act sets forth a reasonable and appropriate approach to addressing the issue of producer compensation disclosure. The NCOIL Model Act properly focuses upon the prevention of an "actual" conflict of interest between the consumer and the producer that could result from the producer receiving compensation from both sides of the transaction. Consumers who directly compensate a producer for the placement of insurance should be informed that the producer might also receive compensation from the insurer. This will alert the consumer to the fact that the producer has an independent contractual relationship and legal duty to the insurance company that is separate and distinct from that which exists between the producer and the consumer. However, customers who do not compensate the producer are already aware that the producer

is being compensated by another source, and that the producer's contractual relationship with the insurance company is the controlling relationship, i.e. the producer represents the interest of the insurance company. Thus, there is no real potential for a conflict of interest and no need for any disclosures.

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2. If a limited number of brokers and insurance companies are prohibited from receiving or paying contingent commissions, what are the potential marketplace implications?

NAMIC's Response from its March 9, 2005 Comments: At this point, the exact implications are unclear. If this prohibition only affects a limited number of producers, the impact may be minor. Nevertheless, any disruption to the marketplace could have unforeseen consequences.

3. Should a producer be required to offer to disclose to the customer all quotes received and anticipated compensation for a placement of insurance?

NAMIC Response: No. The professional relationship between a producer and his/her client is typically a long-term relationship founded upon mutual trust and respect. Many such relationships exist for 10, 20, or 30 years. In these situations, the typical consumer does not need nor want to be burdened with compensation information and/or the product quotes for the various insurance policies considered by the producer. What the consumer wants is a straightforward evaluation and response to his/her stated insurance needs. This type of disclosure information is generally immaterial to the consumer's decision to adhere to the professional recommendations of his/her trusted producer. The fact that a producer is not required to provide the consumer with all quotes does not mean that the consumer is prevented from asking for said information if he/she desires it and believes that it would be useful to consider. In light of the competitive insurance market that exists today, a consumer has the opportunity to shop around for a producer who is willing to voluntarily provide the consumer with whatever information he/she desires.

In reality, any consumer who believes that he/she needs to see what his/her producer is earning in compensation from each insurance product offered to the client really needs to consider the fact that he/she just does not feel confident in the professional relationship that exists between the parties, and that the client needs to find a new producer who makes the consumer feel secure and confident about the professional recommendations being offered by the producer. Once the client finds a producer that instills this confidence in the consumer, this "compensation disclosure issue" becomes irrelevant.

4. Is current law sufficient to require all producers to respond completely and accurately to customer inquiries?

NAMIC's Response from its March 9, 2005 Comments: The Producer Licensing Model Act requires producers to comply with all insurance laws and regulations. This includes the Unfair Trade Practices Act that has been enacted by all states in some form. This model prohibits producers from making false statements or misrepresenting a policy. Federal antitrust law prohibits the bid-rigging activity that gave rise to this issue. Current law has not been shown to be deficient in addressing the current concerns.

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5. What types of financial or other interests in an insurer or reinsurer should a producer be required to disclose at the time of the transaction?

NAMIC Response: If the producer is receiving compensation from both sides of the transaction, the producer need only be required to disclose that he is also receiving compensation from the producer that is separate and distinct from the compensation he/she is receiving from the consumer. Disclosure of the exact amount of the compensation received by the producer from the insurer is not necessary, and is more likely to confuse the issue than it is to illuminate the consumer as to what insurance product best addresses the consumer's insurance needs. If the consumer is then interested in knowing more about the details of the professional relationship between the producer and the insurance company, he/she can inquire. If the producer is willing to risk losing the consumer's business by not voluntarily disclosing the information requested by the consumer, then the consumer has the right to take his business to another producer. This is consistent with the very ideals of the free market.

6. Should insurance companies be required to state all compensation paid to a producer on all quote letters and declaration pages of policies?

NAMIC Response: No. The purpose of the regulation should be to prevent a conflict of interest between the producer and the consumer. If there is no "actual" conflict of interest, then there should be no need to disclose the terms of the producer's compensation agreement with the insurance company. From a public policy standpoint, the idea of mandating disclosure of compensation agreements should be considered cautiously and judiciously. We live in a society that generally holds the belief that a person's professional income is a personal and private matter that should only be infringed upon when it is absolutely necessary. Since, no state has provided any documentation that establishes the contention that the "Spitzer Case" is indicative of a pattern and practice of abuse by insurance producers, the need to violate the constitutional right to privacy is neither reasonable nor warranted.