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May 16, 2014

Colorado Department of Regulatory Agencies  
Division of Insurance  
Commissioner Marguerite Salazar  
1560 Broadway, Suite 850  
Denver, CO 80202

*sent via email to:*  
bobbie.baca@state.co.us

**RE: NAMIC's Written Comments on the Draft Proposed Regulation 5-2-17**

Dear Commissioner Salazar:

Thank you for affording the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written comments on the Draft Proposed Regulation 5-2-17.

NAMIC is the largest property/casualty insurance trade association in the country, serving regional and local mutual insurance companies on main streets across America as well as many of the country's largest national insurers.

The 1,400 NAMIC member companies serve more than 135 million auto, home and business policyholders and write more than \$196 billion in annual premiums, accounting for 50 percent of the automobile/homeowners market and 31 percent of the business insurance market. NAMIC has 160 members who write property/casualty and workers' compensation insurance in the State of Colorado, which represents 44% of the insurance marketplace.

Through our advocacy programs we promote public policy solutions that benefit NAMIC companies and the consumers we serve. Our educational programs enable us to become better leaders in our companies and the insurance industry for the benefit of our policyholders.

NAMIC appreciates the Division of Insurance's (DOI) commitment to regulating the insurance marketplace in a manner that promotes the best interests of insurance consumers and facilitates vibrant pro-consumer market competition. NAMIC is concerned that Proposed Regulation 5-2-17 may actual be harmful not helpful to insurance consumers and inconsistent with the scope of the DOI's regulatory authority.

**A. Proposed Regulation 5-2-17 exceeds the regulatory authority of the DOI –**

There is no specific statute (contract law or insurance law) that directly prohibits an insurer from having a contractual step-down insurance coverage limits provision for certain individuals, so long as the step-down insurance coverage limits provision complies with the mandatory

minimum liability coverage provisions of Colorado's Motor Vehicle Financial Responsibility Law (C.R.S § 42-7-103).

NAMIC has not been able to find any statute or case law on point that supports the DOI's proposed prohibition against *all* forms of step-down insurance coverage provisions. Therefore, we respectfully requests that the DOI provide a citation to the law on point that supports said prohibition or authorizes the DOI to prohibit a contractual provision in an insuring agreement that otherwise complies with all other state contract and insurance laws.

In effect, what the DOI is proposing is a regulation that prohibits an insurer and policyholder from entering into a contractual relationship where the policyholder agrees to purchase optional liability insurance coverage limits for "named insureds" on the policy and minimum liability insurance coverage limits for "permissive use" insureds.

NAMIC appreciates the fact that a "permissive driver" is an "insured" pursuant to statute and case law, but that is not the issue in dispute. NAMIC's concern is that the DOI's regulation seeks to legislate a requirement that all individuals defined as "insured" be afforded the exact same *optional* coverage limits, even if the policyholder doesn't want or need said optional coverage limits for a "permissive use" insured.

Additionally, the language of the proposed regulation could arguably invalidate certain legitimate coverage exclusions, like the "named driver exclusion".

Although the DOI's intentions are laudable - to make sure that consumers are being provided with the insurance coverages and coverage limits they purchase, the proposed regulation goes far beyond consumer protection and improperly interferes with the contractual right of the policyholder to select his/her own customized insurance coverages and the coverage limits for those individuals insured by the policyholder's insuring agreement.

## **B. The proposed regulation is anti-market competition**

One of the ways insurance companies compete for business is to offer consumers products that are different from their competitors as to price-point and coverage options. The proposed regulation would prohibit insurers from offering consumers some valuable options on coverage limits. Insurers should be allowed to compete for consumers by offering them step-down coverage limits for "permissive use" operators. If a consumer doesn't want that particular coverage limits option as part of his/her personalized insurance "meal deal", the consumer has the ability to take his/her business to one of the many other auto insurers in the marketplace, who would be pleased to address the consumer's desire to have uniform coverage limits for all "insureds" covered by the policy.

### **C. The proposed regulation is anti-consumer choice**

Although the DOI may not believe that it is prudent for a policyholder to select different optional coverages and optional coverage limits for those who operate the policyholder's vehicle, this is a mere regulatory preference, and consumers should be allowed to make their own personal coverage decisions. For a person who never allows "permissive use" operators to use his/her vehicle, why shouldn't that consumer have the right to save money on his/her annual insurance premium by purchasing an auto policy that has a step-down coverage limits provision that provides only minimum liability coverage?

So long as consumers have the option in the marketplace to select either an auto insurance policy that provides all "insureds" with the same optional coverage limits or an auto insurance policy that differentiates optional coverage limits based upon the different types of "insureds", why shouldn't consumers be provided with the opportunity to purchase a step-down insurance coverage limits products that address their personal insurance desires and financial needs?

### **D. The proposed regulation is premised upon the unfounded supposition that policyholders are harmed by step-down coverage limits policies -**

Step-down insurance coverage limits policies provide "named insureds" with some clear liability protection benefits that may be important to some insurance consumers. Specifically, since liability limits are per occurrence, a policyholder may benefit from having a step-down coverage limits provision for "permissive use" drivers in cases where the injured plaintiff sues both the "permissive use" driver and the owner/policyholder of the motor vehicle on the basis that the policyholder was independently negligent by failing to properly maintain the vehicle or by negligently entrusting the vehicle to the "permissive use" driver.

If the policyholder/owner of the motor vehicle has liability exposure for the "permissive use" driver's at-fault accident, a step-down coverage limits provision would preserve a larger percentage of the optional liability coverage limits purchased by the policyholder for his/her own personal liability protection (the primary purpose of auto liability insurance coverage). In cases where there is no step-down coverage limits provision, the insurer must divide the liability coverage limits between the policyholder and the "permissive use" driver. This increases the likelihood of legal conflict between the policyholder and the "permissive use" driver, especially if the plaintiff's damages claim against the parties exceeds the total liability coverage limits of the policyholder.

Since the "permissive use" driver may have his/her own auto liability insurance coverage, a step-down provision helps the policyholder protect himself/herself from being unnecessarily underinsured, as a result of the policyholder's liability coverage limits being needlessly divided up to indemnify the policyholder and the "permissive use" driver. From a fairness standpoint, the policyholder, who selected and paid for the optional liability coverage limits should be able to

select an insurance policy (a step-down coverage policy) that reserves all but the mandatory minimum liability coverage limits for the protection of the policyholder.

In closing, for the aforementioned reasons, NAMIC respectfully requests that the proposed regulation be reconsidered in its entirety.

Thank you for your time and consideration of NAMIC's written testimony. Please feel free to contact me at 303.907.0587 or at [crataj@namic.org](mailto:crataj@namic.org), if you have any questions pertaining to my written testimony.

Respectfully,

A handwritten signature in cursive script, appearing to read "Christian J. Rataj".

Christian J. Rataj, Esq.  
NAMIC's Senior Director - State Affairs  
Western Region