Joint Hartford/Boston Actuaries Club Meeting

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Life Regulatory Issues in New York

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New York Section 4228 Background

- Limits individual life & annuity selling expenses
- Covers NY licensed insurers
- Covers policies sold in all states
- Prohibits loss leaders – Self Support

Company Limits - Schedule Q

- Limits all selling expenses
- Requires 3-year projection of expenses and limits

Per Policy Limits

- Agent & General Agent Commissions
- First four policy years only
- Premium or fund based

Yearly Limits

- Expense Allowances
- Training Allowances for new agents
- Development Allowances for new general agents
- Definition of "year" varies by type of expense

Filing Requirements

- Schedule Q – annual statement report
- Standard application of inside limits
  - Use, then file
  - Annual informational filing
- Non-standard application of inside limits
  - File for approval before use
  - 90-day deemed approval
- Self-support certification at product filing

NY Website Information

http://www.ins.state.ny.us/

What is Section 4228?

- A New York statute that limits the selling expenses of N.Y. licensed companies.
- Applies to Individual Life and Annuity business, not Health, Group, etc.
- It is extraterritorial – N.Y. licensed companies must comply in all states, even though they may not write a policy form in New York.

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Modernization Commission

- Formed May 29, 2007 by Former Gov. Spitzer of N.Y.
- Its Intent Was to Enhance New York's Standing With Respect to All Financial Services
- LICONY Recommends Ten Modifications to Current 4228
- The Commission accepts Seven of Ten, Some With Modification

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Modifications to Section 4228

- Provide more flexibility in determining a prospective agent's eligibility for training allowances
- The exclusion from limits, of compensation paid to agents not related to sales or service e.g. natural disaster support e.g.Katrina
- Elimination of the prior approval req'ts under (f)(1)(C) and (D) (Commission insists on pre-approval but cuts deemer from 90 days to 30 days)
- Liberalization of prizes and awards limits, incl. automatic indexing, increasing "safe harbor" from $1,000 to $2,000, awards for longevity allowed but not sales based or profitability based

Modifications to 4228 (Continued)

- Clarify certain expenses not related to sales should not be considered compensation, e.g. marketing materials, internet user leads etc. Still selling expenses tested by Schedule Q
- Meals and Entertainment Expenses Consistent with FINRA (Financial Industry Regulatory Authority) Rules
- Permit combining production, compensation and limits across New York licensed affiliates for purposes of compliance with inside limits

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Modifications Not Adopted by the Commission

- Increasing the Inside Limits for Life and Annuities
  Rothstein: "If the imposition of limits is deemed sound policy,then retain current limits"
- Elimination of Prior Approval for Equivalent Translation Factors
- Elimination of "Transition" limitations on 4th Year and Later Compensation

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Possible Repeal of N.Y. 4228

- Debate currently ensuing regarding the repeal of 4228
- Big Mutuals supporting retention, Most Others supporting repeal
- Support centers on the possible threat to career distribution systems
- Separate Meetings with the Commission

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Possible Repeal of 4228 (Continued)

- Advocates for Repeal Submit a Revised 4228
- Advocates for Retention Comment
- Commission Decides to Not Recommend Repeal
- Advocates for Repeal Will Have to go to the Legislature
- Repeal Doesn't Appear Likely

Compensation Disclosure

- Summer of 2008 Saw Public Hearings
- Probably Initiated by Marsh and other brokers who "voluntarily" agreed to not accept contingent commissions
- Big Brokerage Firms Feel the Issue is the lack of a Level Playing Field
- LICONY testimony strongly urges adoption of the NAIC Producer Licensing Model Act Section18

NAIC Producer Licensing Model Act

- Requires Producers to Disclose to their Customers That They Represent the Insurance Company and are paid by the Company
- If paid by BOTH the Company and the Customer, prohibits the producer or its affiliates from accepting compensation unless the producer has obtained the customer's documented acknowledgment and disclosed the amount(s) of compensation. If amount is unknown, disclosure of cal'n method is required along with an estimate of the amount
- The required disclosure informs the customer of a potential conflict of interest, and enables them to make an informed buying decision

Compensation Disclosure (Continued)

- Regulation currently being drafted by NYID/AG
- Kermit Brooks has said: "NYID cannot go forward without a disclosure requirement"
- Kermit Brooks again says: "the first cousin of disclosure is the elimination of the anti-rebate statute"
- Putting extreme pressure on the NY industry to capitulate
- Working groups to be formed and complete their work by the end of January

Compensation Disclosure (Continued)

- The industry remains strongly opposed to the imposition of disclosure requirements
- Industry is asked for a principled-based approach to exempt life producers, or develop acceptable model
- LICONY recommends the adoption of NAIC Model, deal separately with the contingent commission issues, pursue arguments against repeal of anti-rebate statute, emphasize the cost of compliance
- Possibly pursue the issue through the N.Y. legislature which could be politically explosive with the NYID

Compensation Disclosure (Continued)

Some Pertinent Facts

- LIMRA research into the UK and Australia indicated a non-negative impact on sales when each country instituted compensation disclosure, however
- There is increased cost of compliance (250 million UK), strongly influenced by the need to disclose "soft dollars"
- Stay tuned

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