

A Guide to Voluntary Compensation Disclosure for Independent Insurance Agents and Brokers

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NOTE: This guide is not intended to provide specific advice about individual legal, business, or other questions. It was prepared solely as a voluntary guide and is **not a recommendation** that disclosures be made or that a particular course of action be followed. If specific legal or other expert advice is required or desired, the services of an appropriate and competent professional should be sought.

Introduction

As insurance agents and brokers evaluate their business practices and procedures, one issue for producers to consider is whether and to what extent to make customer disclosures concerning their compensation and their relationship with the insurance purchaser. As a result of the interest in this issue, the Independent Insurance Agents & Brokers of America (IIABA) and its state associations have received many inquiries from members seeking guidance about what actions to take relative to compensation disclosure. Although IIABA does not and cannot provide any recommended policy or procedure, this short voluntary guide was developed to assist agents and brokers as they evaluate both existing and potential disclosure practices and determine how best to address this issue for their respective businesses.

Each business must determine for itself whether to make such disclosures and how to make them. Every firm has unique characteristics, responsibilities, relationships, and operating procedures, and the disclosure practices of a business must fit its particular needs. These needs and considerations will be based on such factors as applicable statutory and regulatory requirements, contractual obligations with insurers, and relationships with current and potential policyholders. The legal requirements (including statutes, regulations, and case law) of some jurisdictions may extend beyond the sample language provided below, and every firm should take the appropriate steps to ensure it is operating consistently with applicable law.

Possible Components of a Compensation Disclosure

There are a variety of possible approaches to making a compensation disclosure, ranging from a short and simple form to those that include greater detail. In order to assist members who elect to develop a compensation disclosure, a list of possible topics to cover and some specific ideas about how to do so are set forth in the pages that follow.

As you read through the topics and ideas in the pages below, please remember that the development of such a disclosure is a business-specific process. It is essential that any and all statements included in a disclosure notice accurately describe your firm's practices and not promise something that is inaccurate or something that your firm is either unwilling or unable to provide. The sample language included below is simply that—sample language. It can be combined or modified – or supplemented with additional language – in a manner that matches your firm's individual business practices and needs.

Introductory Statements / Benefits of Utilizing Independent Agents and Brokers

A compensation disclosure statement offers an opportunity to describe the benefits and services that you offer as an independent agent and broker, and the ideas included in this section can be used to help set the tone for your particular disclosure.

Examples of introductory points that a firm might consider including in its compensation disclosure follow below. Feel free to utilize one or more of the following options in your own disclosure statement.

- You are a highly valued customer, and our [agency/firm] takes pride in the services we provide to you.
- As an independent insurance agent or insurance broker, we are able to offer you excellent service and competitive prices because, in most situations, we can access insurance coverage from more than one insurance company.
- Our [agency/firm] does business with multiple insurance companies and normally can offer you a variety of coverage choices. As a result, we can assist you in securing the combination of coverage, price, and service that you want.
- Our [agency/firm] is committed to operating in an open and transparent way.

Commissions

This section describes some common characteristics of percentage commissions paid to your firm for placing business with an insurer.

Examples of points concerning commissions that a firm might consider including in its compensation disclosure follow below. Feel free to utilize one or more of the following options in your own disclosure statement.

- The insurer that underwrites your policy pays our [agency/firm] a sales commission.
- For our efforts, we are compensated primarily by commissions paid by insurers. The amount is based on the commission schedules established individually by each insurance company and is typically calculated as a percentage of the premium.
- Our [agency/firm] does not charge you any fees for placing for your policy. We are compensated on a commission basis by the insurance company that writes your insurance. This commission percentage is set by the company, not by us, and typically is included as a part of the insurance premium you pay.

Additional Commissions and Other Compensation

Additional commissions and other forms of incentive compensation are received by many agents and brokers, and this section describes some common attributes of these types of compensation.

Examples of points concerning incentive compensation that a firm might consider including in its compensation disclosure follow below. Feel free to utilize one or more of the following options in your own disclosure statement.

- Our [agency/firm] [may also be/is] eligible to receive various forms of incentive compensation, including contingent commissions and other awards and bonuses. This incentive compensation is based upon a variety of factors that may include the volume,

growth, profitability, and retention of business we place or other performance measures established by the individual insurers with whom we do business.

- It is usually impossible to know at the time we place any individual policy whether that policy will contribute to, or detract from, our potential eligibility for future additional compensation from any insurer.
- Eligibility for and the amount of contingency or bonus compensation is based on criteria established by individual insurers, and any contingency or bonus compensation we receive is paid to us by the insurer. If our [agency/firm] does not meet the criteria set by any individual insurer in a given year, we will not any incentive compensation from that carrier for that year.
- Any additional commission we receive from an insurer is paid directly to the [agency/firm] and not to the individual employee who is working with you to obtain the products or services you requested.

Fees Paid by Customers

Some agents and brokers may charge their customers fees for particular services, either in lieu of or in addition to compensation from an insurance company. Transactions involving the payment of such fees are typically regulated by state law, and agents and brokers must familiarize themselves and comply with the applicable requirements of the jurisdictions in which they operate. When such a fee is to be paid, many states require the agent or broker to provide their customers with a written disclosure that specifies the fee to be paid by the customer, the services to be provided to the customer by the agent or broker, and the nature of any compensation to be received from an insurer. Such a notice may also need to be signed by the customer.

In addition, agents and brokers should review their appointment contracts with carriers to determine which, if any, require disclosure to the policyholder when the agent or broker is being paid a fee by the policyholder. If any such disclosures are required, procedures should be established by the agent or broker to remain in compliance with the agreement.

Statements Concerning Representation

Some firms may also wish to provide a statement that describes the firm's position in the marketplace and its relationship to the customer.

If a firm chooses to address this particular issue as part of its disclosure, it is important to note that the agent's or broker's words and actions can be significant factors in any determination of whether the firm is regarded as representing the insurer, the customer, or both. For example, communications made directly to individual customers (such as conversations) and communications made to broader audiences (such as advertisements and slogans) will be important to any such determination.

A thorough discussion of the relevant statutes, regulations and case law in this area and the factors that influence a legal determination of this kind are beyond the scope of this guide. Due to the complexity of this issue and the potential consequence of any statements regarding representation, it is prudent to consult with an attorney or other appropriate professional for guidance on representation disclosures. Please note, however, that the laws of at least one state (Arkansas) mandate that an insurance producer disclose to every new customer whether he/she represents that customer or an insurer.¹

¹ See Ark. Code §23-64-250.

Conclusion

A firm may choose to close its disclosure statement with additional information about the firm, an offer to answer additional questions, and other information. Examples of points that a firm might consider including in the conclusion of a compensation disclosure follow:

- If you would like more information about our services or compensation or have any other questions about our [agency/firm], please contact [us/your agent or broker].
- For more specific details about compensation relating to your policy, please contact [us/your agent or broker].
- Thank you for choosing us and allowing us to work with you.
- Our agency is delighted to have you as a customer, and we welcome any comments, questions, or suggestions you have for us. We appreciate your business.