

President's Corner

This is a busy time of year for everyone here at CCS! Several of us just got back from another fabulous IAdCA Conference in Miami where we got to see long-time colleagues and friends, as well as meet lots of new folks. Both Glenda Bean and Maureen James led sessions at IAdCA and received rave reviews!

Maureen James and Roger Hayashi attended the Heartland Chapter of AICP E-day in Kansas City and then went directly to the American Fraternal Alliance Compliance Day in Chicago earlier this week where they presented on Suitability. Sarah Huffer, Glenda Bean, Kaycie Tyll, Mark Buckholtz, Terry Dansin, and I are attending the AICP E-day NE Chapter in NH on April 29th. Then I'll be in Boston May 5th & 6th presenting to GAPCA...should I go on? What about LHCA, you ask? Sarah Huffer and Mark Buckholtz will be there in May!

Wait there's more...

While many of us are traveling, the planning and preparation for our own Currin Insurance Compliance Symposium (CICS) continues and we are just two months out from another great event (June 22-24). **Our newest team member, Tom Hartman, will be joining us at CICS this year!** He will be happy to talk to our attendees from his new vantage point as a compliance actuary rather than a regulator.



We hope our paths cross in the various travels, and we would love to talk to you in person, even if it is just a brief hello. So come by to see us at our booth, or tap us on the shoulder at a breakout. See you at a compliance event, or two, soon!

~ Cailie



Currin Insurance Compliance Symposium

Desmond Hotel • Albany, NY • June 22-24, 2016

Visit currincompliance.com/cics for more information, including the list of session topics and registration link.

Rebate, Gift, or Inducement – What Does it Matter?

By Maureen James

Everyone likes to get something extra, something for free, a little treat, *right*? Buy one pair of shoes, get another one half off. Buy a \$100 gift card, get another \$25 gift card for free. No big deal, *right*?

**Buy ONE, get ONE
1/2 OFF**

But if we're talking about gifts in connection with the sale of insurance or annuity products, it IS a big deal, and one that can land you in hot water with state insurance regulators. Most insurance departments have published regulations that limit what, if anything, an insurance agent or carrier can give to prospective or existing clients as a gift. Some states have what I call a "zero tolerance" for gifts of any kind that are offered as a means to induce a consumer to purchase an insurance product. In these states, their rules generally state that gifts "of any valuable consideration or inducement not specified in the policy" are prohibited.

Other states have similar wording in their regulations, but they still allow gifts up to a certain limit to be provided, with amounts generally in the \$5-50 range per consumer, per year. There are outliers, though. For example, the state of Idaho includes this same wording in their regulations, yet has the highest limit of \$200 per person, per year. It's also important to note that some of the states that *do* allow certain gifts not only have a monetary limit, but only allow the gifts to be given if they are unrelated to and not dependent on the purchase of insurance.

Whether you call it a rebate, a gift, or an inducement, the basic premise of the rule is the same – state insurance regulators want clients on even footing when it comes to the policies they purchase. To pass the rebate test in most states, any benefit must be expressly stated in the insurance or annuity policy, and provided to everyone who purchases the product. This also helps to ensure that consumers are not influenced to purchase

a product primarily because of the gift, and that they have a real need for the product itself.

According to the NAIC Unfair Trade Practices model¹ regulations, "Paying, allowing, giving or offering any of the following, if not specified in the contract, is an unfair method of competition and an unfair or deceptive act:

Rebates of premiums payable on the policy; special favors or advantages in the dividends or other benefits; any valuable consideration or inducement not specified in the policy; giving, selling, purchasing or offering, as an inducement, any stocks, bonds or other securities, any dividends or profits accrued, or anything of value not specified in the policy."

So, what does this mean, especially for insurance agents? What exactly is a rebate? In some states, a rebate means a gift of value, such as cash, a gift card, a fruit basket, or some other tangible gift or object. Other states, however, may consider it a rebate if an agent holds an insurance seminar and serves a nice meal. The cost of that meal, per person, may need to comply with the states' rebating limits, or the agent runs the risk of a state enforcement action for violating state laws. The same issue may apply with a client appreciation event, such as wine tasting party, golf outing, or other similar events. To determine if the event is in line with their rules, many states will calculate the cost of the event, including all possible variables, such as food, drink, cost of entertainment, etc., and divide it by the number of attendees.

Insurance companies and agents often conduct business in multiple states, so being familiar with and staying current with each states' position on rebates is important.

Need help sorting through the various regulations? We can help! Currin Compliance offers our clients comprehensive rebating guidelines for all states, carefully researched and updated regularly to ensure you can manage your rebating risks. Call or email us to find out more about this, and many other valuable research programs we have available!

¹ Model Reg 880-4(H)(1)

Our mission at Currin Compliance Services, Inc. is to deliver an unparalleled combination of knowledge, creativity, and superior problem-solving skills to each compliance challenge faced by our clients in the insurance industry.

DOL Rule: Impact on Insurance and Annuity Advertising

By Maureen James

If you offer, sell, or distribute fixed insurance and annuity products, you are likely aware of the intense scrutiny by state insurance regulators on advertisements for these products. Regulators continue to place a heavy emphasis on the need to market insurance products to consumers in a fair and balanced manner, and we are seeing enforcement actions for misleading advertising increasing at a surprising rate.

Key issues with many of these enforcement actions involve improper lead generation techniques, violation of state rebating laws, misrepresentation of products, and mischaracterization of insurance seminars – which are often disguised as educational workshops for seniors, with the audience not understanding that the event is being hosted by an insurance professional.

From a risk perspective, the insurance agent is usually first and foremost on the hook for any problematic advertising they distribute, whether the content is company-specific or generic in nature. IMOs and insurance carriers are often pulled into the mix too; IMOs, if they provided the marketing materials, or because they earned an override on the agent's sales, and for insurance carriers, if the sale of their product was the end result of the advertising.

This concept of shared risk for advertising, including advertising that is generic and does not mention or discuss a specific carrier or product, is not new. Insurance carriers, in particular, continue to struggle with how to manage their advertising risks (often with limited resources) while trying to delicately balance their relationships with their sales force.

And now a new twist has arrived – the DOL Fiduciary Rule, which was published on April 6 of this year, and is slated to go into effect in April 2017 with full implementation by January 2018. This new rule has important new provisions that affect insurance and annuity advertising, and carriers, IMOs, and producers will need to fully understand the impact, and then tailor their advertising accordingly in order to avoid running afoul of the new rule.

One of the biggest impacts on advertising relates to whether or not an advertisement would be deemed to be providing investment advice to an ERISA plan participant or IRA/401(k) holder, which would then subject the representative, IMO, and/or carrier to a fiduciary duty under the new rule.

The final rule includes language that emphasizes that, in order to determine if investment advice has occurred, there must be an “investment recommendation” as a threshold issue and initial step in making the determination. It states that a recommendation requires that there be a call to action that a “reasonable person would believe was a suggestion to make or hold a particular investment or pursue a particular investment strategy.”

So, what does this mean and how does it apply to your advertisements? While the rule is brand new and still undergoing review by many industry experts, it highlights that there will be different categories of advertising under the new rules, one of which is “Investment Education.” The goal of this category is for consumers to receive information that is truly educational and generic in nature vs. selling a specific product or family of products. This type of advertising may be provided under the new rule without creating a fiduciary relationship as a result.

This part of the rule will be critical to understand, particularly if you or your sales force promote insurance and annuity products through the use of seminars, lead materials, or other mediums that directly promote specific products – especially if those materials include direct calls to action that could be construed as providing a consumer with specific advice or direction on their financial strategy. This could likely be deemed as providing investment advice under the new rule and you may now inadvertently be classified as a fiduciary as a result.

The advertising provisions of the new rule and their expected impact on insurance and annuity advertising are raising as many questions as there are answers. Currin Compliance Services will continue to follow this issue closely. We offer advertising review services to address this very real risk – both now and at the time the rule is implemented.

Also, the DOL rule's effect on advertising will be a key topic of discussion at the upcoming Currin Insurance Compliance Symposium on June 22-24, 2016, in Albany, NY. Visit currincompliance.com/cics for more information and to register for this important event, designed to help you understand and manage your key compliance issues, network with your peers in the industry, and come away with practical and real-world compliance solutions!

Our mission at Currin Compliance Services, Inc. is to deliver an unparalleled combination of knowledge, creativity, and superior problem-solving skills to each compliance challenge faced by our clients in the insurance industry.

Dear Compliance Hero

As compliance consultants, we get asked a lot of questions that are very specific. But sometimes we get asked general questions that could apply to many of our clients and friends in the insurance compliance world. We'd like to answer some of those here. If you would like to see your question answered here, send it to hero@currincompliance.com. If your question makes the newsletter we will send you a little token of our appreciation for your interest and participation.

Dear Compliance Hero,

One of our agents sent me a small website banner ad for compliance review, which promotes the first year bonus on one of our annuity products. We require that certain disclosures always accompany any promotion of the bonus, but the agent claims there is no room on the ad for disclosure. Is this OK for the banner ad to link to the disclosures instead?

Thank you,
Disclosure Master

Dear Disclosure Master,

You raise a good question, one which we encounter quite often with our clients. The answer, unfortunately, is that it depends. Generally, state insurance regulators believe that advertisements must stand on their own and that important information about the topic at hand should be presented so that it is easily found by the reader. Placing key information and disclosure on a separate, linked web page is not always the answer. In some cases, if that information is necessary to the reader's understanding of the topic, you may need to modify the ad and speak at a higher level so that the additional disclosure isn't critical to the understanding of the product. Whether or not disclosures can be included as a link to another web page is a case-by-case determination. Need help with a specific situation? Call us. We can walk you through this and any other advertising challenges you face!

Sincerely,
Compliance Hero
(518) 692-2494



Currin Insurance Compliance Education Update

By Glenda Bean

Hey guys! I am very excited and grateful to be heading up the Currin Insurance Compliance Education (CICEd) Program. We're in full swing and have already received some great feedback from our first webinar series (watch recordings at currincompliance.com/webinars) and there's been a lot of positive interest in our online, on-demand courses at education.currincompliance.com.

We are continuing to develop courses, webinars, and other valuable educational services to make you better, faster, and more effective in your role...so bookmark education.currincompliance.com right now!



If you have any questions about our CICEd program and services, or if you have any subjects that you'd like featured in a webinar or course, please let me know! Send your thoughts to gbean@currincompliance.com!

Looking for in-person training, but can't fully out-source, then our upcoming symposium at the Desmond Hotel in Albany, NY (June 22-24) is a great option. We have an extensive line-up of session topics and a spectacular keynote speaker. Head over to our symposium web page at currincompliance.com/cics to learn more and claim your spot!

Our mission at Currin Compliance Services, Inc. is to deliver an unparalleled combination of knowledge, creativity, and superior problem-solving skills to each compliance challenge faced by our clients in the insurance industry.

CurrinCompliance.com • (518) 692-2494