



Government of Puerto Rico
OFFICE OF THE COMMISSIONER OF INSURANCE

RULING LETTER NO.: N-C-9-98-98
October 9, 1998

TO ALL DOMESTIC INSURERS AND GENERAL AGENTS AND TO ALL FOREIGN
INSURANCE MANAGERS AUTHORIZED TO TRANSACT INSURANCE IN PUERTO
RICO AND TO ALL FINANCIAL INSTITUTIONS

Re: Service Fees paid to Financial Institutions

Dear Sirs and Madams:

Public Law No. 106 enacted on June 28, 1965, as amended, known as "Small Personal Loans Act," allows for entities authorized to transact insurance under such law to receive payment as compensation for the costs said entities incur when undertaking various tasks related to transacting credit life insurance and credit disability insurance, as such are defined in Section 18.030 of the Puerto Rico Insurance Code.

In accordance with the provisions in Section 14(d)(6) of Public Law No. 106, supra, said compensation must be approved by the Commissioner of Insurance. Additionally, the standard established by this Office is to allow such compensation to financial entities that provide small personal loans, regardless of the legislation under which such loans are authorized, provided said compensation **does not exceed 20% of the premium charged.**

The provisions of Public Law No. 106, supra, shall be interpreted in accordance with the provisions of Section 9.061 of the Puerto Rico Insurance Code, which categorically prohibits commission payment or compensation to any person who holds a license duly issued by the Commissioner of Insurance, as well as Section 9.070 (3) of such Code, which prohibits entities whose business consists of lending money from being authorized to act as insurance agents or brokers. Due to this reason, compensation paid to a financial institution with regards to the transaction of credit life insurance and credit disability insurance shall **always** comply with the compensation approved by the Commissioner of Insurance or, otherwise, such payment shall constitute a prohibited payment of commission or compensation, as provided in Section 9.061.

In accordance with the above, it is necessary to expressly establish the premises under which this Office has exercised and will exercise the authority with which it has been vested in this matter. Said premises are as follows:

1. No insurer, general agent, agent, broker, or solicitor shall pay any Service Fee amount to any person or entity without this Office's prior approval.
2. No amount in excess of the amount approved by the Commissioner may be directly or indirectly paid, in any form or manner, since then commissions or compensations would be being paid in violation of the provisions mentioned above.
3. The purpose of the fees in question is to provide indemnity to the financial institution for the costs incurred by said institution in making available credit insurance to its borrowers, such as, but not limited to:
 - a) collecting the corresponding premium and remitting it to the insurer;
 - b) preparing reports for the insurer with regards to the sold and cancelled coverage
 - c) issuing certificates to borrowers; and
 - d) providing the borrower and the claimant with the claim forms, receiving the claims, referring them to the insurer and applying the payments or report the corresponding rejections.

The financial institution may not execute any of the duties included in the definition of "transact insurance" provided for in Section 1.050 of the Puerto Rico Insurance Code. Also, in accordance with the prohibition established in said Section 9.070(3), the financial institution may not execute any duties for which an insurance agent, broker, solicitor, or adjuster license is required.

4. The service fees approved by this Office take into consideration both non-recurring costs when the policy is first issued as well as other recurring costs that may arise throughout the insurance coverage period.
5. The financial institution cannot require that the proposed insured obtain credit life insurance or credit disability insurance as a condition for granting a loan or in relation to granting a loan, or if the policy is acquired, that said policy be provided through a particular agent or insurer.

On this matter, it should be noted that what has been explained in the above paragraph 2, could create a legal conflict in cases in which, because of loan repayment prior to the normal maturity date, credit life insurance or credit disability insurance is cancelled prematurely and, therefore, the corresponding accrued premium is returned, as provided in Section 18.090(2) of the Puerto Rico Insurance Code. In such cases, if part of the compensation paid to the financial institution at the time the insurance policy was issued is not returned, such compensation will represent a

higher percentage than the one used as a basis for calculating the compensation that will be paid to the financial institution. For example, if for a \$100.00 premium, \$20.00 or 20% of the premium was paid to the financial institution for service fees, and a subsequent cancellation causes that the premium accrued by the insurer amounts to \$75.00, the \$20.00 that were originally paid to the financial institution will represent 26.7% of the final premium ($\$20 \div \$75 = 26.7\%$), which would constitute a payment in excess of the amount needed to cover the administrative costs incurred by the financial institution. Therefore, in accordance with the provisions in paragraph 2, an approximate \$5.00 **illegal** payment for a commission or compensation would be made.

This leads to the inevitable conclusion that, in cases in which credit life insurance coverage or credit disability coverage is prematurely cancelled, **it is the financial institution's responsibility to return from the compensation received the amount that exceeds the maximum limit approved by this Office**, otherwise, said financial institution would be violating Section 9.061, *supra*, since it would be paying commissions or compensation to an entity that does not hold an insurance license. Said practice also violates Sections 27.090 and 27.100 of the Puerto Rico Insurance Code.

Any person who has been addressed by this Ruling Letter, through such is required to strictly comply with the provisions stipulated above and the conditions herein established. Failure to comply with such will lead to, among other things, the revocation of the applicable compensation to the financial institution in question.

Very truly yours,

Signed
Juan Antonio García
Commissioner of Insurance

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