

Government of Puerto Rico
OFFICE OF THE COMMISSIONER OF INSURANCE OF PUERTO RICO
Guaynabo, Puerto Rico

**RULE NUMBER 84 OF THE REGULATIONS OF THE
PUERTO RICO INSURANCE CODE**

**“STANDARDS FOR REGULATING THE PAYMENT OF CONTINGENT COMMISSIONS BY
INSURERS TO THEIR GENERAL AGENTS AND AUTHORIZED REPRESENTATIVES AND
THE PAYMENT OF ADDITIONAL COMPENSATION BY THE INSURED”**

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SECTION 1. - AUTHORITY

The Office of the Commissioner of Insurance of Puerto Rico hereby repeals Rule No. 84 of the Regulations of the Insurance of Puerto Rico Code, Regulations Nos. 7374, 7423, and 7481 of the Department of State of Puerto Rico, titled “Standards for Regulating the Payment of Additional Compensation to General Agents, Authorized Representatives and Producers,” and adopts a new Rule Number 84, titled “Standards for Regulating the Payment of Contingent Commissions by Insurers to their General Agents and Authorized Representatives and the Payment of Additional Compensation by the Insured,” under the powers and authority vested by Sections 2.030, 9.022, and 9.062 of the Puerto Rico Code of Insurance of, Act No. 77, dated June 19, 1957, as amended, as well as in Act No. 38, dated June 30, 2017, as amended, the “Uniform Administrative Procedure Act of the Government of Puerto Rico,” and pursuant to the provisions of Section 27.100 of the Puerto Rico Insurance Code.

SECTION 2. - PURPOSE

This new Rule is adopted and the currently in effect Rule 84 is repealed for the purpose of including in a single document the regulation of the payment of contingent commissions, updating the standards that are currently in effect for the payment of contingent commissions, and reducing the maximum percentage

limit for the payment of contingent commissions that insurers may pay their general agents and authorized representatives. The purpose of this Rule is to protect the interests of the insureds and the general public with standards that make insurance products more accessible to consumers, strengthen the economic development of Puerto Rico, and foster greater transparency in the insurance business, while balancing interests and ensuring that charges for contingent commissions related to insurance contracts are not excessive, for the protection of public welfare.

SECTION 3. – APPLICABILITY

The provisions of this Rule shall be applicable to all insurers that are authorized to write property and casualty insurance in Puerto Rico and all insurance producers, authorized representatives, and general agents that transact property and casualty insurance business in Puerto Rico.

SECTION 4. – STATEMENT OF NEED AND PURPOSE

After Hurricanes Irma and María hit Puerto Rico in September 2017, along with the natural disasters of the earthquake in Mexico, Hurricanes Harvey and Irma that principally affected the States of Texas and Florida, respectively, and the California wildfires, the property insurance sector was significantly impacted during the past year. This scenario reflects the impact on the local property insurance market, that makes it necessary to take certain steps to ensure that the market is accessible to consumers. The Commissioner of Insurance is empowered to regulate the fees related to insurance contracts for the purpose of maintaining insurance products that are accessible to consumers and protecting public welfare, including that the commissions that are awarded not be excessive.

Payments of contingent commissions made by insurers to their general agents and authorized representatives, directly and indirectly, result in increasing the property insurance premiums ultimately paid by consumers. This impact has a negative effect on the accessibility of insurance products, above all in view of the current situation of the property insurance market after Hurricanes Irma and María impacted Puerto Rico.

Consumer protection is being sought with the reduction of the maximum percentage limit to twenty-five percent (25%) for contingent commissions established in this new Rule, thereby preventing the transfer of higher costs to insurance premium payments. In addition, risk underwriting is more aligned with consumer needs than with the commission percentage that one insurer can pay as compared to another, in view of the wide discrepancy between contingent commissions that are paid in the property and casualty insurance market. According to the reports submitted by the insurers, the contingent commissions paid from 2014 through 2016 are mostly below the current maximum limit of 50%, so that the reduction would not affect any sector of the insurance industry nor would it result in a de facto elimination of contingent commissions.

The provisions of this Rule are necessary for the proper oversight and regulation of the payment of contingent commissions and the payment of additional compensation for the protection of the public interest.

SECTION 5. - DEFINITIONS

The following terms shall have the meanings set forth below, except that the text of any other Section of this Rule should imply a different meaning:

- a) “Contingent commission”- means any additional compensation, in cash or in kind, which general agents or authorized representatives may earn pursuant to the provisions of the Puerto Rico Insurance Code, that insurers pay to general agents or authorized representatives, based on levels of profitability, productivity, and efficiency of the agent's or representative's portfolio, as established by the insurer contractually
- b) “Reliable evidence” - means the acceptance in writing by the insured confirming that the amount of the compensation that the producer will receive from the insurer or through its general agents was disclosed to the insured and showing the specific date on which the producer made such disclosure.
- c) “Net profit or loss on underwriting” – means the net profit or loss from earned premium generated through underwriting for the insurer.

The remaining terms used in this Rule shall have the same meaning and scope as those provided in the Puerto Rico Insurance Code.

SECTION 6. – PAYMENT OF CONTINGENT COMMISSIONS BY AN INSURER TO ITS GENERAL AGENTS AND AUTHORIZED REPRESENTATIVES

A. If a property and casualty insurer agrees to pay contingent commissions to a general agent or authorized representative, this payment of contingent commissions must be specified in writing in the contract with the general agent or authorized representative and shall be subject to the maximum percentage limit established in this Section.

B. An insurer that is authorized by the Commissioner to write property and casualty insurance may pay a contingent commission to a general agent or an authorized representative, provided that the total amount of the contingent commissions paid during a year to all general agents and authorized representatives does not exceed the lesser of the amounts resulting from calculating twenty-five percent (25%) of the total net earnings generated from the insurer's underwriting from the previous year, as reflected in its annual report and twenty-five percent (25%) of the amount of average net earnings resulting from total net earnings or loss generated by the insurer's underwriting in the previous three (3) years, as shown in its annual report.

Any additional compensation in kind that an insurer grants to a general agent or an authorized representative, including, but not limited to, travel, lodging, evening meals, awards, gifts or any other object of value or form of valuable consideration, will be subject to the limit set forth in the previous paragraph.

C. The contingent commissions that an insurer may pay a general agent or authorized representative, as provided in this Section, will be made only if the business portfolio of the general agent or authorized representative has generated net earnings on underwriting for the insurer and has reached profitability, productivity, and efficiency levels established by the insurer contractually. No advances or loans to be repaid with the contingent commissions will be allowed.

D. All contingent commissions paid by an insurer to general agents or authorized representatives will be considered to be an expense that must be kept in a separate account and duly identified in the insurer's books.

E. No insurer may use expenses due to contingent commissions to justify a rate increase.

F. Under no circumstances may the payment of contingent commissions affect the solvency of an insurer.

G. No later than March 31 of each year, insurers that are authorized to write property and casualty insurance shall file the forms designated by such purpose by the Commissioner for such purpose including detailed information on the contingent commissions paid during the previous calendar year. If the insurer has not paid contingent commissions during a given year, the insurer shall so report on the aforementioned forms.

H. Each insurer shall be responsible for ensuring that all payments of contingent commissions made to a general agent or authorized representative are made in accordance with the provisions of this Rule.

SECTION 7. - PAYMENT OF ADDITIONAL COMPENSATION BY THE INSURED AND DISCLOSURE

A. An insurance producer who receives or directly accepts from an insured any compensation that is in addition to the commission paid by an insurer or general agent, shall have the obligation to disclose in writing the following information to the prospective insured, before placing the insurance policy:

(i). the name of the insurer or general agent who will receive the commission or financial compensation for placing the insurance;

(ii). the amount of the commission or financial compensation that will be received for placing the insurance. If the amount of the commission or financial compensation is unknown, the insurance producer shall disclose the method for calculating the commission or financial compensation; and

(iii). the nature of the efforts to be made on behalf of the insured by the producer of insurance.

B. The producer shall keep reliable evidence in its records, setting forth the specific date of the acceptance in writing by the insured confirming that information was disclosed to the insured as provided in subsection A of this Section.

C. A person will not be considered to be an “insured,” for the purposes of this Section, if that person is merely:

- (i). a participant or beneficiary of an employee benefits plan; or
- (ii). an insured under a group insurance policy or annuities contract, that has been sold, solicited, or negotiated by the insurance producer of its affiliate.

It is further provided that in the cases mentioned above, the producer must make the required disclosures to the entity named in the policy has the group policyholder.

D. No provision of this Rule will be interpreted as prohibiting a producer from receiving compensation in addition to the commission paid by an insurer or general agent directly from an insured, provided that the producer, prior to placing the insurance policy, has disclosed to the insured the amount of the commission or financial compensation that the producer will receive from the insurer or general agent.

SECTION 8. – PENALTIES POR VIOLATIONS

The payment or acceptance of a contingent commission in excess of the maximum percentage permitted under this Rule, shall be considered to be an unlawful incentive that is prohibited under Section 27.100 of the Puerto Rico Insurance Code.

Any violation or failure to comply with the provisions of this Rule will entail the imposition of sanctions, in accordance with the powers and authority vested in the Commissioner by Sections 3.211, 9.460, 9.480, and 27.260 of the Puerto Rico Insurance Code, as well as any other applicable provision of law.

SECTION 9. - SEVERABILITY

If any word, sentence, paragraph, section, subsection, or part of this Rule were found to be null and void by a court of competent jurisdiction, the order entered by such court will not affect or invalidate the remaining provisions of this Rule, and the effect thereof shall be limited to such word, sentence, paragraph, section, subsection, or part that has been found to be null and void.

SECTION 10. – EFFECT

The provisions of this Rule will enter into effect thirty (30) days after filing at the Department of State of Puerto Rico, as provided in Act No. 38, supra. It is further provided that any contract entered into after the effective of this Rule in which the payment of commissions has been covenanted shall comply with the requirements set forth herein.

JAVIER RIVERA-RÍOS
COMMISSIONER OF INSURANCE

Date approved: January 2019

Date filed
At the Department of State:

Date filed
At the Legislative Library: