

MISSISSIPPI

Department of Insurance



GEORGE DALE
Commissioner

CHARLES D. PACE
Deputy Commissioner

1804 Walter Sillers Bldg.
Post Office Box 79
Jackson, Mississippi 39205-0079
Telephone
(601) 359-3569

FINAL REGULATION NO. 89-102

REGULATION OF CERTAIN PAYMENTS WITH RESPECT TO CREDIT LIFE AND CREDIT DISABILITY INSURANCE

Section 1. Statutory Authority.

This Regulation is promulgated by the Commissioner of Insurance pursuant to the authority granted by Mississippi Code Annotated, Sections 83-53-29, 83-17-129 and 83-17-229 and in accordance with the Mississippi Administrative Procedures Law. Section 83-53-29 grants the Commissioner authority to "issue any rules and regulations that he deems necessary to effectuate the purposes of this chapter (the credit insurance chapter of the Mississippi Code Annotated)." Section 83-17-129 states that the "Commissioner is hereby authorized to establish such rules and regulations as shall be necessary for the administration of this article (the article of the Mississippi Code Annotated entitled "Regulation of Agents for Life, Health, or Accident Insurers")." Section 83-17-229 provides that "the employees or officers of a lending institution or holding company, or the subsidiary or affiliate of a lending institution or holding company, may be licensed to sell credit life, health and accident insurance on behalf of his employer in accordance with regulations promulgated by the insurance commissioner." This Regulation is promulgated by the Commissioner pursuant to his full authority to regulate the payment of compensation to agents and to others in connection with the sale of credit insurance as set out in the above statutes.

Section 2. Purposes.

The Commissioner is aware of the decision of the Mississippi Supreme Court in Tew vs. Dixieland Finance, Inc., 527 So. 2d 665 (Miss. 1988), in which the Court addressed certain issues concerning the licensing of agents to write credit life and credit disability insurance and payments made in connection with writing such insurance. The Court stated that it was delaying the effect of its decision with respect to those issues until July 1, 1989, in order to provide the executive and legislative branches of the government of the State of Mississippi with an opportunity to take measures to resolve what the Court considered to be inconsistencies in the statutes and regulations concerning the licensing of agents and payment of compensation with respect to credit life and credit disability insurance. The purpose of this Regulation is

to clarify and regulate what persons or entities may receive compensation payments made in connection with the issuance of credit life and credit disability insurance and/or the manner in which such payments may be received by licensed agents, creditors, corporations or other persons or entities involved in credit transactions.

Mississippi Code Annotated, Section 83-17-105 states that "no insurer or agent doing business in this state shall pay, directly or indirectly, any commission or any other valuable consideration to any person for services as an agent within this state unless such person shall hold a currently valid license and certificate of authority to act as an agent, as required by the laws of this State (emphasis added)." Mississippi Code Annotated, Section 83-17-7 contains a similar prohibition. Mississippi Code Annotated, Section 83-17-101(a), however, states that "the possessor of an insurable interest in any risk or subject of insurance shall not be deemed an agent by reason of procuring or maintaining, or agreeing to procure or maintain, insurance extending to such interests, together with the interest or interests of others in such risk or subject of insurance, however the cost may be borne." The Mississippi Legislature clearly contemplated that creditors can receive compensation from the sale of credit insurance. Mississippi Code Annotated, Section 83-53-25 makes this fact clear. The Commissioner interprets these four sections together and has determined that the prohibitions contained in Mississippi Code Annotated, Sections 83-17-7 and 83-17-105 do not apply in certain contexts involving credit insurance.

Many creditors offer credit insurance in connection with sale or lease transactions in which the creditor extends credit to a purchaser or lessee of goods or in connection with transactions in which the creditor makes a loan to a borrower. Credit life insurance is designed to "pay off the loan obligation if the insured borrower or co-borrower dies. Credit disability insurance provides a monthly benefit equal to the loan's monthly payment if the primary borrower is disabled." Fagg, Credit Life and Disability Insurance, xiv (1986). These creditors are required by law to offer credit insurance only through employees or other agents of the creditor licensed to write such insurance. By its nature, credit insurance is designed to protect both the creditor and the borrower from the risk of the borrower's death or disability. The creditor's interest in the transaction is that the extension of credit be repaid. Therefore, the Commissioner finds that the creditor in a credit transaction is the possessor of an insurable interest. The Commissioner further finds that the purchase and sale of credit insurance in connection with such a credit transaction is designed to protect the creditor's insurable interest in the transaction as well as the insurable interest of the debtor in the credit transaction. The Commissioner also finds that payments of compensation by a licensed employee or other agent of a creditor in a credit transaction to the creditor are not payments made in violation of Mississippi Code Annotated, Sections 83-17-7 and 83-17-105; such payments are not made to the creditor for the creditor's "services as an agent" since the

creditor is not acting as an agent when procuring or arranging to procure insurance to protect its own insurable interest as provided by Mississippi Code Annotated, Section 83-17-101(a).

Many lending institutions and other entities covered by the Lending Institutions Act (Mississippi Code Annotated, Sections 83-17-227 through 83-17-233) offer credit insurance in connection with loans and other credit transactions. Such an institution or entity is a creditor in a credit transaction and the possessor of an insurable interest. As noted above, Mississippi Code Annotated, Section 83-17-229 provides that "the employees or officers of a lending institution or a holding company, or the subsidiary or affiliate of a lending institution or holding company, may be licensed to sell credit life, health and accident insurance for and on behalf of his employer in accordance with regulations promulgated by the insurance commissioner." Pursuant to this regulatory authority, the Commissioner finds that the "for and on behalf" language authorizes a lending institution or a holding company, or the subsidiary or affiliate of a lending institution or holding company, to receive compensation in connection with the sale of credit insurance without being licensed to sell such insurance, provided an officer or employee of the lending institution or holding company or a subsidiary or affiliate of the lending institution or holding company is licensed to sell such insurance. The Commissioner also finds that the prohibitions contained in Mississippi Code Annotated, Sections 83-17-7 and 83-17-105 do not apply to such lending institutions, holding companies, subsidiaries or affiliates meeting the above standard.

Section 3. Applicability and Scope.

This Regulation shall apply to all insurers and agents licensed to sell credit life and credit disability insurance and to the employers and affiliates of such agents acting as creditors, including lending institutions and other entities covered by the Lending Institutions Act (Mississippi Code Annotated, Sections 83-17-227 through 83-17-233), in credit transactions in connection with which there is a sale or purchase of a policy or certificate of credit life or credit disability insurance.

Section 4. Definitions.

(a) "Creditor" shall have the same meaning as defined in Mississippi Code Annotated, Section 83-53-3(2)(d).

(b) "Credit insurance" shall mean credit life insurance as defined in Mississippi Code Annotated, Section 83-53-3(2)(b) and credit disability insurance as defined in Mississippi Code Annotated, Section 83-53-3(2)(c).

(c) "Compensation" shall have the same meaning as defined in Mississippi Code Annotated, Section 83-53-25(2) and (3).

(d) "Insurer" shall have the same meaning as defined in Mississippi Code Annotated, Section 83-53-3(2)(g).

(e) "Lending institution" shall have the same meaning as defined in Mississippi Code Annotated, Section 83-17-227(a).

(f) "Holding company" shall have the same meaning as defined in Mississippi Code Annotated, Section 83-17-227(c).

Section 5. Regulation of Certain Payments in Connection with the Sale of Credit Life and Credit Disability Insurance.

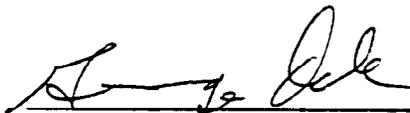
Compensation paid in connection with the purchase or sale of credit insurance may be paid (i) by an insurer to a person or other entity licensed as an agent to write credit insurance, (ii) by an insurer to the creditor in the transaction in connection with which the credit insurance was purchased or sold, or (iii) by an employee or other person or entity licensed to write credit insurance to the creditor in the transaction in connection with which the credit insurance was purchased or sold, or (iv) by an insurer or by an employee or other person or entity licensed to write credit insurance to a lending institution or a holding company or the subsidiary or affiliate of a lending institution or holding company. Nothing herein shall be construed as permitting the total compensation paid in connection with the purchase or sale of credit insurance to exceed the amount otherwise permitted by law. Nothing herein shall be construed as permitting the offer or sale or issuance of a policy or certificate of credit insurance other than by an authorized insurer or through an agent licensed to write credit insurance.

Section 6. Severability.

If any provision of any section of this regulation or the application thereof to any circumstance or person or entity is held invalid, such invalidity shall not affect any other provision of that section or application of the regulation which can be given effect without the invalid provision or application, and to this end the provisions of this regulation are declared to be severable.

Section 7. Effective Date.

This Regulation shall become effective July 1, 1989.



GEORGE DALE
Commissioner of Insurance