



**Comments of the Center for Economic Justice
To the NAIC Travel Insurance Working Group
November 26, 2017**

CEJ submits these comments regarding the proposals for definitions of eligible groups and travel insurance in the draft Travel Insurance Model Law.

Definition of Travel Insurance

Industry proposes that travel protection plan components – lost baggage, medical, rental car, etc. – may be sold separately and still be called travel insurance. The result will be that, for example, a travel retailer might sell travel protection that provides only rental car coverages – the same coverages sold currently as stand-alone rental car insurance. This clearly is illogical from a regulatory and consumer protection perspective because it invites regulatory arbitrage – allowing insurers, producers and retailers to select the regulatory structure they find most favorable. We have not seen the most recent proposal for a definition of travel insurance, but we strongly oppose any definition that permits a travel retailer to sell as travel protection the same rental car coverage as a rental car company unless it is bundled with other travel insurance coverages and does not represent the majority of the coverage or premium of the travel protection plan.

Industry's argument that such regulatory arbitrage will not occur with unfettered ability to sell stand-alone coverages as travel protection because the rental car insurance sold by rental car or truck rental companies is not purchased by people who are traveling. This argument is clearly without merit since the act of using a rental car or truck is – wait for it – travel.

Definition of Eligible Groups

We start by stating that the definition and laundry list of eligible groups in the proposed model does not make sense from a regulatory or consumer protection perspective. On the one hand, no regulator or consumer protection purpose has been articulated to require prohibitions on group sales. On the other hand, the current proposal has the effect of allowing any two people to be sold a group policy with the result that, if we assume there is some regulatory or consumer protection purpose for some prohibition on group travel insurance sales, then the current draft offers purported, but not meaningful, regulation.

No Regulatory or Consumer Purpose Articulated for Prohibitions on Group Sales

On the one hand, we ask what is the purpose of having a purported limitation on group travel insurance sales? During the numerous conference calls, we have yet to hear either a regulatory or consumer protection rationale. We have heard that regulators are concerned about premium taxes and consumer disclosures, but those issues are more appropriately addressed directly than through some indirect manner via individual versus group sales.

Our experience shopping for and purchasing travel insurance further raises questions about purported prohibitions against group travel insurance sales. As noted in a prior comment, I purchased travel insurance issued by AIG (“Travelguard”) through the United Airlines web site. Presumably this is coverage under a group policy issued to United Airlines. The document is entitled “Individual Travel Protection Policy” and “United Airlines” is not mentioned anywhere in the document.

I also obtained a policy from AIG Travelguard from the InsureMyTrip website. Presumably, this is an individual travel insurance policy since I provided information as an individual and not part of any group. The document is also entitled “Individual Travel Protection Policy” like the travel insurance purchased through the United Airlines web site.

Although the travel protection purchased through United should be part of a group policy and the travel protection purchased through InsureMyTrip should be an individual policy, it is unclear whether either is an individual or group coverage. Several questions arise. Is there a consumer protection issue if I am sold a certificate on a group policy instead of an individual policy? The answer appears to be no because regardless of the type – individual or group – the same consumer protection issues regarding misleading policy forms, unreasonable exclusions and relevant and timely disclosures exist for both sales.

The next question is, if there are currently prohibitions against group sales – existing prohibitions which the industry believes need “clarity” – then how could my purchase experience above have happened? Are regulators not enforcing the current prohibitions? Are these prohibitions so difficult to monitor that ongoing oversight is effectively impossible? What is the purpose of a prohibition on group sales?

If We Assume a Regulatory Purpose for Prohibitions on Group Sales, the Current Proposal Offers Purported, Not Real Regulation

On the other hand – assuming a regulatory or consumer protection rationale can be articulated – it makes no sense to have a laundry list of so-called eligible groups that allow any two people to be considered an eligible group. The draft laundry list of eligible groups fails to exclude any group of two or more people with the result that the current draft contains pretend regulation – purported prohibitions against certain types of group sales when, in reality, the list allows anything.

For example, the current draft allows any two people who (separately and for completely different travel purposes) walk into a travel agency to become a group compliant with the current model law language. More important and more troubling – if there is a concern about improper group travel insurance sales – the model allows a group policy to be issued to a travel agency with the result that the agency can enroll any customer into the same group policy regardless of the disparate needs of the travelers. If consumer protection were a rationale for the proposed definition and laundry list of eligible groups, a travel agency would not be included in the list – for the same reasons that an auto insurer can't issue a group policy to an agent and simply have the agent enroll all consumers onto the group auto insurance policy.

We submit that industry's rationale for adding a dozen new eligible groups – this particular grouping of people might not fit into one of the broader definitions and we need to articulate every possible group to promote “clarity” – demonstrates the problems with the laundry list.

Mr. Fielding has written that a separate item for eligible groups is warranted for preschools, daycare institutions for children or adults and senior citizens clubs. Preschools are clearly covered by current (c) learning institutions as well as (d) any employer covering employees, contractors, volunteers or guests. Mr. Fielding argues that these two groups do not cover senior citizens clubs or private daycare. Private daycare would be covered by current proposed (d) and senior citizen clubs would be covered by current proposed (f) civic organizations.

In addition to the repetitive nature of many of the recently-proposed eligible groups, there is also the problem of a conflict between the general definition and some of the identified groups. The current Oklahoma/Louisiana proposal states:

Solely for the purposes of Travel Insurance, “Eligible Group” means two (2) or more persons who are engaged in a common enterprise, or have an economic, educational, or social affinity or relationship, including but not limited to any of the following

The intent appears clear – two or more people who are engaged in a common enterprise, or have an economic, educational or social affinity or relationship can be a group for purposes of travel insurance – even if the entire relationship is that the two people are buying travel insurance. This renders the concept of regulating eligible groups meaningless – there are literally no two people whose only “affinity” is their common interest in travel insurance that would now fail to be an eligible group. The “affinity” could be nothing more than purchasing insurance – an outcome contrary to the concept of group insurance.

The confusion continues with proposed paragraph (a) which declares as an eligible group any entity engaged in the travel business. While the opening paragraph discusses the members of the group – the people who will comprise the group – paragraph (a) switches to defining eligible groups as the entities who will be selling the travel insurance. Proposed paragraph (a) conflates eligible group with travel retailer.

The Way Forward for Individual and Group Sales

Since no regulatory or consumer protection rationale for a prohibition on group travel insurance sales has been articulated and because the consumer protection issues we have identified¹ do not distinguish between or otherwise rely upon individual or group sales, ***we recommend that the model simply state that travel insurance may be sold as an individual or group policy.*** Since this is the effect of the current effort to define eligible groups, we suggest that regulators and stakeholders simply acknowledge this and spend as much or more time on provisions to prevent unfair and misleading policy forms and contract and to require useful and timely consumer information.

¹ Appropriate disclosures, specific prohibition against unfair and misleading policy forms, prohibitions against unreasonable exclusions, consumer protections for captive (reverse-competitive market) sales, collection and publication of travel insurer experience data, to name a few