

Bulletin No. 2025-27**December 19, 2025**

RE: IMPORTANT UPDATE ON
POLICY FEES PAID TO PRODUCERS

On February 24, 2025, ELANY issued bulletin number 2025-08 advising all excess line brokers that the position of the New York Department of Financial Services (DFS) holds that “Policy” fees payable to an excess line insurer are consideration for the policy and therefore subject to excess line tax. ELANY often receives policy documents that incorrectly label fees intended for MGAs, MGUs, or other licensed intermediaries as “Policy” fees rather than producer or broker fees which are not subject to excess line tax. Such labels should reflect that the carrier does not retain the fee, e.g.: broker fee, producer fee, non-carrier inspection fee, wholesale broker fee, etc. This list is not exhaustive, and ELANY will accept terminology as simple as “broker fee,” if it achieves the goal of distinguishing the charge from insurer fees.

ELANY’s bulletin had provided a grace period for producers to work with insurers to amend standard documentation to clarify the tax status of the fee and had provided a deadline for correction of January 1, 2026. We are pleased to report that ELANY will keep the current procedure of using the Total Cost Form as acceptable documentation in place indefinitely.

Where a filing lists fees entitled “Policy” fee that is intended for a licensed intermediary and not the insurer, we will process such filings if it clearly lists such fees as broker fees on a Total Cost Form that is submitted to ELANY.

We note that New York Insurance Law Section 2118 requires excess line brokers to file the notice of excess line placement (NELP) with ELANY, but not specifically a total cost form. Many brokers use the combined NELP and Total Cost Form on the ELANY website, which can serve a dual purpose of meeting the notice and filing requirements of 2118, as well as identifying broker fees not properly labeled by insurers. ELANY accepts this approach.

ELANY members are reminded that Insurance Law Section 2102 (e)(1) states that no person shall accept any commission, service fee, brokerage or other valuable consideration for selling, soliciting or negotiating insurance in this state if that person is required to be licensed under the insurance law. See Sections 2101 through 2105 for the licensing provisions applicable to agents, brokers, and surplus lines brokers.

Should you have any questions regarding the content of this bulletin, please direct them to elanyinfo@elany.org.