

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF INSURANCE

Military Sales Practices

Proposed New Rules: N.J.A.C. 11:2-23A

Authorized By: Steven M. Goldman, Commissioner, Department of Banking and Insurance

Authority: N.J.S.A. 17:1-8.1, 1-15e, 17B:30-1 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2007-303

Submit comments by November 30, 2007 to:

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The agency proposal follows:

Summary

Companies regulated by the Department of Banking and Insurance (Department), including insurers transacting life insurance and annuity business are responsible for assuring that their agents and brokers adhere to the marketing conduct and solicitation requirements imposed by N.J.S.A. 17B:30-1 et seq., and N.J.A.C. 11:2-23.1 et seq., 11:4-2. and 11:4-48. The purpose of these proposed new rules is to set forth standards in accordance with Section 9 of the Federal Military Personnel Financial Services Protection Act (FMPFSPA) (Public Law No. 109-290) and in conjunction with the Military Sales Practices Model Regulation (NAIC Model) endorsed by the National Association of Insurance Commissioners (NAIC), both of which establish standards to protect active duty service members of the United States Armed Forces

from dishonest and predatory insurance sales practices, by declaring certain identified practices to be false, misleading, deceptive and unfair. The Department, in response to the new Federal law and the NAIC Model, is proposing new rules to augment the current rules governing life insurance and annuities replacement; life insurance solicitation, unfair discrimination, and insurance producer standards of conduct: marketing as they apply to life insurance and annuity sales to active military personnel by insurers and their agents. The proposed new rules will define and prohibit military sales practices which are dishonest, predatory, false, misleading, deceptive and unfair.

The new rules will provide the regulatory framework to enable the Commissioner to properly monitor the conduct of agents and companies to prevent the prohibited predatory conduct and will align the New Jersey Administrative Code with the FMPFSPA and the NAIC Model.

A description of each proposed new rule follows.

New N.J.A.C. 11:2-23A.1 defines the purpose of the new rules as setting forth standards to protect active duty service members of the United States Armed Forces from dishonest and predatory insurance sales practices.

New N.J.A.C. 11:2-23A.2 indicates that the scope of the new rules shall extend to the solicitation or sale of any life or annuity product by any insurer or insurance producer to an active duty member of the United States Armed Forces, wherever located.

New N.J.A.C. 11:2-23A.3 specifies the life and annuity products which that are exempt from these new rules.

New N.J.A.C. 11:2-23A.4 lists the definitions of the terms contained in the new rules.

New N.J.A.C. 11:2-23A.5 sets forth the practices declared false, misleading, deceptive or unfair if committed by an insurer or insurance producer upon a military installation within New Jersey with respect to in-person, face-to-face solicitation of life insurance. Among the violations are door-to-door sales without an appointment; non-voluntary solicitation of service members in a “captive” or “mass audience”; making appointments or soliciting service members during their normal duty hours; making appointments or soliciting service members in barracks, dayrooms, unit areas, or other areas where the installation commander has prohibited such solicitation; soliciting sales without the installation commander’s permission; posting unauthorized bulletins, notices or advertisements in installation areas; failing to present personal solicitation evaluation forms and knowingly accepting a life insurance application or issuing a life policy without first obtaining completed copies of all required counseling or disclosure forms.

New N.J.A.C. 11:2-23A.6 sets forth the practices declared to false, misleading, deceptive or unfair regardless of location within New Jersey. Within this section, those actions that will be considered corrupt practices, improper influence, improper inducement, improper solicitation or prohibited solicitation are explained. This section also eliminates confusion regarding the necessary disclosure required during the sales solicitation. The new rule text requires that the producer or sales agent identify to the prospective insured with what insurer, if any, the producer or sales agent is appointed, sponsored, approved or affiliated. This section also defines the required disclosures that must be utilized during the sales solicitation of military personnel and it further defines the deceptive, unfair or unsuitable insurance products that are prohibited from any sales solicitation to a service member in pay grades E-1 through E-4 or their equivalent.

Finally, New N.J.A.C. 11:2-23A.7 sets forth the effectiveness and enforceability of this new rule text in the event that a portion of the text is held invalid for any reason.

A 60-day comment period is provided and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, the proposal is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The proposed new rules will apply to the solicitation or sale of specified life or annuity products by an insurer or insurance producer to an active duty member of the United States Armed Forces, located, stationed or bivouacked in the State of New Jersey. The new rules will protect active duty military personnel from being exploited by unscrupulous agents or insurers who solicit them to purchase life insurance or annuity products in a predatory, deceptive or unfair manner.

Economic Impact

The new rules will not have an adverse economic impact on the general public, the insurance industry or the Department. The new rules are intended to protect active duty military personnel from the potentially significant adverse economic effects of predatory life insurance and annuity sales practices and ensure that such military personnel are solicited in compliance with the FMPFSPA and the NAIC Model. Such compliance should not result in increased insurance industry solicitation costs nor increased premium costs to military personnel.

Federal Standards Statement

The proposed new rules are consistent with and do not exceed the requirements of the FMPFSPA. Therefore no Federal standards analysis is required.

Jobs Impact

The Department does not anticipate that any jobs will be generated or lost as a result of the proposed new rules. The Department invites commenters to submit any data or studies concerning the jobs impact of the proposed new rules together with their written comments on other aspects of this proposal.

Agriculture Industry Impact

The Department does not expect any agriculture industry impact from the proposed new rules.

Regulatory Flexibility Analysis

Many producers are, and some insurance companies may be small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rules impose compliance requirements on these entities as discussed in the Summary above. The Department believes that compliance with the rules will be handled by existing staff and no insurer or producer will have to obtain or increase the use of professional services in order to comply with the rules being proposed. As a result, there are no new costs associated with these compliance requirements. The Department invites commenters to submit any data or studies concerning economic impact of the new rules proposed together with their written comments on other aspects of this proposal; however they do impose reporting or recordkeeping requirements..

The Department believes that these requirements are authorized by N.J.S.A. 17:30B-1 et seq., and generally mandated by FMPFSPA. Moreover, the Department does not believe that these requirements are unduly burdensome. The purpose of these rules is to protect active duty service members of the United States Armed Forces from dishonest and predatory insurance sales practices by declaring certain identified practices to be false, misleading, deceptive or unfair. Thus, the purpose of these requirements does not vary based upon business size. Accordingly, no differentiation in compliance requirements based upon business size is provided.

Smart Growth Impact

The proposed new rules will not have an impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Full text of the proposed new rules follows:

SUBCHAPTER 23A. MILITARY SALES PRACTICES

11:2-23A.1 Purpose

(a) **The purpose of this subchapter is to set forth standards to protect active duty service members of the United States Armed Forces from dishonest and predatory insurance sales practices by declaring certain identified practices to be false, misleading, deceptive or unfair.**

(b) Nothing in this subchapter shall be construed to create or imply a private cause of action for a violation of this subchapter.

11:2-23A-2 Scope

This subchapter shall apply only to the solicitation or sale of any life insurance or annuity product by an insurer or insurance producer to an active duty service member of the United States Armed Forces.

11:2-23A-3 Exemptions

(a) This subchapter shall not apply to solicitations or sales involving:

- 1. Credit insurance;**
- 2. Group life insurance or group annuities where there is no in-person, face-to-face solicitation of individuals by an insurance producer or where the contract or certificate does not include a side fund;**
- 3. An application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised; when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the commissioner; or when a term conversion privilege is exercised among corporate affiliates;**
- 4. Individual stand-alone health policies, including disability income policies;**
- 5. Contracts offered by Service members' Group Life Insurance (SGLI) or Veterans' Group Life Insurance (VGLI), as authorized by 38 U.S.C. §§1965 et seq.;**

6. Life insurance contracts offered through or by a non-profit military association, qualifying under Section 501(c)(23) of the Internal Revenue Code (IRC), and which are not underwritten by an insurer; or

7. Contracts used to fund:

- i. An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act, Pub.L. 93-406;**
- ii. A plan described by Sections 401(a), 401(k), 403(b), 408(k) or 408(p) of the IRC, as amended, if established or maintained by an employer;**
- iii. A government or church plan defined in Section 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the IRC;**
- iv. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;**
- v. Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or**
- vi. Prearranged funeral contracts.**

(b) Nothing in this section shall be construed to abrogate the ability of nonprofit organizations (and/or other organizations) to educate members of the United States Armed Forces in accordance with Department of Defense "DoD" Instruction 1344.07 personal commercial solicitation on DoD installations or or any successor directive.

(c) For purposes of this subchapter, general advertisements, direct mail and internet marketing shall not constitute "solicitation." Telephone marketing shall not constitute "solicitation" provided the caller explicitly and conspicuously discloses that the product concerned is life insurance and makes no statements that avoid a clear and unequivocal statement that life insurance is the subject matter of the solicitation. Provided, however, nothing in this subsection shall be construed to exempt an insurer or insurance producer from this subchapter in any in-person, face-to-face meeting established as a result of the "solicitation" exemptions identified in this section.

11:2-23A.4 Definitions

For the purposes of this subchapter, the following terms and phrases shall have the following meanings, unless the context clearly indicates otherwise:

"Active duty" means full-time duty in the active military service of the United States and includes members of the reserve component (National Guard and Reserve) while serving under published orders for active duty or full-time training. The term does not include members of the reserve component who are performing active duty or active duty for training under military calls or orders specifying periods of less than 31 calendar days.

“Department of Defense (DoD) personnel” means all active duty service members and all civilian employees, including nonappropriated fund employees and special government employees, of the Department of Defense.

“Door-to-door” means a solicitation or sales method whereby an insurance producer proceeds randomly or selectively from household to household without prior specific appointment.

“General advertisement” means an advertisement having as its sole purpose the promotion of the reader's or viewer's interest in the concept of insurance, or the promotion of the insurer or the insurance producer.

“Insurer” means an insurance company required to be authorized or admitted under the laws of this State to provide life insurance products, including annuities.

“Insurance producer” means a person required to be licensed under the laws of this state to sell, solicit or negotiate life insurance, including annuities.

“Known” or “knowingly” means, depending on its use in this subchapter, the insurance producer or insurer had actual awareness, or in the exercise of ordinary care should have known, at the time of the act or practice complained of, that the person solicited is a service member, including a service member with a pay grade of E-4 or below.

“Life insurance” means insurance coverage on human lives including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income and unless otherwise specifically excluded, includes individually issued annuities.

“Military installation” means any Federally owned, leased, or operated base, reservation, post, camp, building, or other facility to which service members are assigned for duty, including barracks, transient housing, and family quarters.

“MyPay” is a Defense Finance and Accounting Service (DFAS) web-based system that enables service members to process certain discretionary pay transactions or provide updates to personal information data elements without using paper forms.

“Service member” means any active duty officer (commissioned and warrant) or enlisted member of the United States Armed Forces.

“Side fund” means a fund or reserve that is part of or otherwise attached to a life insurance policy (excluding individually issued annuities) by rider, endorsement or other mechanism, which accumulates premiums or deposits with interest or by other means. The term does not include:

- 1. Accumulated value or cash value or secondary guarantees provided by a universal life policy;**
- 2. Cash values provided by a whole life policy which are subject to standard nonforfeiture law for life insurance; or**
- 3. A premium deposit fund which:**
 - i. Contains only premiums paid in advance, which accumulate at interest;**
 - ii. Imposes no penalty for withdrawal;**
 - iii. Does not permit funding beyond future required premiums;**
 - iv. Is not marketed or intended as an investment; and**

- v. Does not carry a commission, either paid or calculated.

“Specific appointment” means a prearranged appointment agreed upon by both parties and definite as to place and time.

“United States Armed Forces” means all components of the Army, Navy, Air Force, Marine Corps, and Coast Guard.

11:2-23A.5 Practices declared false, misleading, deceptive or unfair on a military installation

(a) The following acts or practices when committed on a military installation by an insurer or insurance producer with respect to the in-person, face-to-face solicitation of life insurance are declared to be false, misleading, deceptive or unfair:

- 1. Knowingly soliciting the purchase of any life insurance product door-to-door or without first establishing a specific appointment for each meeting with the prospective purchaser;**
- 2. Soliciting service members in a group or “mass” audience or in a “captive” audience where attendance is not voluntary;**
- 3. Knowingly making appointments with or soliciting service members during their normally scheduled duty hours;**
- 4. Making appointments with or soliciting service members in barracks, day rooms, unit areas, or transient personnel housing or other areas where the installation commander has prohibited solicitation;**
- 5. Soliciting the sale of life insurance without first obtaining permission from the installation commander or the commander’s designee;**

- 6. Posting unauthorized bulletins, notices or advertisements;**
- 7. Failing to present DD Form 2885, Personal Commercial Solicitation Evaluation, to service members solicited or encouraging service members solicited not to complete or submit a DD Form 2885; and**
- 8. Knowingly accepting an application for life insurance or issuing a policy of life insurance on the life of an enlisted member of the United States Armed Forces without first obtaining for the insurer's files a completed copy of any required form that confirms that the applicant has received counseling or fulfilled any other similar requirement for the sale of life insurance established by regulations, directives or rules of the DoD or any branch of the Armed Forces.**

(b) The following acts or practices when committed on a military installation by an insurer or insurance producer constitute corrupt practices, improper influences or inducements and are declared to be false, misleading, deceptive or unfair:

- 1. Using DoD personnel, directly or indirectly, as a representative or agent in any official or business capacity with or without compensation with respect to the solicitation or sale of life insurance to service members; and**
- 2. Using an insurance producer to participate in any United States Armed Forces sponsored education or orientation program.**

11:2-23A.6 Practices declared false, misleading, deceptive or unfair regardless of location

(a) The following acts or practices by an insurer or insurance producer constitute corrupt practices, improper influences or inducements and are declared to be false, misleading, deceptive or unfair:

- 1. Submitting, processing or assisting in the submission or processing of any allotment form or similar device used by the United States Armed Forces to direct a service member's pay to a third party for the purchase of life insurance. The foregoing includes, but is not limited to, using or assisting in using a service member's MyPay account or other similar internet or electronic medium for such purposes. This paragraph does not prohibit assisting a service member by providing insurer or premium information necessary to complete any allotment form;**
- 2. Knowingly receiving funds from a service member for the payment of premium from a depository institution with which the service member has no formal banking relationship. For purposes of this paragraph, a formal banking relationship is established when the depository institution:**
 - i. Provides the service member a deposit agreement and periodic statements and makes the disclosures required by the Truth in Savings Act, 12 U.S.C. §§ 4301 et seq. and the regulations promulgated thereunder; and**

- ii. Permits the service member to make deposits and withdrawals unrelated to the payment or processing of insurance premiums;**
- 3. Employing any device or method or entering into any agreement whereby funds received from a service member by allotment for the payment of insurance premiums are identified on the service member's Leave and Earnings Statement or equivalent or successor form as "Savings" or "Checking" and where the service member has no formal banking relationship as defined in (a)2;**
- 4. Entering into any agreement with a depository institution for the purpose of receiving funds from a service member whereby the depository institution, with or without compensation, agrees to accept direct deposits from a service member with whom it has no formal banking relationship;**
- 5. Using DoD personnel, directly or indirectly, as a representative or agent in any official or unofficial capacity with or without compensation with respect to the solicitation or sale of life insurance to service members who are junior in rank or grade, or to the family members of such personnel;**
- 6. Offering or giving anything of value, directly or indirectly, to DoD personnel to procure their assistance in encouraging, assisting or**

facilitating the solicitation or sale of life insurance to another service member;

- 7. Knowingly offering or giving anything of value to a service member with a pay grade of E-4 or below for his or her attendance at any event where an application for life insurance is solicited; and**
- 8. Advising a service member with a pay grade of E-4 or below to change his or her income tax withholding or State of legal residence for the sole purpose of increasing disposable income to purchase life insurance.**

(b) The following acts or practices by an insurer or insurance producer lead to confusion regarding source, sponsorship, approval or affiliation and are declared to be false, misleading, deceptive or unfair:

- 1. Making any representation, or using any device, title, descriptive name or identifier that has the tendency or capacity to confuse or mislead a service member into believing that the insurer, insurance producer or product offered is affiliated, connected or associated with, endorsed, sponsored, sanctioned or recommended by the U.S. Government, the United States Armed Forces, or any state or federal agency or government entity. Examples of prohibited insurance producer titles include, but are not limited to, "Battalion Insurance Counselor," "Unit Insurance Advisor," "Servicemen's Group Life Insurance Conversion Consultant" or "Veteran's Benefits Counselor."**

i. Nothing in this paragraph shall be construed to prohibit a person from using a professional designation awarded after the successful completion of a course of instruction in the business of insurance by an accredited institution of higher learning. Such designations include, but are not limited to, Chartered Life Underwriter (CLU), Chartered Financial Consultant (ChFC), Certified Financial Planner (CFP), Master of Science in Financial Services (MSFS), or Masters of Science in Financial Planning (MS); and

2. Soliciting the purchase of any life insurance product through the use of or in conjunction with any third-party organization that promotes the welfare of or assists members of the United States Armed Forces in a manner that has the tendency or capacity to confuse or mislead a service member into believing that either the insurer, insurance producer or insurance product is affiliated, connected or associated with, endorsed, sponsored, sanctioned or recommended by the U.S. Government, or the United States Armed Forces.

(c) The following acts or practices by an insurer or insurance producer lead to confusion regarding premiums, costs or investment returns and are declared to be false, misleading, deceptive or unfair:

- 1. Using or describing the credited interest rate on a life insurance policy in a manner that implies that the credited interest rate is a net return on premium paid; and**
- 2. Excluding individually issued annuities, misrepresenting the mortality costs of a life insurance product, including, stating or implying that the product "costs nothing" or is "free."**

(d) The following acts or practices by an insurer or insurance producer regarding Service Member's Group Life Insurance (SGLI) or Veterans Group Life Insurance (VGLI) are declared to be false, misleading, deceptive or unfair:

- 1. Making any representation regarding the availability, suitability, amount, cost, exclusions or limitations to coverage provided to a service member or dependents by SGLI or VGLI, which is false, misleading or deceptive;**
- 2. Making any representation regarding conversion requirements, including the costs of coverage, or exclusions or limitations to coverage of SGLI or VGLI to private insurers which is false, misleading or deceptive; and**
- 3. Suggesting, recommending or encouraging a service member to cancel or terminate his or her SGLI policy or issuing a life insurance policy which replaces an existing SGLI policy unless the replacement shall take effect upon or after the service member's separation from the United States Armed Forces.**

(e) The following acts or practices by an insurer or insurance producer regarding disclosure are declared to be false, misleading, deceptive or unfair:

- 1. Deploying, using or contracting for any lead generating materials designed exclusively for use with service members that do not clearly and conspicuously disclose that the recipient will be contacted by an insurance producer, if that is the case, for the purpose of soliciting the purchase of life insurance;**
- 2. Failing to disclose that a solicitation for the sale of life insurance will be made when establishing a specific appointment for an in-person, face-to-face meeting with a prospective purchaser;**
- 3. Excluding individually issued annuities, failing to clearly and conspicuously disclose the fact that the product being sold is life insurance;**
- 4. Failing to make, at the time of sale or offer to an individual known to be a service member, the written disclosures required by Section 10 of the “Military Personnel Financial Services Protection Act,” Pub. L. 109-290; and**
- 5. Excluding individually issued annuities, when the sale is conducted in-person face-to-face with an individual known to be a service member, failing to provide to the applicant at the time the application is taken:**
 - i. An explanation of any free-look period with instructions on how to cancel if a policy is issued; and**

- ii. **Either a copy of the application or a written disclosure. The copy of the application or the written disclosure shall clearly and concisely set out the type of life insurance, the death benefit applied for and its expected first-year cost. A basic illustration that meets the requirements of N.J.A.C. 11:4-11 shall be deemed sufficient to meet this requirement for a written disclosure.**

(f) The following acts or practices by an insurer or insurance producer with respect to the sale of certain life insurance products are declared to be false, misleading, deceptive or unfair:

1. **Excluding individually issued annuities, recommending the purchase of any life insurance product, which includes a side fund to a service member in pay grades E-4 and below unless the insurer or producer has reasonable grounds to believe that the life insurance death benefit, standing alone, is suitable;**
2. **Offering for sale or selling a life insurance product which includes a side fund to a service member in pay grades E-4 and below who is currently enrolled in SGLI. Such offering or selling is presumed unsuitable unless, after the completion of a needs assessment, the insurer demonstrates that the applicant's SGLI death benefit, together with any other military survivor benefits, savings and investments, survivor income, and other life insurance are insufficient to meet the applicant's insurable needs for life insurance.**

each policy year from one to 10 and for every fifth policy year thereafter ending at age 100, policy maturity or final expiration; and

- iii. Which by default diverts or transfers funds accumulated in the side fund to pay, reduce or offset any premiums due;
- 4. Excluding individually issued annuities, offering for sale or selling any life insurance contract, which after considering all policy benefits, including, but not limited to, endowment, return of premium or persistency, does not comply with standard nonforfeiture law for life insurance; and
- 5. Selling any life insurance product to an individual known to be a service member that excludes coverage if the insured's death is related to war, declared or undeclared, or any act related to military service except for an accidental death coverage, for example, double indemnity, which may be excluded.

11:2-23A.7 Severability

If any provision of this subchapter or the application thereof to any person or circumstance is held invalid for any reason, the invalidity shall not affect any other provisions or any other application of this subchapter which can be given effect without the invalid provisions or application. To this end, all provisions of this subchapter are declared to be severable.

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