

Regulatory Analysis Form

(Completed by Promulgating Agency)



IRRC

Independent Regulatory Review Commission

SECTION I. PROFILE

(1) Agency:

Insurance Department

(2) Agency Number:

Identification Number: 11-241

IRRC Number:

2709

(3) Short Title: **Military Sales Practices**

(4) PA Code Cite: 31 Pa. Code, Chapter 146d, §§146d.1-146d.8

(5) Agency Contacts (List Telephone Number, Address, Fax Number and Email Address):

Primary Contact: Peter J. Salvatore, Regulatory Coordinator, 1326 Strawberry Square, Harrisburg, PA 17120, (717) 787-4429

Secondary Contact:

(6) Primary Contact for Public Comments (List Telephone Number, Address, Fax Number and Email Address) – Complete if different from #5:

(All Comments will appear on IRRC'S website)

(7) Type of Rulemaking (check applicable box):

- Proposed Regulation
- Final Regulation
- Final Omitted Regulation
- Emergency Certification Regulation;
 - Certification by the Governor
 - Certification by the Attorney General

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(8) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The final form rulemaking will establish standards to protect active duty service members of the United States Armed Forces from dishonest and predatory insurance sales practices by deeming and declaring certain identified practices to be false, misleading, deceptive or unfair. The Department has chosen to implement the NAIC Model to achieve a level of uniformity among the states because a majority of the states have committed to implementing the NAIC Model. For these reasons, the Department has attempted to implement the provisions of the NAIC Model as closely as possible.

(9) Include a schedule for review of the regulation including:

- A. The date by which the agency must receive public comments: _____
- B. The date or dates on which public meetings or hearings will be held: _____
- C. The expected date of promulgation of the proposed regulation as a final-form regulation: July 14, 2009
- D. The expected effective date of the final-form regulation: Sept 1, 2009
- E. The date by which compliance with the final-form regulation will be required: _____
- F. The date by which required permits, licenses or other approvals must be obtained: _____

(10) Provide the schedule for continual review of the regulation.

The Department reviews each of its regulations for continued effectiveness on a triennial basis.

SECTION II: STATEMENT OF NEED

(11) State the statutory authority for the regulation. Include specific statutory citation.

Sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P.S. §§ 66, 186, 411 and 412) and the Unfair Insurance Practices Act ("UIPA") (40 P. S. §§ 1171.1--1171.14).

(12) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

Although there is no direct federal mandate to implement this proposed rulemaking, the NAIC Model was drafted in response to the United States Congress' direction in Section 9 of the Military Personnel Financial Services Protection Act ("Federal Act") (Pub. L. No. 109-290) (120 Stat. 1317). Section 9 of the Federal Act mandated that states work collectively with the Secretary of Defense to ensure the implementation of appropriate standards to protect members of the Armed Forces from dishonest and predatory insurance sales practices while on and off military installations. In addition, Section 12 of the Federal Act required the development of a uniform system for collecting and distributing reports from insurers and federal and state governmental entities regarding disciplinary actions taken against insurance producers soliciting or selling life insurance products on military installations. On September 25, 2007, the NAIC implemented the Military Sales Online Reporting System ("MSORS") in order to satisfy the requirements of the Federal Act.

(13) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The proposed rulemaking is 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 proposed rulemaking.

(14) If scientific data, studies, references are used to justify this regulation, please submit material with the regulatory package. Please provide full citation and/or links to internet source.

N/A

(15) Describe who and how many will be adversely affected by the regulation. How are they affected?

N/A

(16) List the persons, groups or entities that will be required to comply with the regulation.

Approximate the number of people who will be required to comply.

All insurers or insurance producers who sell and solicit life insurance or annuity products to active duty service members of the United States Armed Forces would be required to comply with the regulation.

SECTION III: COST AND IMPACT ANALYSIS

(17) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

The Department anticipates that compliance with the rulemaking will be handled by an insurer's or insurance producer's existing staff, and there will be no need to obtain or increase the use of professional services in order to comply with the rulemaking.

(18) Provide a specific estimate of the costs and/or savings to **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

N/A

(19) Provide a specific estimate of the costs and/or savings to **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

N/A

Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years. N/A

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(20a) Provide the past three year expenditure history for programs affected by the regulation. N/A

Program	FY -3	FY -2	FY -1	Current FY

Regulatory Analysis Form

(21) Explain how the benefits of the regulation outweigh any cost and adverse effects.

N/A

(22) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

The regulation is based upon a model regulation drafted by the NAIC. The NAIC model regulation was circulated to interested parties, including the Department of Defense, for public comment in February of 2007. The regulation was published, as proposed, on August 2, 2008 with a 30-day public comment period. During the 30-day comment period, a comment was received from Representative Fairchild (Chairman of the Pennsylvania House Veteran's Affairs and Emergency Preparedness Committee) expressing support for the regulation. A comment was also received from the Insurance Federation of Pennsylvania, Inc.

(23) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

No other regulatory schemes were considered. No other nonregulatory alternatives were considered. The adoption of the NAIC Model is advisable because it was drafted in response to the United States Congress' direction in Section 9 of the Federal Act.

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

No.

Regulatory Analysis Form

(25) How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?

The rulemaking will not put Pennsylvania at a competitive disadvantage with other states, but will bring Pennsylvania in line with the majority of other states that have already implemented the NAIC Model.

(26) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No.

(27) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

N/A

(28) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

N/A

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Copy below is hereby certified to be a true and correct
copy of a document issued, prescribed or promulgated
by:

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legality. Executive or Independent Agencies

By _____
(Deputy Attorney General)

Insurance Department

(AGENCY)

BY: 
Andrew C. Clark
JUL - 1 2009

DATE OF APPROVAL

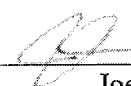
Date of Approval

DOCUMENT/FISCAL NOTE NO. 11-241

DATE OF ADOPTION: _____

(DEPUTY GENERAL COUNSEL)
(~~CHIEF COUNSEL, INDEPENDENT AGENCY~~)
(STRIKE INAPPLICABLE TITLE)

→ Check if applicable.
Copy not approved. Objections
attached.

BY: 
Joel Ario
Acting Insurance Commissioner
TITLE: _____
(EXECUTIVE OFFICER, CHAIRMAN OR
SECRETARY)

→ Check if applicable. No Attorney General
approval or objection within 30 days after
submission.

NOTICE OF FINAL FORM RULEMAKING

INSURANCE DEPARTMENT

31 Pa. Code, Chapter 146d
§§146d.1-146d.g

Military Sales Practices

Title 31--INSURANCE
INSURANCE DEPARTMENT
[31 PA. CODE CH. 146]

Military Sales Practices

The Insurance Department (Department), by this order, adopts Chapter 146d (relating to military sales practices) to read as set forth in Annex A.

Statutory Authority

The final-form rulemaking is adopted under the general rulemaking authority of sections 205, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P. S. §§ 66, 186, 411 and 412). Likewise, the proposed rulemaking is made under the Department's rulemaking authority under the Unfair Insurance Practices Act ("UIPA") (40 P. S. §§ 1171.1--1171.14) (as is further explained in *PALU v. Insurance Department*, 371 A.2d 564 (Pa. Cmwlth. 1977)).

Comments and Response

Notice of proposed rulemaking was published at 38 Pa.B. 4101 with a 30-day comment period. During its regulatory review, the Independent Regulatory Review Commission (IRRC) did not submit comments to the Department. During the 30-day comment period, a comment was received from Representative Fairchild (Chairman of the Pennsylvania House Veteran's Affairs and Emergency Preparedness Committee) expressing support for the regulation. A comment was also received from the Insurance Federation of Pennsylvania, Inc. (IFP) indicating general support of the regulation to the extent that it is consistent with the NAIC's Model Regulation (the Model), but expressed concerns with various sections where the Department's proposed regulation deviated from the Model. The following is a response to the IFP's comments.

Initially, the IFP objects to the Department's deletion of the paragraph in the Model which specified that there was no private right of action under the regulation. The UIPA does not provide for a private cause of action, but permits only regulatory remedies for violations of that law. Because this regulation is promulgated pursuant to the authority set forth in the UIPA, the Department believes that inclusion of this paragraph in the regulation text is unnecessary and redundant. This approach is consistent with other regulations promulgated by the Department pursuant to its rulemaking authority pursuant to the UIPA.

The IFP made several suggestions that were incorporated into the final-form version of the regulation attached as Annex A. The IFP specifically objected to the removal of the reference to the National Guard within the Department's revisions to the definition of "active duty." In order to address the IFP's concern, the Department has added "National Guard or Reserve" language within the definition of "active duty." Additionally, the IFP noted that the Department eliminated the specific reference to commissioned and warrant officers within the definition of "service member." The Department has added the "commissioned and warrant" language to the definition. Likewise, the miscellaneous typographical errors noted at part 7 of the IFP letter have been corrected as set forth in Annex A.

Several of the IFP's comments expressed concern regarding changes made by the Department in order to conform the Model to the standards for regulatory drafting set forth in the Pennsylvania Code & Bulletin Style Manual (Style Manual). All such deviations from the Model are specifically explained below.

The IFP indicated that the Model was not improved by changing the gender neutral "his or her" to his. This deviation from the model was made in order to conform the model to Section 6.10 of the Pennsylvania Code & Bulletin Style Manual, which provides, in pertinent part, that "words used in the masculine gender include the feminine under 1 Pa.C.S. 1902 relating to number; gender; tense."

The IFP also objected to the Department's omission of the "short form style of the model" and instead spell out the elements of "Department of Defense (DoD) Personnel" where appropriate in sections 146d.5(b)(1) and 146.d6(a)(5) and (6). The Department's revisions to the Model were based upon Section 6.5 (which provides that acronyms should be avoided unless absolutely necessary) and Section 1.7 (which indicates that the term being defined may not be included as part of the definition; terms only should be defined in order to avoid vagueness, ambiguity or unnecessary verbosity; and substantive provisions may not be contained within a definition) of the Style Manual.

The IFP contends that section 146.d6(a)(7) of this regulation creates a more difficult compliance standard than the Model, going further than the Model's prohibition against "knowingly" inducing service members with pay grades at or below E-4 to attend events where life applications are solicited. Specifically, within the prohibition against providing attendance inducements, the Department describes the service member as one "whom the insurer or insurance producer knows, or in the exercise of ordinary care should have known . . ." has such a pay grade. The Department's deviation from the Model in this respect was editorial only and made because substantive regulatory provisions are not permitted in the definition of a regulation pursuant to section 1.7 of the Style Manual. The IFP fails to note that the Model includes a definition of "known or knowingly" which "means, depending on its use herein, 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: (1) is a service member; or (2) is a service member with a pay grade of E-4 or below. (emphasis added). The Model's definition of the terms "known or knowingly" is a substantive, regulatory requirement and is not permitted to be in a definition pursuant to Section 1.7 of the Style Manual. For this reason, the Department incorporated the definition *directly* into the appropriate regulatory provision as follows:

(7) Knowingly offering or giving anything of value to a service member whom the insurer or insurance producer knows, or in the exercise ordinary care should have known has a pay grade of E-4 or below for his or her attendance to any event where an application for life insurance is solicited.

Accordingly, the Department's draft does not create a more difficult compliance standard than

the Model as claimed by the IFP.

In part five of its comment, the IFP appears to be objecting to the Department's failure to use the Model's "but not limited to" between "including" and "endowment" of section 146d.6.(f)(4). The "includes but not limited to" language was deleted pursuant to Section 6.16(b)(13) of the Style Manual, which specifically directs that the phrase "includes but not limited to" is not to be used.

Part six of the IFP's letter objects to the "or both" language added by the Department in place of the model's "and/or" language. This change was made as mandated by Section 6.16 of the Style Manual, which prohibits the use of "and/or" in favor of "_____ or _____, or both."

Affected Parties

The final-form regulation will apply to life insurance companies and fraternal benefit societies doing business in this Commonwealth.

Fiscal Impact

State Government

There will be no increase in cost to the Department as a result of the adoption of the amendments to Chapter 146.

General Public

Since this final-form regulation concerns the proscription of certain improper marketing practices that are now deemed to be unfair insurance practices pursuant to the UIPA, the public will benefit from this additional consumer protection and will not incur any additional costs for these protections.

Political Subdivisions

This final-form regulation will not impose additional costs on political subdivisions.

Private Sector

This final-form regulation will not impose any additional costs on insurers or insurance producers as it merely prohibits certain improper marketing strategies aimed at members of our armed forces.

Paperwork

The adoption of this final-form regulation would not impose additional paperwork on the Department or any other parties.

Effectiveness/Sunset Date

This regulation will become effective 60 days from the promulgation of this regulation in final form. The Department continues to monitor the effectiveness of regulations on a triennial basis; therefore, no sunset date has been assigned.

Contact Person

Any questions regarding this final-form regulation, should be directed to Peter J. Salvatore, Regulatory Coordinator, Bureau of Administration, 1326 Strawberry Square, Harrisburg, PA 17120, (717) 787-4429. Questions may be e-mailed to psalvatore@state.pa.us or faxed to (717) 705-3873.

Regulatory Review

Under section 5(a) of the Regulatory Review Act, (71 P. S. § 745.5(a)), the agency submitted a copy of this final-form regulation on July 20, 2009, to IRRC and to the Chairpersons of the House Insurance Committee and the Senate Banking and Insurance Committee (Committees). In addition to the submitted regulation, the agency has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the agency in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of that material is available to the public upon request.

In preparing this final-form regulation, the Department considered all comments received from IRRC, the Committees and the public. This final-form regulation was deemed approved by the House and Senate Committees on _____. Under section 5(g) of the Regulatory Review Act, the final-form regulation was deemed approved, effective _____.

Findings

The Commissioner finds that:

(1) Public notice of intention to adopt this final-form regulation has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of this final-form rulemaking in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statutes.

Order

The Commissioner, acting under the authorizing statutes, orders that:

(a) The regulations of the Department are amended by adding Chapter 146, to read as set forth in Annex A..

(b) The Commissioner shall submit this order and _____ to the Office of General Counsel and Office of Attorney General for approval as to form and legality as required by law.

(c) The Commissioner shall certify this order and _____ and deposit them with the Legislative Reference Bureau as required by law.

(d) The final-form regulation adopted by this order takes effect 60 days from the promulgation of this regulation in final form.

JOEL ARIO,
Insurance Commissioner

Annex A

TITLE 31. INSURANCE

PART VIII. MISCELLANEOUS PROVISIONS

CHAPTER 146d. MILITARY SALES PRACTICES

Sec.

146d.1. Purpose.

146d.2. Applicability and scope.

146d.3. Definitions.

146d.4. Exemptions.

146d.5. Practices declared false, misleading, deceptive or unfair on a military installation.

146d.6. Practices declared false, misleading, deceptive or unfair regardless of location.

146d.7. Violation.

146d.8. Effective date

§ 146d.1. Purpose.

This chapter establishes standards to protect active duty service members of the United States Armed Forces from dishonest and predatory insurance sales practices by deeming and declaring certain identified practices to be false, misleading, deceptive or unfair.

§ 146d.2. Applicability and scope.

This chapter applies 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.

§ 146d.3. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Active duty--

(i) Full-time duty in the United States Armed Forces.

(ii) This term includes full-time duty or training in the NATIONAL GUARD OR RESERVE reserve components of the United States Armed Forces if serving under published orders for a period of more than 31-calendar days.

Commissioner--The Insurance Commissioner of the Commonwealth.

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

General advertisement--An advertisement that promotes the concept of insurance, the insurer or the insurance producer.

Insurer--A life insurance company required to be licensed under section 202 of The Insurance Company Law of 1921 (40 P. S. § 382), or a fraternal benefit society required to be licensed under Article XXIV of The Insurance Company Law of 1921 (40 P. S. §§ 991.2401--991.2466), known as the Fraternal Benefit Societies Code, to provide life insurance products, including annuities.

Insurance producer--A person who sells, solicits or negotiates contracts of insurance as defined in section 601-A of The Insurance Department Act of 1921 (40 P. S. § 310.1).

Life insurance--

(i) 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.

(ii) The term includes individually issued annuities unless specifically excluded.

Military installation--A 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--A Defense Finance and Accounting Service 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.

Premium deposit fund--Amounts paid in and held for payments of future contractual obligations of policyholders or contractholders under an individual life insurance policy or an individual annuity contract.

Service member--~~An~~ A COMMISSIONED OR WARRANT active duty officer or enlisted member of the United States Armed Forces.

Side fund--

(i) 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 premium or deposits with interest or by other means.

(ii) The term does not include the following:

(A) The accumulated value, cash value or secondary guarantee provided by a universal life policy.

(B) A cash value provided by a whole life policy that is subject to standard nonforfeiture law for life insurance.

(C) A premium deposit fund that meets the following requirements:

- (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.
- (V) Does not carry a commission, either paid or calculated.

Specific appointment--A prearranged, agreed upon appointment that is definite as to place and time.

United States Armed Forces--All components of the Army, Navy, Air Force, Marine Corps and Coast Guard.

§ 146d.4. Exemptions.

(a) This chapter does not apply to solicitations or sales involving:

(1) Credit insurance.

(2) Group life insurance or group annuities when there is no in-person, face-to-face solicitation of individuals by an insurance producer or when 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 one of the following applies:

(i) A contractual change or a conversion privilege is being exercised.

(ii) The existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the Commissioner.

(iii) A term conversion privilege is exercised among corporate affiliates.

(4) Individual stand-alone health policies, including disability income policies.

(5) Contracts offered by Servicemembers' Group Life Insurance or Veterans' Group Life Insurance, as authorized by 38 U.S.C. §§ 1965--1980A.

(6) Life insurance contracts offered through or by a nonprofit military association, qualifying under section 501(c)(23) of the Internal Revenue Code of 1986, (26 U.S.C.A. § 501(c)(23)), and which are not underwritten by an insurer.

(7) Contracts used to fund:

(i) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA) (29 U.S.C.A. §§ 1001--1461).

(ii) A plan described by sections 401(a) or (k), 403(b) or 408(k) or (p) of the Internal Revenue Code of 1986 (26 U.S.C.A. §§ 401(a) or (k), 403(b) or 408(k) or (p)), if established or maintained by an employer.

(iii) A government or church plan defined in section 414 of the Internal Revenue Code of 1986 (26 U.S.C.A. § 414) or a deferred compensation plan of a state or local government or tax exempt organization under section 457 of the Internal Revenue Code of 1986 (26 U.S.C.A. § 457).

(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.

(vi) Prearranged funeral contracts.

(b) Nothing in this chapter abrogates the ability of nonprofit organizations or other organizations, or both, to educate members of the United States Armed Forces in accordance with Department of Defense Instruction 1344.07--PERSONAL COMMERCIAL SOLICITATION ON DOD INSTALLATIONS or successor directive. (**Note: this is to be capitalized and not new language**).

(c) For purposes of this chapter, general advertisements, direct mail and internet marketing does not constitute "solicitation." Telephone marketing does not constitute "solicitation" when the caller explicitly and conspicuously discloses that the product concerned is life insurance and makes no statements that evade a clear and unequivocal statement that life insurance is the subject matter of the solicitation. Nothing in this section exempts an insurer or insurance producer from this chapter in any in-person, face-to-face meeting established as a result of the "solicitation" exemptions identified in this section.

§ 146d.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 deemed and 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, 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.

(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 confirming 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 Department of Defense 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 deemed and declared to be false, misleading, deceptive or unfair:

(1) Directly or indirectly using an active duty service member or a civilian, nonappropriated fund, or special government employee of the Department of Defense 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.

(2) Using an insurance producer to participate in any United States Armed Forces sponsored education or orientation program.

§ 146d.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 deemed and 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, including using or assisting in using a service member's "MyPay" account or other similar internet or electronic medium for this purpose. 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 does all of the following:

(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.A. §§ 4301--4313) and the regulations promulgated thereunder.

(ii) Permits the service member to make deposits and withdrawals unrelated to the payment or processing of insurance premiums.

(3) Employing a device or method or entering into an 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 when the service member has no formal banking relationship as defined in paragraph (2).

(4) Entering into an 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) Directly or indirectly using an active duty service member or a civilian, nonappropriated fund, or special government employee of the Department of Defense, as a representative or agent in an 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 the personnel.

(6) Offering or giving anything of value, directly or indirectly, to an active duty service member or a civilian, nonappropriated fund, or special government employee of the Department of Defense to procure 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 whom the insurer or insurance producer knows, or in the exercise of ordinary care should have known, has a pay grade of E-4 or below for his attendance to an event where an application for life insurance is solicited.

(8) Advising a service member with a pay grade of E-4 or below to change his 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 United States Government, the United States Armed Forces, or any State or Federal agency or government entity.

(i) Examples of titles prohibited include "Battalion Insurance Counselor," "Unit Insurance Advisor," "Servicemen's Group Life Insurance Conversion Consultant" or "Veteran's Benefits Counselor."

(ii) Notwithstanding the prohibitions of this paragraph, a person may use 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. Examples include "Chartered Life Underwriter," "Chartered Financial Consultant," "Certified Financial Planner," "Master of Science In Financial Services" or "Master of Science In Financial Planning."

(2) Soliciting the purchase of a life insurance product through the use of or in conjunction with a 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 United States Government, the United States Armed Forces or any State or Federal agency or governmental entity.

(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.

(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 Servicemembers Group Life Insurance or Veterans' Group Life Insurance are declared to be false, misleading, deceptive or unfair:

(1) Making a representation regarding the availability, suitability, amount, cost, exclusions or limitations to coverage provided to a service member or dependents by service members' group life insurance or veterans' group life insurance, 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 Servicemembers' Group Life Insurance or Veterans' Group Life Insurance to private insurers which is false, misleading or deceptive.

(3) Suggesting, recommending or encouraging a service member to cancel or terminate a Servicemembers' Group Life Insurance policy or issuing a life insurance policy which replaces an existing Servicemembers' Group Life Insurance policy unless the replacement takes effect upon or after the service member's separation from the United States Armed Forces.

(e) The following acts or practices by an insurer and or insurance producer regarding disclosure are deemed and 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 the written disclosures required by section 10 of the Military Personnel Financial Services Protection Act, (10 U.S.C. § 992 nt), at the time of sale or ~~offer~~ OFFER to an individual who the insurer or insurance producer knows, or in the exercise of ordinary care should have known, is a service member.

(5) Excluding individually issued annuities, when the sale is conducted in-person face-to-face with an individual whom the insurer or insurance producer knows, or in the exercise of ordinary care should have known, to be a service member, failing to provide the applicant at the time the application is taken with the following:

(i) An explanation of any free look period with instructions on how to cancel if a policy is issued.

(ii) Either a copy of the application or a written disclosure that clearly and concisely sets 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 sections 407-A and 408-A of The Insurance Company Law of 1921 (40 P. S. §§ 625-7 and 625-8), regarding illustrations and life insurance illustrations, 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 life insurance products, excluding individually issued annuities, are deemed and declared to be false, misleading, deceptive or unfair:

(1) Recommending the purchase of a life insurance product which includes a side fund to a service member in pay grades E-4 and below unless the insurer has reasonable grounds for believing that the life insurance death benefit, standing alone, is suitable.

(2) Offering for sale or selling any life insurance contract which includes a side fund unless all the following conditions are met:

(i) Interest credited accrues from the date of deposit to the date of withdrawal and permits withdrawals without limit or penalty.

(ii) The applicant has been provided with a schedule of effective rates of return based upon cash flows of the combined product. For this disclosure, the effective rate of return will consider all premiums and cash contributions made by the policyholder and all cash accumulations and cash surrender values available to the policyholder in addition to life insurance coverage. This schedule will be provided for at least each policy year from 1 to 10 and for every 5th policy year thereafter ending at age 100, policy maturity or final expiration.

(iii) The contract does not, by default, divert or transfer funds accumulated in the side fund to pay, reduce or offset any premiums due.

(4)(3) Offering for sale or selling any life insurance contract which after considering all policy benefits, including endowment, return of premium or persistency, does not comply with standard nonforfeiture law for life insurance.

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

(1) Offering for sale or selling a life insurance product that includes a side fund to a service member in pay grades E-4 and below who is currently enrolled in Service Members' Group Life Insurance. This practice is presumed unfair unless the following conditions are met:

(i) The insurer conducts a needs assessment which includes consideration of the risks associated with premature death, the financial obligations and immediate and future cash needs of the applicant's estate, or survivors or dependents, or both.

(ii) The insurer demonstrates that the applicant's service members group life insurance death benefit, together with 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. For purposes of this subparagraph, "other military survivor benefits" include the Death Gratuity, Funeral Reimbursement, Transition Assistance, Survivor and Dependents' Educational Assistance, Dependency and Indemnity Compensation, TRICARE Healthcare Benefits, Survivor Housing Benefits and Allowances, Federal Income Tax Forgiveness and Social Security Survivor Benefits. (**Note: this is to be capitalized and not new language**).

(2) Selling a life insurance product to an individual whom the insurer or insurance producer knows, or in the exercise of ordinary care should have known, to be a service member that excludes coverage if the insured's death is related to war, declared or undeclared, or an act related to military service except for an accidental death coverage, for example, double indemnity, which may be excluded.

§ 146d.7. Violation.

Violations of this chapter are deemed and defined by the Commissioner to be an unfair method of competition and an unfair or deceptive act or practice and shall be subject to applicable penalties or remedies contained in the Unfair Insurance Practices Act (40 P. S. §§ 1171.1--1171.15).

§ 146d.8. Effective date.

This chapter will become effective _____ (*Editor's Note: The blank refers to a date 60 days after the final adoption of this proposal.*) and apply to acts or practices committed on or after _____ (*Editor's Note: The blank refers to a date 60 days after the final adoption of this proposal.*).



July 20, 2009

Mr. Kim Kaufman
Executive Director
Independent Regulatory Review Comm.
333 Market Street
Harrisburg, PA 17101

Re: Insurance Department Final Regulation No. 11-241, Military Sales Practices

Dear Mr. Kaufman:

Pursuant to Section 5a(c) of the Regulatory Review Act, enclosed for your information and review is final regulation 31 Pa. Code, Chapter 146d, Military Sales Practices.

The purpose of this final form rulemaking is to adopt Chapter 146d in order to implement the requirements of the National Association of Insurance Commissioners Model Military Sales Practices Regulation ("NAIC Model") and comply with the Military Personnel Financial Services Protection Act (Public Law 109-290) ("Federal Act"), which was enacted on September 29, 2006.

If you have any questions regarding this matter, please contact me at (717) 787-4429.

Sincerely yours,

A handwritten signature in black ink that reads "Peter J. Salvatore". The signature is written in a cursive style with a large initial "P".

Peter J. Salvatore
Regulatory Coordinator

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 11-241
 SUBJECT: MILITARY SALES PRACTICES
 AGENCY: DEPARTMENT OF INSURANCE

TYPE OF REGULATION

- Proposed Regulation
- X Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

RECEIVED
 2009 JUL 20 PM 12:47
 INDEPENDENT REGULATORY
 REVIEW COMMISSION

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
7/20/09	<i>Shelia Earhart</i>	HOUSE COMMITTEE ON INSURANCE
7/20/09	<i>By Rep. Deluca</i>	MAJORITY CHAIRMAN <u>REP. ANTHONY DELUCA</u>
7/20/09	<i>[Signature] (Stade)</i>	SENATE COMMITTEE ON BANKING & INSURANCE
7/20/09	<i>Nalei</i>	MAJORITY CHAIRMAN <u>SEN. DONALD C. WHITE</u>
7/20/09	<i>M. Belmont</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
_____	_____	ATTORNEY GENERAL
_____	_____	LEGISLATIVE REFERENCE BUREAU