

# Regulatory Analysis Form

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INDEPENDENT REGULATORY  
REVIEW COMMISSION

(1) Agency

Insurance Department

(2) I.D. Number (Governor's Office Use)

11-241

IRRC Number: 2709.

(3) Short Title

## Military Sales Practices

(4) PA Code Cite

31 Pa. Code, Chapter 146d,  
§§146d.1-146d.9

(5) Agency Contacts & Telephone Numbers

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

(6) Type of Rulemaking (check one)

- Proposed Rulemaking  
 Final Order Adopting Regulation  
 Final Order, Final form Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

- No  
 Yes: By the Attorney General  
 Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

The purposed of the proposed rulemaking is to 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) State the statutory authority for the regulation and any relevant state or federal court decision.

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).

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(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and 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.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

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.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

Certain life insurance products being offered to our service members are being improperly marketed as investment products. These products provide very low death benefits for very high premiums that are front-loaded in the first few years, making them completely inappropriate for most military personnel. In addition, some insurance producers have employed sales techniques that utilize intimidation from superior officers, dishonest portrayal of the contracts, and other misrepresentations in order to induce the purchase of the insurance by military personnel.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

Active duty military personnel will benefit from the proposed rulemaking, because they will be protected from the potentially significant adverse economic effects of predatory life insurance and annuity sales practices.

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(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

The proposed rulemaking imposes compliance requirements on producers and insurers.

(15) 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.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

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.

(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.

The Department anticipates that compliance with the proposed 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 being proposed.

**Regulatory Analysis Form**

(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.

There are no costs or savings to local governments associated with this rulemaking.

(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.

There are no costs or savings to state government associated with this rulemaking.

### 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
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
<b>Total Savings</b>						
<b>COSTS:</b>						
Regulated Community						
Local Government						
State Government						
<b>Total Costs</b>						
<b>REVENUE LOSSES:</b>						
Regulated Community						
Local Government						
State Government						
<b>Total Revenue Losses</b>						

(20a) Explain how the cost estimates listed above were derived.

N/A.

**Regulatory Analysis Form**

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

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

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

No costs or adverse effects are anticipated as a result of this regulation.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

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.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

No other regulatory schemes were considered.

### Regulatory Analysis Form

(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 regulation.

No.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage 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 existing or final form regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

No public hearings or informational meetings are anticipated.

### Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

No.

(29) 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.

The rulemaking will have no effect on special needs of affected parties.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The rulemaking will take effect 60 days after the publication of this rulemaking in final form in the *Pennsylvania Bulletin*.

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

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



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FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE  
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(Pursuant to Commonwealth Documents Law)

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INDEPENDENT REGULATORY  
REVIEW COMMISSION

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to  
form and legality. Attorney General

*[Signature]*  
By \_\_\_\_\_

(Deputy Attorney General)

JUN 19 2008

Date of Approval

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

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

Insurance Department

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 11-241

DATE OF ADOPTION: \_\_\_\_\_

BY: \_\_\_\_\_

*[Signature]*

Joel Ario

Acting Insurance Commissioner

TITLE: \_\_\_\_\_  
(EXECUTIVE OFFICER, CHAIRMAN OR  
SECRETARY)

Copy below is hereby approved as to form and  
legality. Executive or Independent Agencies

*[Signature]*  
BY: \_\_\_\_\_

Andrew C. Clark

MAY 28 2008

DATE OF APPROVAL

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

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

NOTICE OF PROPOSED RULEMAKING

INSURANCE DEPARTMENT

31 Pa. Code, Chapter 146d  
§§146d.1-146d9

Military Sales Practices

## PREAMBLE

The Insurance Department (Department) proposes to adopt Chapter 146d (relating to military sales practices) to read as set forth in Annex A. The proposed rulemaking is made 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)), because the Insurance Commissioner has determined that certain dishonest and predatory insurance sales practices directed toward active duty service members of the United States Armed Forces constitute unfair methods of competition and unfair or deceptive acts or practices.

### *Purpose*

The purpose of this proposed 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.

### *Background*

This proposed rulemaking is based upon the NAIC Model. For purposes of this proposed rulemaking, the Department will make available a copy of the NAIC Model to the Independent Regulatory Review Commission (IRRC), the Legislative Standing Committees, the Governor's Office of Policy and Planning, the Governor's Office of General Counsel and the Attorney General to assist in their analysis of this proposed regulation. Copies of NAIC model regulations may be available to the general public by contacting the NAIC.

In general, the NAIC Model 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. 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.

The NAIC Model was developed in response to the Federal Act. 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.

### ***Explanation of Regulatory Changes***

Section 146d.1 (relating to purpose) declares that the purpose of the regulation is to protect all active duty service members of the United States Armed Forces from dishonest and predatory insurance sales practices.

Section 146d.2 (relating to applicability and scope) specifies that the Chapter applies to the solicitation or sale of any life insurance or annuity product by an insurer or insurance producer to all active duty service members of the United States Armed Forces.

Section 146.3 (relating to definitions) contains the definitions of terms that are used in this chapter.

Section 146d.4 (relating to exemptions) exempts solicitations or sales involving certain contracts from the purview of the chapter.

Section 146d.5 (relating to practices declared false, misleading, deceptive or unfair on a military installation) sets forth those practices that constitute corrupt practices, improper influences or inducements when committed on a military installation.

Section 146d.6 (relating to practices declared false, misleading, deceptive or unfair regardless of location) sets forth those practices declared to constitute corrupt practices, improper influences or inducements, as well as those practices that lead to confusion regarding the source, sponsorship, approval or affiliation of an insurance producer or insurer. This section also sets forth practices that have been determined to lead to confusion regarding premiums, costs or investment returns, and Servicemembers Group Life Insurance or Veterans' Group Life Insurance, and sets forth requirements regarding the disclosures which must be made during the solicitation and sale of the insurance product.

Section 146d.7 (relating to violations) deems a violation of the chapter to be UIPA and subject to all applicable penalties or remedies.

Section 146d.8 (relating to severability) declares provisions of the chapter to be severable if held invalid for any reason.

### ***Affected Parties***

The proposed rulemaking will apply to insurers and insurance producers selling or soliciting life insurance or annuity products to an active duty service member of the United States Armed Forces in the Commonwealth.

### ***Fiscal Impact***

#### *State Government*

There will be no increase in cost to the Department as a result of the adoption of proposed rulemaking.

### *General Public*

Since the proposed rulemaking concerns the sale or solicitation of life insurance or annuities to active duty service members of the United States Armed Forces, it will have no adverse economic impact on the general public.

### *Political Subdivisions*

There will be no fiscal impact on political subdivisions as a result of the adoption of the proposed rulemaking.

### *Private Sector*

The proposed rulemaking will not have an adverse economic impact on the insurance industry. Compliance with the Chapter proposed should not result in increased insurance industry solicitation costs nor increased premium costs to military personnel.

### *Paperwork*

The Department does not believe that the proposed rulemaking will impose additional paperwork requirements on licensees.

### *Effectiveness/Sunset Date*

The proposed rulemaking will become effective 60 days after the publication of this rulemaking in final form in the *Pennsylvania Bulletin*.

### *Contact Person*

Questions or comments regarding the proposed rulemaking may be addressed in writing to Peter J. Salvatore, Regulatory Coordinator, Insurance Department, 1326 Strawberry Square, Harrisburg, PA 17120, within 30 days following the publication of this notice in the *Pennsylvania Bulletin*. Questions and comments may also be e-mailed to [psalvatore@state.pa.us](mailto:psalvatore@state.pa.us) or faxed to (717) 705-3873.

Pursuant to the Regulatory Review Act (71 P.S. §745.1 et seq.), the Department is required to write to all commentators, requesting whether or not they wish to receive a copy of the final form regulation. In order to better serve our stakeholders, the Department has made a determination that all commentators will receive a copy of the final form rulemaking when it is made available to the IRRC and the Legislative Standing Committees.

### ***Regulatory Review***

Under section 5(a) of the Regulatory Review Act (71 P.S. §745.5(a)), on July 17, 2008, the Department submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Banking and Insurance Committee and the House Insurance Committee. In addition to the submitted proposed rulemaking, the Department has, as required by the Regulatory Review Act, provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department. A copy of that material is available to the public upon request.

The IRRC will notify the Department of any objections to any portion of the proposed rulemaking within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria that have not been met by that portion. The Regulatory Review Act specifies detailed procedures for the Department, the Governor, and the General Assembly to review these objections before final publication of the regulations.

*Joel Ario*  
*Insurance Commissioner*

CONTINUATION SHEET FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU  
Pursuant to Commonwealth Documents Law

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. Severability.

146d.9. 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 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.

### §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* -- Full-time duty in the United States Armed Forces. This term includes full-time duty or training in the reserve components of the United States Armed Forces if serving under published orders for a period of more than 31 calendar days.

*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 Act of May 17, 1921 (P.L. 682, No. 284), known as the Insurance Company Law of 1921, or a fraternal benefit society required to be licensed under the act of December 14, 1992 (P.L. 835, No. 134), 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 act of May 17, 1921 (P.L. 789, No. 285), known as The Insurance Department Act of 1921.

*Life Insurance* -- 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. This term includes individually issued annuities unless specifically excluded.

Military Installation -- 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 -- 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 -- Any active duty officer or enlisted member of the United States Armed Forces.

Side Fund -- 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. The term does not include the following:

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

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

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

(A) Contains only premiums paid in advance which accumulate at interest.

(B) Imposes no penalty for withdrawal.



(C) Does not permit funding beyond future required premiums.

(D) Is not marketed or intended as an investment.

(E) 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 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 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. Section 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 of 1986 (Public Law 99-514, 26 U.S.C. §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) (Public Law 93-406, 88 Stat. 829, 29 U.S.C.S. §§1001-1461).

(ii) A plan described by Sections 401(a) or (k), 403(b), 408(k) or (p) of the Internal Revenue Code of 1986 (26 U.S.C. §§ 401(a) or (k), 403(b), 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. §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. §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 herein 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 Instruction 1344.07 – PERSONAL COMMERCIAL SOLICITATION ON DOD INSTALLATIONS or successor directive.

(c) For purposes of this chapter, general advertisements, direct mail and internet marketing shall not constitute “solicitation.” Telephone marketing shall not constitute "solicitation" where 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. Provided however, nothing in this section shall be construed to exempt 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. § 4301 *et seq.* 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 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 subsection (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) 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 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 an active duty service member or a civilian, nonappropriated fund, or special government employee of the Department of Defense to procure his or her 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 or her attendance to any 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 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.

(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 paragraph (b)(1), 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 "Masters of Science Financial Planning."

(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, 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 any representation regarding the availability, suitability, amount, cost, exclusions or limitations to coverage provided to a service member or dependents by Servicemembers' 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 his or her Servicemembers' Group Life Insurance policy or issuing a life insurance policy which



replaces an existing Servicemembers' Group Life Insurance 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 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," Pub. L. No. 109-290, p.16, at the time of sale or officer 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 40 P.S. §§625-7 and 625-8 (relating to 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 any 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 one to ten and for every fifth policy year thereafter ending at age 100, policy maturity or final expiration.

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

(4) 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) 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 Servicemembers' 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 and/or survivors or dependents.

(ii) The insurer demonstrates that the applicant's Servicemembers Group Life Insurance 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. 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.

(2) Selling any 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 any act

related to military service except for an accidental death coverage, e.g., 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 any applicable penalties or remedies contained in the Unfair Insurance Practices Act (40 P.S. §§1171.1 -- 1171.15).

**§146d.8 Severability.**

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

**§146d.9 Effective Date.**

This chapter shall become effective 60 days from the date of publication of this rulemaking in final form, and shall apply to acts or practices committed on or after the effective date.

# MILITARY SALES PRACTICES MODEL REGULATION

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### **Section 1. Purpose**

- A. The purpose of this regulation 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 herein shall be construed to create or imply a private cause of action for a violation of this regulation.

**Drafting Note:** The language of Subsection B comes from the NAIC Unfair Trade Practices Act. If a state has adopted different language, it should be substituted for Subsection B.

### **Section 2. Scope**

This regulation 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.

### **Section 3. Authority**

This regulation is issued under the authority of [insert reference to enabling legislation].

**Drafting Note:** States may wish to use the Unfair Trade Practices Act as enabling legislation or may pass a law with specific authority to adopt this regulation.

### **Section 4. Exemptions**

- A. This regulation 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; or, 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 Servicemembers' Group Life Insurance (SGLI) or Veterans' Group Life Insurance (VGLI), as authorized by 38 U.S.C. Section 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:
  - (a) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);
  - (b) 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;
  - (c) 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;
  - (d) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;
  - (e) Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or
  - (f) Prearranged funeral contracts.

- B. Nothing herein 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 successor directive.
- C. For purposes of this regulation, 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 regulation in any in-person, face-to-face meeting established as a result of the “solicitation” exemptions identified in this subsection.

**Section 5. Definitions**

- A. “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.
- B. “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.
- C. “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.
- D. “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.
- E. “Insurer” means an insurance company required to be licensed under the laws of this state to provide life insurance products, including annuities.
- F. “Insurance producer” means a person required to be licensed under the laws of this state to sell, solicit or negotiate life insurance, including annuities.
- G. “Known” or “Knowingly” 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.
- H. "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.
- I. "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.
- J. "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.
- K. "Service Member" means any active duty officer (commissioned and warrant) or enlisted member of the United States Armed Forces.
- L. "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 premium 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:
    - (a) contains only premiums paid in advance which accumulate at interest;
    - (b) imposes no penalty for withdrawal;
    - (c) does not permit funding beyond future required premiums;
    - (d) is not marketed or intended as an investment; and
    - (e) does not carry a commission, either paid or calculated.
- M. "Specific Appointment" means a prearranged appointment agreed upon by both parties and definite as to place and time.



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

**Section 6. 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.
  - (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 which 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.

**Drafting Note:** Currently, Army Regulation 210-7, which applies only to Army pay grades E-3 and below, requires that DA Form 2056, “Commercial Insurance Solicitation Record” be completed. At the time this Model Regulation was adopted, there were no similar requirements for other service branches, although it is anticipated that in the future there may be similar regulations adopted by other service branches.

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

**Section 7. 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 subsection 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 section, a formal banking relationship is established when the depository institution:
  - (a) 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
  - (b) 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 subsection 7 (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 to any 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 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."

Nothing herein 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 Financial Planning (MS).

- (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.
  - (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 SGLI or 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.
  - (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 and 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. No. 109-290, p.16.
- (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 the applicant at the time the application is taken:
  - (a) an explanation of any free look period with instructions on how to cancel if a policy is issued; and
  - (b) 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 [insert reference to state's illustration or disclosure regulation] shall be deemed sufficient to meet this requirement for a written disclosure.

**Drafting Note:** In addition to the items enumerated above, states may wish to add other items required by their laws and regulations, for example, the NAIC Life Insurance Buyer's Guide.

- 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 has reasonable grounds for believing 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, 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.
  - (a) "Insurable needs" are the risks associated with premature death taking into consideration the financial obligations and immediate and future cash needs of the applicant's estate and/or survivors or dependents.
  - (b) "Other military survivor benefits" include, but are not limited to: 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.
- (3) Excluding individually issued annuities, offering for sale or selling any life insurance contract which includes a side fund:
  - (a) unless interest credited accrues from the date of deposit to the date of withdrawal and permits withdrawals without limit or penalty;
  - (b) unless 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 one (1) to ten (10) and for every fifth policy year thereafter ending at age 100, policy maturity or final expiration; and
  - (c) 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.
- (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, *e.g.*, double indemnity, which may be excluded.

**Drafting Note:** While the drafters are of the opinion that making it an unfair or deceptive trade practice to market and sell life insurance policies containing a war or military exclusion to active duty service members during a time of war is not inconsistent with statutes which permit those exclusions, others may disagree. Those states may either delete the subsection or seek to amend their statutes in order to protect service members under this subsection.

#### **Section 8. Severability**

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

#### **Section 9. Effective Date**

This regulation shall become effective [January 1, 2008, or the effective date set in regulation] and shall apply to acts or practices committed on or after the effective date.



COMMONWEALTH OF PENNSYLVANIA  
INSURANCE DEPARTMENT

SPECIAL PROJECTS OFFICE  
1326 Strawberry Square  
Harrisburg, PA 17120

Phone: (717) 787-4429  
Fax: (717) 772-1969  
E-mail: [psalvatore@state.pa.us](mailto:psalvatore@state.pa.us)

July 18, 2008

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

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

Dear Mr. Kaufman:

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

The purpose of this proposed 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 cursive script that reads "Peter J. Salvatore".

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**

- X Proposed Regulation  
 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  
 2008 JUL 18 AM 10:44  
 INDEPENDENT REGULATORY  
 REVIEW COMMISSION

**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
7/18/08	<i>Lynne Klutas</i>	HOUSE COMMITTEE ON INSURANCE
07/18/08	<i>Dea Yubeika</i>	MAJORITY CHAIRMAN <i>Rep. DeLuca</i>
7/18/08	<i>Laura Carter</i>	SENATE COMMITTEE ON BANKING & INSURANCE
7/18/08	<i>Wm Bowers</i>	MAJORITY CHAIRMAN <i>Sen Donald C White</i>
7/18/08	<i>Kathy Cooper</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
	<i>7-18-08</i>	LEGISLATIVE REFERENCE BUREAU (for Proposed only)