

Title 210 - NEBRASKA DEPARTMENT OF INSURANCE

Chapter 82 - MILITARY SALES PRACTICES

001. Authority. This Rule is adopted and promulgated pursuant to the authority granted by Neb.Rev.Stat. §44-1534.01.

002. Purpose. This Rule is promulgated 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; nothing contained herein creates or implies private causes of action for any violations.

003. Scope. This Rule 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 (USAF).

004. Exemptions.

004.01 This rule does not apply to solicitations or sales involving:

004.01A Credit insurance;

004.01B Group life insurance or group annuities where there is no face-to-face solicitation of individuals by an insurance producer or where the contract or certificate does not include a side fund;

004.01C An application to the insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised; when the existing policy or contract is 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;

004.01D Individual stand-alone health and disability income policies;

004.01E Contracts offered by Service members Group Life Insurance (SGLI) or Veterans Group Life Insurance (VGLI), as authorized by 38 U.S.C. § 1965 et seq.;

004.01F Life insurance contracts offered by a non-profit military association, qualifying under Internal Revenue Code (IRC) Section 501 (c) (23), and which are not underwritten by an insurer;

004.01G Contracts used to fund:

004.01G (1) Employee pensions or welfare benefit plans that are covered by the Employee Retirement and Income Security Act (ERISA);

004.01G (2) Plans described by IRC Sections 401(a), 401(k), 403(b), 408(k) or 408(p), as amended, if established or maintained by an employer;

004.01G (3) Government or church plans defined in IRC Section 414, government or church welfare benefit plans, or deferred compensation plans of state or local government or tax exempt organizations under IRC Section 457;

004.01G (4) Nonqualified deferred compensation arrangements established or maintained by an employer or plan sponsor;

004.01G (5) Settlements or assumptions of liabilities associated with personal injury claims; or

004.01G (6) Contracts governed by the Burial Pre-Need Sale Act.

004.02 Nothing in this Rule will restrict the ability of organizations to educate members of the USAF pursuant to Department of Defense DoD Instruction 1344.07 PERSONAL COMMERCIAL SOLICITATION ON DOD

INSTALLATIONS, or successor directive.

004.03 For purposes of this rule, solicitation does not include general advertisements, direct mail and internet marketing. Telephone marketing is not "solicitation" provided the caller explicitly discloses that the product concerned is life insurance.

005. Definitions. 005 As used in this rule:

005.01 Active Duty carries the same definition as that included in 38 U.S.C. § 1965(1).

005.02 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.

005.03 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.

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

005.05 Insurer means an insurance company required to be licensed under Nebraska law to provide life insurance products, including annuities.

005.06 Insurance producer carries the same definition as that set out in Neb.Rev.Stat. §44-103(10).

005.07 Known or Knowingly means, depending on its use, the insurance producer or insurer had actual awareness, or in the exercise of ordinary care should have known, at the time of the act or practice complained of, that the person solicited is a service member.

005.08 Life Insurance means insurance coverage on human lives including benefits of endowment and may include: (a) benefits in the event of death or dismemberment by accident; (b) benefits for disability income; and (c) individually issued annuities unless otherwise excluded.

005.09 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.

005.10 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.

005.11 Service Member means any active duty officer (commissioned and warrant) or enlisted member of the USAF.

005.12 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 other means. The term does not include:

005.13 A accumulated value, cash value, or secondary guarantees provided by a universal life policy;

005.13 B cash values provided by a whole life policies which are subject to standard nonforfeiture law for life insurance; or

005.13 C a premium deposit fund which:

005.13 C (1) contains only premiums paid in advance which accumulate at interest;

005.13 C (2) imposes no penalty for withdrawal;

005.13 C (3) does not permit funding beyond future mandatory premiums;

005.13 C (4) is not marketed or intended as an investment; and

005.13 C (5) does not carry a commission, either paid or calculated.

005.14 Specific Appointment means a prearranged meeting at a specific place and time agreed upon by both parties.

005.15 United States Armed Forces (USAF) means all components of the Army, Navy, Air Force, Marine Corps, and Coast Guard.

006. Practices Declared False, Misleading, Deceptive or Unfair on a Military Installation.

006.01 The following acts or practices when committed on a military installation by an insurer or insurance producer are declared to be false, misleading, deceptive or unfair:

006.01 (A) Knowingly soliciting any life insurance product door to door or without first establishing a specific appointment with the prospective purchaser.

006.01 (B) Soliciting service members in a group or mass or captive audience where attendance is not voluntary.

006.01 (C) Knowingly making appointments with or soliciting service members during their normally scheduled duty hours.

006.01 (D) Making appointments with or soliciting service members in barracks, day rooms, unit areas, or transient personnel housing or any areas where the installation commander has barred solicitation.

006.01 (E) Soliciting the sale of life insurance without first obtaining permission from the installation commander or the commander's designee.

006.01 (F) Posting unauthorized bulletins, notices or advertisements.

006.01 (G) 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.

006.01 (H) Knowingly accepting an application for life insurance or issuing a policy of life insurance on the life of an enlisted member of the USAF without first obtaining a completed copy of all forms which confirm that the applicant has received counseling or fulfilled any similar requirements for the sale of life insurance established by regulations, directives or rules of the DoD or any branch of the USAF.

006.01 (I) 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.

006.01 (J) Having an insurance producer participate in any USAF sponsored education or orientation program.

007. Practices Declared False, Misleading, Deceptive or Unfair Regardless of Location.

007.01 The following acts or practices by an insurer or insurance producer are declared to be false, misleading, deceptive or unfair:

007.01 (A) Submitting, processing or assisting in the submission or processing of any allotment form or similar

device used by the USAF 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.

007.01 (B) 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:

007.01 (B) (1) provides the service member a deposit agreement, periodic statements and makes the disclosures outlined in the Truth in Savings Act, 12 U.S.C. § 4301 et seq. and regulations promulgated thereunder; and

007.01 (B) (2) permits the service member to make deposits and withdrawals unrelated to the payment or processing of insurance premiums.

007.01 (C) Employing any device or method or entering into any agreement whereby funds received from a service member for the payment of insurance premiums are identified on the service member's Leave and Earnings Statement or equivalent form as Savings or Checking .

007.01 (D) Using DoD personnel, directly or indirectly, as a representative or agent in any capacity with or without compensation with respect to the solicitation or sale of life insurance to service members (or their family members) that are junior in rank or grade.

007.01 (E) 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.

007.01 (F) 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.

007.01 (G) Advising service members in pay grades E-4 and below to change their income tax withholdings or states of legal residence for the sole purpose of increasing disposable income to purchase life insurance.

007.01 (H) 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 USAF, any state or federal agency or government entity. Examples of improper insurance producer titles include, "Battalion Insurance Counselor," "Unit Insurance Advisor," "Servicemen's Group Life Insurance Conversion Consultant" or Veteran's Benefits Counselor.

Nothing herein may 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 accredited institutions or organizations. Some such designations include, Chartered Life Underwriter (CLU), Chartered Financial Consultant (ChFC), Certified Financial Planner (CFP), Master of Science Financial Services (MSFS), or Masters of Science Financial Planning (MS).

007.01 (I) Soliciting 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 USAF in a manner that has the tendency or capacity to confuse or mislead a service member into believing that 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 USAF.

007.01 (J) 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.

007.01 (K) 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."

007.01 (L) Making any false, misleading or deceptive representation regarding the availability, suitability, amount, cost, exclusions or limitations to coverage provided to a service member or dependents by SGLI or VGLI.

007.01 (M) Making any false, misleading or deceptive representation regarding conversion requirements, including the costs of coverage, or exclusions or limitations to coverage of SGLI or VGLI to private insurers..

007.01 (N) Suggesting or recommending a service member cancel or terminate an SGLI policy or issuing a life insurance policy which replaces an existing SGLI policy unless the replacement takes effect upon or after the service member's separation from the USAF.

007.01 (O) Deploying, using or contracting for any lead generating materials designed exclusively for use with service members that do not clearly disclose that the recipient will be contacted by an insurance producer, for the purpose of soliciting life insurance.

007.01 (P) Failing to disclose that a solicitation for life insurance will be made when establishing a specific appointment for a face-to-face meeting with a prospective purchaser.

007.01 (Q) Excluding individually issued annuities, failing to clearly and conspicuously disclose the fact that the product being sold is life insurance.

007.01 (R) Failing to make, at the time of sale or offer to an individual known to be a service member, the written disclosures outlined in Section 10 of the Military Personnel Financial Services Protection Act, Pub. L. No. 109-290, p.16.

007.01 (S) Excluding individually issued annuities, when the sale is conducted face-to-face with an individual known to be a service member, failing to provide the applicant at the time the application is taken:

007.01 (T) (1) an explanation of any free look period with instructions on how to cancel if a policy is issued; and

007.05 (T) (2) either a copy of the application or a written disclosure. The copy of the application or the written disclosure needs to clearly set out the type of life insurance, the death benefit, and the expected first year cost. A basic illustration that meets the requirements of 210 Neb. Admin. Code §72 is sufficient to meet this requirement.

007.01 (U) Excluding individually issued annuities, recommending the purchase of any life insurance product which includes a side fund to service members 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.

007.01 (V) Offering or selling a life insurance product which includes a side fund to service members in pay grades E-4 and below who are currently enrolled in SGLI unless, after the completion of a needs assessment, the insurer demonstrates that the applicant's SGLI death benefit, together with any military survivor benefits, savings, investments, survivor income, and other life insurance are insufficient to meet the applicant's insurable needs.

007.01 (V) (1) 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 survivors, dependents and estate.

007.01 (V) (2) Military survivor benefits include such things as: 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.

007.01 (W) Excluding individually issued annuities, offering for sale or selling any life insurance contract which includes a side fund:

007.01 (W) (1) unless interest credited accrues from the date of deposit to the date of withdrawal and permits withdrawals without limit or penalty;

007.01 (W) (2) 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 each of the first ten policy years and every fifth policy year thereafter, ending at age 100, policy maturity or final expiration; and

007.01 (W) (3) which diverts or transfers funds accumulated in the side fund to pay, reduce or offset any premiums due.

007.01 (X) Excluding individually issued annuities, offering 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 life insurance nonforfeiture law.

007.01 (Y) 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.

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

009. Effective Date. This rule becomes effective January 1, 2009 and applies to acts or practices committed on or after that date.