

# DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Section 311 (18 Del.C. §311)  
18 DE Admin. Code 1216

## PROPOSED

### PUBLIC NOTICE

#### 1216 Military Sales Practices

INSURANCE COMMISSIONER MATTHEW DENN hereby gives notice of intent to adopt proposed Department of Insurance Regulation 1216 relating to the sale of life and annuity insurance products to military personnel. The docket number for this proposed amendment is 393.

The purpose of the proposed regulation is to set forth standards to protect 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. The text of the proposed amendment is reproduced in the May 2007 edition of the *Delaware Register of Regulations*. The text can also be viewed at the Delaware Insurance Commissioner's website at: <http://www.state.de.us/inscom/departments/documents/ProposedRegs/ProposedRegs.shtml>.

The Department of Insurance does not plan to hold a public hearing on the proposed changes. Any person can file written comments, suggestions, briefs, compilations of data or other materials concerning the proposed amendments. Any written submission in response to this notice and relevant to the proposed changes must be received by the Department of Insurance no later than 4:30 p.m., Monday June 4, 2007, and should be addressed to Mitchell Crane, Esquire, Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, or sent by fax to 302.739.6278 or email to [mitch.crane@state.de.us](mailto:mitch.crane@state.de.us).

#### 1216 Military Sales Practices

##### 1.0 Purpose and Scope

1.1 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.

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

1.3 Nothing herein shall be construed to create or imply a private cause of action for a violation of this regulation.

##### 2.0 Definitions

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

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

"General Advertisement" means an advertisement having as its purpose the raising of awareness in the concept of life insurance or in an insurer's or insurance producer's products.

"Insurer" means a life insurance company required to be licensed under the laws of this state to provide insurance products, including annuities.

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

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

"Military Installation" means any federally owned, leased, or operated base, reservation, post, camp,

building, or other facility to which service members are assigned for duty, including barracks, transient housing, and family quarters.

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

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

"Side Fund" means a fund or reserve that is part of or otherwise attached to a life insurance policy (excluding individually issued annuities) by rider, endorsement or other mechanism which accumulates premium or deposits at interest or by other means. The term does not include accumulated or cash value or secondary guarantees provided by a universal life policy nor does it include cash values provided by a whole life policy which are subject to standard nonforfeiture law for life insurance.

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

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

### **3.0 Authority**

3.1 This regulation is issued under the authority of 18 Del.C. §§311, 2307, 2312 and 29 Del.C. Chapter 101.

### **4.0 Exemptions**

4.1 This regulation shall not apply to solicitations or sales involving:

4.1.1 Credit insurance;

4.1.2 Group life insurance or group annuities where there is no direct solicitation of individuals by an insurance producer;

4.1.3 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;

4.1.4 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.; or

4.1.5 Contracts used to fund:

4.1.5.1 An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);

4.1.5.2 A plan described by Sections 401(a), 401(k), 403(b), 408(k) or 408(p) of the Internal Revenue Code (IRC), as amended, if established or maintained by an employer;

4.1.5.3 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;

4.1.5.4 A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

4.1.5.5 Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

4.1.5.6 Prearranged funeral contracts.

4.1.6 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.

### **5.0 Practices Declared False, Misleading, Deceptive or Unfair**

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

5.1.1 Prohibited In-Person Face to Face Solicitation: Time, Place and Setting

5.1.1.1 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.

5.1.1.2 Soliciting service members in a group or “mass” audience or in a “captive” audience where attendance is not voluntary.

5.1.1.3 Making appointments with or soliciting service members during their normally scheduled duty hours.

5.1.1.4 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.

5.1.1.5 Soliciting the sale of insurance without first obtaining permission from an office designated by the installation commander.

5.1.1.6 Posting unauthorized bulletins, notices or advertisements.

5.1.1.7 Failing to present DD Form 2885, *Personal Commercial Solicitation Evaluation*, to persons solicited or encouraging persons solicited not to complete or submit a DD Form 2885.

5.1.2 Corrupt Practices, Improper Influence, Inducements

5.1.2.1 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

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

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

5.2.1 Corrupt Practices, Improper Influence, Inducements

5.2.1.1 Possessing, completing, submitting, or processing or assisting in completing, submitting or processing of any form or device used by the United States Armed Forces to direct a service member’s pay to a third party, including using or assisting in using a service member’s “MyPay” account or other similar internet or electronic medium, for the purpose of establishing a direct deposit for the purchase of life insurance.

5.2.1.2 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.”

5.2.1.3 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, there is no formal banking relationship unless the depository institution:

5.2.1.3.1 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 there under; and

5.2.1.3.2 permits the service member to make deposits and withdrawals unrelated to the payment or processing of insurance premiums.

5.2.1.4 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.

5.2.1.5 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.

5.2.1.6 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.

5.2.1.7 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.

5.2.1.8 Advising a service member with a pay grade of E-4 or below to change their income tax withholding or State of legal residence for the sole purpose of increasing disposable income to purchase life insurance.

5.2.2 Confusion Regarding Source, Sponsorship, Approval, Affiliation

5.2.2.1 Making any representation, or using any device, 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.

5.2.2.2 Using any title, descriptive name or identifier, other than titles which identify the insurance producer as a producer or agent for the insurer. Examples of prohibited 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."

5.2.2.3 Soliciting the purchase of any life insurance product through the use of or in conjunction with any third party service or fraternal organization that promotes the welfare of or assists members of the United States Armed Forces, absent express approval from the Department of Insurance.

#### 5.2.3 Confusion Regarding Premiums, Costs and Investment Returns

5.2.3.1 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.

5.2.3.2 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."

#### 5.2.4 Disparagement of SGLI or VGLI

5.2.4.1 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.

5.2.4.2 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.

#### 5.2.5 Required Disclosures

5.2.5.1 Deploying, using or contracting for any lead generating materials 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.

5.2.5.2 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.

5.2.5.3 Excluding individually issued annuities, failing to clearly and conspicuously disclose the fact that the product being sold is life insurance, the amount of coverage and the cost thereof.

5.2.5.4 Failing to make, at the time of sale or offer, the written disclosures required by Section 10 of the "Military Personnel Financial Services Protection Act," Pub. L. No. 109-290.

5.2.5.5 Failing to provide the applicant at the time a policy is applied for when the sale is conducted in-person face to face, a copy of the application, or a written disclosure that clearly and concisely sets out the type and amount of coverage applied for and cost thereof, and in all cases an explanation of any free look period with instructions on how to cancel.

5.2.5.6 Failing to comply with 18 DE Admin. Code 1203.

#### 5.2.6 Deceptive or Unfair Products, Suitability, Required Counseling

5.2.6.1 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, standing alone, is suitable. Sale of 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.

##### 5.2.6.2 Overcoming the Presumption of Unsuitability

5.2.6.2.1 The presumption of unsuitability regarding the sale of life insurance contracts which include a side fund to service members in pay grades E-4 and below may be overcome if, after the completion of a needs assessment, the insurer demonstrates that the applicant's SGLI death benefit, together with any other military survivors benefits, savings and investments, survivors income, and other life insurance are insufficient to meet the applicant's insurable needs for life insurance.

5.2.6.2.2 "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.

5.2.6.2.3 Other military survivor's benefits provided by the federal

government which must be included in a service member's needs assessment 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's Housing Benefits and Allowances, Federal Income Tax Forgiveness, and Social Security Survivors Benefits.

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

5.2.6.3.1 unless interest credited accrues from the date of deposit to the date of withdrawal and permits withdrawals without limit or penalty:

5.2.6.3.2 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 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:

5.2.6.3.3 which by default diverts or transfers funds accumulated in the side fund to pay, reduce or offset any premiums due:

5.2.6.4 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.

5.2.6.5 Offering for sale or selling any life insurance product that excludes coverage if the insured's death is related to war, declared or undeclared, or any act related to military service save and except for accidental death coverage which may be excluded.

5.2.6.6 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.

5.2.6.7 Accepting an application for life insurance or issuing a policy of life insurance on the life of an enlisted member of the United States Army with the pay grade of E-3 and below without first obtaining for the Company's files a completed copy of DA Form 2056, "Commercial Insurance Solicitation Record," or its equivalent, which confirms that the applicant has received counseling as required by Army Regulation 210-7 or its equivalent.

## **6.0 Severability**

6.1 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.

## **7.0 Effective Date**

7.1 This regulation shall become effective August 1, 2007.

**10 DE Reg. 1663 (05/01/07) (Prop.)**