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## **Memorandum (Revised)**

**To:** Valerie Barton, Executive Director  
American Bankers Insurance Association

**From:** Chrys D. Lemon  
Eli K. Peterson

**Re:** Florida's Regulation on the Solicitation and Sale of  
Insurance and Annuity Products to Military Personnel

Florida has issued a regulation on solicitations and sales of life insurance and annuity products to military personnel.<sup>1</sup> The rule, which goes into effect on July 28, 2008, implements, and is consistent with, the National Association of Insurance Commissioners' model regulation on military sales practices. The rule is very technical and contains many exemptions and caveats; consequently, *this memorandum is not meant to be an exhaustive analysis of its provisions*. Rather, we briefly summarize the provisions. ABIA members should consult with legal counsel to confirm compliance with the regulation.

### **I. Overview**

The rule applies to the sale and solicitation of life insurance and annuity products to active duty service members, and to National Guard/Reserve members who have been ordered to active duty or full-time training.<sup>2</sup> Life insurance is defined as insurance coverage on human lives including benefits of endowment and annuities, and may include accidental death and dismemberment (AD&D) insurance and disability benefits. (We will refer to both life insurance and annuity products as "life insurance," unless otherwise noted.) Certain prohibitions apply only to the solicitation and sale of life insurance to active duty service members on military installations; others apply independent of location.

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<sup>1</sup> Florida Department of Financial Services Rule 69B-240 (July 9, 2008).

<sup>2</sup> The rule defines Active Duty as "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 or in a drill status in the National Guard or United States Armed Forces Reserve."

Exempted from the prohibitions are the following products:

- credit insurance;
- group-life insurance where there is no face-to-face solicitation, or where the contract or certificate does not include a “side fund” (generally, a fund attached to a life insurance policy other than an individually issued annuity that accumulates premium or deposits with interest);
- individual stand-alone health policies, including disability income policies; and
- several other products and plans.<sup>3</sup>

## **II. Prohibitions Applicable on Military Installations**

The rule prohibits the following activities when conducted face-to-face on a “military installation” (broadly defined as 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”):

- *Permission to solicit.* Soliciting the sale of life insurance without first obtaining permission from the installation commander or the commander’s designee;
- *Need for an appointment.* 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;
- *Duty hours.* Making appointments with, or soliciting service members during, their normally scheduled duty hours;
- *Prohibited locations.* 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;
- *Group solicitations.* Soliciting service members in a group or “mass” audience or in a “captive” audience where attendance is not voluntary;

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<sup>3</sup> The rule also does not apply to the following products and plans: Servicemembers’ Group Life Insurance (SGLI); Veterans’ Group Life Insurance (VGLI); life insurance contracts offered by nonprofit military associations; contracts used to fund pension and welfare benefit plans covered by the Employment Retirement and Income Security Act (ERISA), plans described in Sections 401(a), 401(k), 403(b), 408(k) or 408(p) of the Internal Revenue Code (IRC), government or church plans defined in Section 414 of the IRC or deferred compensation plans of state or local government described in Section 457 of the IRC; or nonqualified deferred compensation arrangements established or maintained by employers or plan sponsors, legal settlements, or prearranged funeral contracts.

- *Advertising.* Posting bulletins, notices, or advertisements that have not been authorized by the installation commander;
- *Evaluation form.* Failing to present a DD Form 2885 (“Personal Commercial Solicitation Evaluation”) to service members solicited, or encouraging service members not to complete or submit the form; and
- *Counseling for enlisted members.* Accepting an application for life insurance or issuing a policy of life insurance on the life of an *enlisted* service member without first obtaining for the insurer’s files a completed copy of any form required by the military that confirms that the applicant has received any required counseling or fulfilled any other similar requirement.

### **III. Prohibitions Applicable On or Off Military Installations**

The rule prohibits the following practices – regardless of where they occur – related to nonforfeiture, exclusions, disclosures, sale/solicitation methods, payment methods, and misrepresentations:

#### ***Nonforfeiture, Exclusion Limitations***

- *Nonforfeiture.* 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 (this provision does not apply to individually issued annuities);
- *Prohibited exclusions.* Selling any life insurance product to an individual known to be a service member that excludes coverage if the insured’s death is related to war, declared or undeclared, or any act related to military service except for an accidental death coverage, for example, double indemnity, which may be excluded;

#### ***Required Disclosures***

- *Pre-appointment disclosure.* Failing to disclose that a solicitation for the sale of life insurance will be made when establishing an appointment for a face-to-face meeting with a prospective purchaser;
- *Insurance disclosure.* Failing to clearly and conspicuously disclose the fact that the product being sold is life insurance or an annuity contract;
- *Other disclosures.* When a face-to-face sale is conducted with an individual known to be a service member, failing to provide the applicant with the following at the time the application is taken:

- An explanation of any free-look period with instructions on how to cancel if a policy is issued; and
- Either a copy of the application or a written disclosure, which must set out the type of life insurance or annuity contract, the death benefit applied for, and its expected first year cost;

***Improper Sale and Solicitation Methods***

- *Use of DoD personnel.* Using Department of Defense (DoD) personnel in any capacity regarding the solicitation or sale of life insurance to service members, or to the family members of such personnel;
- *Paying for attendance.* Offering anything of value to a service member for his or her attendance at any event where an application for life insurance is solicited;
- *Tax status.* Advising a service member 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;
- *Government's sanction.* Misleading a service member into believing that the insurer, insurance producer, or product offered is in any way connected with or sanctioned by the government (state or Federal) or the U.S. Armed Forces. The regulation provides the following examples of prohibited titles: Battalion Insurance Counselor, Unit Insurance Advisor, Servicemen's Group Life Insurance Conversion Consultant, or Veteran's Benefits Counselor;
- *SGLI replacements.* Encouraging a service member to cancel his or her SGLI policy, or issuing a life insurance policy which replaces an existing SGLI policy, unless the replacement will not take effect until after the service member's separation from the U. S. Armed Forces;
- *Leads.* Using 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;
- *Suitability.* Recommending the purchase of any life insurance product (other than individually-issued annuities) that includes a side fund to a service member unless the insurer has reasonable grounds for believing that the life insurance death benefit, standing alone, is *suitable*. Offering for sale or selling a life insurance product that includes a side fund to a service member, 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;

- *Side funds.* Offering for sale or selling any life insurance contract that includes a side fund, unless certain requirements are satisfied (this provision does not apply to individually issued annuities);

### ***Improper Payment Methods***

- *Allotment forms.* Being involved with the submission or processing of any allotment form used by the Armed Forces to direct a service member's pay to a third party for the purchase of life insurance. An example is a service member's "MyPay" account. The provision does not prohibit assisting a service member by providing insurer or premium information necessary to complete any allotment form;
- *Lack of banking relationship.* 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; or entering into any agreement with a depository institution for the depository institution to accept direct deposits from a service member with whom it has no formal banking relationship;
- *Labeling of funds.* Using a method where 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 as "Savings" or "Checking";

### ***Misrepresentations***

- *Return on premium.* Implying that the credited interest rate on a life insurance policy is a net return on premium paid;
- *Mortality costs.* Misrepresenting the mortality costs of a life insurance product, including stating or implying that the product "costs nothing" or is "free" (this provision does not apply to individually issued annuities);
- *SGLI/VGLI.* Making false, misleading, or deceptive claims about any aspect of SGLI or VGLI, such as availability, suitability, amount, cost of coverage, exclusions, or limitations; and
- *Conversions.* Misrepresenting conversion requirements, including the costs of coverage, or exclusions or limitations to coverage, of SGLI or VGLI to private insurers.