

**NEW YORK STATE  
INSURANCE DEPARTMENT  
REGULATION NO. 186  
(11 NYCRR 223)**

**MILITARY SALES PRACTICES**

I, ERIC R. DINALLO, Superintendent of Insurance of the State of New York, pursuant to the authority granted by Sections 201, 301, 308, 309, 2103, 2104, 2107, 2109, 2110, 2123, 3201, and 4226, and Articles 24 and 45 of the Insurance Law, do hereby promulgate the following Part 223 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Regulation No. 186), to take effect upon publication in the State Register, to read as follows:

ALL NEW MATERIAL

**§ 223.1 Purpose.**

(a) This Part sets forth standards to protect active-duty service members of the United States Armed Forces from dishonest and predatory insurance sales practices, by identifying and prohibiting certain acts that constitute unfair methods of competition or unfair or deceptive acts and practices in the conduct of the business of insurance in this state, or are trade practices constituting determined violations, as defined in Insurance Law section 2402(c), in violation of Insurance Law section 2403. This Part also effectuates the federal Military Personnel Financial Services Protection Act, Pub. L. No. 109-290 (2006), which was signed by the president on September 29, 2006. This Part is intended to be consistent, to the greatest extent practicable, with the model regulation adopted by the National Association of Insurance Commissioners on June 4, 2007. While addressing specific acts and practices with respect to the sale of insurance to active-duty service members, nothing herein shall be construed as permitting acts or practices that are otherwise prohibited under other laws or regulations of this State.

(b) Nothing herein shall be construed to create or imply a private cause of action for violation of this Part, or implying that similar conduct in non-military sales circumstances would be otherwise permissible.

**§ 223.2 Applicability.**

This Part shall apply, except as provided in section 223.4 of this Part, only to the solicitation or sale of an insurance policy by an insurer or insurance producer to an active-duty service member of the United States Armed Forces.

**§ 223.3 Definitions.**

For purposes of this Part only:

(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, but with respect to a member of the reserve component, does not include annual training or active duty for training under military calls or orders specifying periods of less than 31 calendar days.

(b) *DoD* means the United States Department of Defense.

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

(d) *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.

(e) *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.

(f) *Insurer* means a person, firm, association, corporation or joint-stock company doing an insurance business as defined in section 1101 of the Insurance Law, including a fraternal benefit society.

(g) *Insurance policy* means, except as limited by section 223.4 of this Part, an agreement providing "life insurance" as defined in section 1113(a)(1) of the Insurance Law; "annuities" as defined in section 1113(a)(2) of the Insurance Law; and benefits in the event of death or dismemberment by accident and benefits for disability income pursuant to section 1113(a)(3) of the Insurance Law.

(h) *Insurance producer* has the meaning ascribed by section 2101(k) of the Insurance Law.

(i) *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.

(j) *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.

(k) *MyPay* means 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.

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

(m) *SGLI* means Servicemembers' Group Life Insurance.

(n) *Side Fund* means a fund or reserve that is part of or otherwise attached to an insurance policy (excluding individually issued annuities) by rider, endorsement or other mechanism that 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 that are subject to section 4221 of the Insurance Law; or

(3) a premium deposit fund that:

(i) contains only premiums paid in advance that accumulate at interest;

(ii) imposes no penalty for withdrawal;

(iii) does not permit funding beyond future required premiums;

(iv) is not marketed or intended as an investment; and

(v) does not carry a commission, either paid or calculated.

(o) *Specific Appointment* means a prearranged appointment agreed upon by both parties and definite as to place and time.

(p) *United States Armed Forces* means any component of the Army, Navy, Air Force, Marine Corps, and Coast Guard.

(q) *VGLI* means Veterans' Group Life Insurance.

#### **§ 223.4 Exemptions.**

(a) This Part shall not apply to solicitations or sales involving:

(1) credit insurance, including credit insurance as defined in section 1113(a)(17) of the Insurance Law; credit life insurance or credit accident and health insurance as defined in Part

185 of this Title (Regulation 27A); or credit unemployment insurance as defined in Part 187 of this Title (Regulation 27C);

- (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 policy, contract or certificate does not include a side fund;
- (3) an application to an insurer that issued an existing policy or contract when:
  - (i) a contractual change or a conversion privilege is being exercised;
  - (ii) an existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the superintendent; or
  - (iii) a term conversion privilege is exercised among corporate affiliates;
- (4) an individual stand-alone health insurance policy, including a disability income policy;
- (5) an insurance policy offered by SGLI or VGLI, as authorized by 38 U.S.C. Section 1965 *et seq.*;
- (6) an insurance policy offered through or by a non-profit military association, qualifying under the Internal Revenue Code (IRC) pursuant to 26 U.S.C. § 501(c)(23), and that are not underwritten by an insurer; or
- (7) a policy or contract used to fund:
  - (i) an employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);
  - (ii) a plan described by 26 U.S.C. §§ 401(a), 401(k), 403(b), 408(k) or 408(p), as amended, if established or maintained by an employer;
  - (iii) a government or church plan defined in 26 U.S.C. § 414, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under 26 U.S.C. § 457;
  - (iv) a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor; or
  - (v) settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process.

(b) Nothing herein shall be construed to abrogate the ability of non-profit organizations or other organizations to educate members of the United States Armed Forces in accordance with

Department of Defense Instruction (DoDI) 1344.07 – PERSONAL COMMERCIAL SOLICITATION ON DOD INSTALLATIONS or a successor directive.

(c) For purposes of this Part, 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.

**§ 223.5 Prohibited Acts or Practices on a Military Installation.**

(a) No insurer or insurance producer with respect to in-person, face-to-face solicitation of an insurance policy on a military installation, shall:

- (1) knowingly solicit the purchase of an insurance policy “door to door” from a service member, or without first establishing a specific appointment for each meeting with the prospective purchaser;
- (2) solicit a service member in a group or “mass” audience or in a “captive” audience where attendance is not voluntary;
- (3) knowingly make appointments with or solicit a service member during the service member’s normally scheduled duty hours;
- (4) make appointments with or solicit a service member in barracks, day rooms, unit areas, or transient personnel housing or other areas where the installation commander has prohibited solicitation;
- (5) solicit the sale of an insurance policy without first obtaining permission from the installation commander or the commander’s designee;
- (6) except for telephone solicitations, fail to present to a solicited service member DD Form 2885, *Personal Commercial Solicitation Evaluation* (a sample of which may be found as Enclosure 5 to DoDI 1344.07, which is referenced in section 223.4(b) of this Part), or encourage a service member solicited not to complete or submit a DD Form 2885; or
- (7) knowingly accept an application for an insurance policy or issue an insurance policy 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 that confirms that the applicant has received counseling or fulfilled any other similar requirement for the sale of an insurance policy established by regulations, directives or rules of the DoD or any branch of the Armed Forces.

(b) No insurer or insurance producer on a military installation shall:

- (1) use 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 an insurance policy to a service member;
- (2) use an insurance producer to participate in any United States Armed Forces sponsored education or orientation program; or
- (3) post unauthorized bulletins, notices or advertisements.

**§ 223.6 Prohibited Acts or Practices Regardless of Location.**

(a) No insurer or insurance producer shall:

- (1) submit, process or assist 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 an insurance policy, including using or assisting in using a service member's "MyPay" account or other similar internet or electronic medium for such purposes. This paragraph does not prohibit assisting a service member by providing insurer or premium information necessary to complete any allotment form;
- (2) knowingly receive 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 provides the service member a deposit agreement and periodic statements and permits the service member to make deposits and withdrawals unrelated to the payment or processing of insurance premiums;
- (3) employ any device or method or enter 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;
- (4) enter 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) use 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 an insurance policy to a service member who is junior in rank or grade, or to a family member of such personnel;

(6) offer or give anything of value, directly or indirectly, to DoD personnel to procure his or her assistance in encouraging, assisting or facilitating the solicitation or sale of an insurance policy to another service member;

(7) knowingly offer or give 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 an insurance policy is solicited; or

(8) advise 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 an insurance policy.

(b) No insurer or insurance producer, regarding source, sponsorship, approval or affiliation, shall:

(1) make any representation, or use 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 insurance policy 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: "Battalion Insurance Counselor," "Unit Insurance Advisor," "Servicemen's Group Life Insurance Conversion Consultant" and "Veteran's Benefits Counselor." Nothing in this paragraph 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: Chartered Life Underwriter (CLU), Chartered Financial Consultant (ChFC), Certified Financial Planner (CFP), Master of Science in Financial Services (MSFS), and Masters of Science Financial Planning (MS); or

(2) solicit the purchase of an insurance policy from a service member through the use of or in conjunction with a third-party organization that promotes the welfare of or assists members of the United States Armed Forces in a manner that has the tendency or capacity to confuse or mislead a service member into believing that either the insurer, insurance producer or insurance policy is affiliated, connected or associated with, endorsed, sponsored, sanctioned or recommended by the U.S. Government, or the United States Armed Forces.

(c) No insurer or insurance producer, regarding premiums, costs or investment returns, shall:

(1) use or describe the credited interest rate on an insurance policy in a manner that implies that the credited interest rate is a net return on premium paid; or

(2) excluding individually issued annuities, misrepresent the mortality costs of an insurance policy, including stating or implying that the policy "costs nothing" or is "free."

(d) No insurer or insurance producer, regarding SGLI or VGLI, shall:

- (1) make 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) make any representation or comparison to a service member regarding conversion requirements, including the costs of coverage, or exclusions or limitations to coverage of SGLI or VGLI to private insurers that is false, misleading or deceptive; or
  - (3) suggest, recommend or encourage a service member to cancel or terminate his or her SGLI policy or issuing an insurance policy that 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) No insurer and or insurance producer, regarding disclosure to a service member, shall:
- (1) deploy, use or contract 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, if that is the case, for the purpose of soliciting the purchase of an insurance policy;
  - (2) fail to disclose that a solicitation for the sale of an insurance policy will be made when establishing a specific appointment for an in-person, face-to-face meeting with a prospective purchaser;
  - (3) fail to clearly disclose the nature or type of insurance policy being sold.;
  - (4) fail 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; or
  - (5) excluding individually issued annuities, when the sale is knowingly conducted in-person, face-to-face with a service member, failing to provide the applicant, at the time the application is taken:
    - (i) an explanation of any free look period with instructions on how to cancel if a policy is issued; and
    - (ii) 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 insurance, the death benefit applied for and its expected first year cost. An illustration that meets the requirements of Part 53 of this Title (Regulation 74) shall be deemed sufficient to meet this requirement for a written disclosure.
- (f) No insurer or insurance producer, with respect to the sale of an insurance policy to a service member, shall:

(1) excluding individually issued annuities, recommend the purchase of any insurance policy that includes a side fund to a service member in pay grades E-4 and below unless the insurer or insurance producer has reasonable grounds for believing that the insurance policy, standing alone, is suitable.

(2) offer for sale or selling an insurance policy that 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 or insurance producer demonstrates that the applicant's SGLI death benefit, together with any other military survivor benefits, savings and investments, survivor income, and other insurance are insufficient to meet the applicant's insurable needs. For purposes of this paragraph:

- (i) *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, survivors, or dependents.
- (ii) *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.

(3) excluding individually issued annuities, offer for sale or sell any insurance policy that includes a side fund:

- (i) unless interest credited accrues from the date of deposit to the date of withdrawal and permits withdrawals without limit or penalty;
- (ii) 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 shall 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 shall 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; and
- (iii) 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, offer for sale or sell any insurance policy which after considering all policy or contract benefits, including, endowment, return of premium or persistency, does not comply with section 4221 or any other section of the Insurance Law, or any regulation thereunder.

**§ 223.7 Determined Violation.**

A contravention of this Part shall be deemed to be an unfair method of competition or an unfair or deceptive act and practice in the conduct of the business of insurance in this state, and shall be deemed to be a trade practice constituting a determined violation, as defined in section 2402(c) of the Insurance Law, in violation of section 2403 of such law.

I, Eric Dinallo, Superintendent of Insurance of the State of New York, do hereby certify that the foregoing is a new Part 223 of Title 11 (Regulation No. 186), promulgated by me on November 12, 2008, pursuant to the authority granted by Sections 201, 301, 308, 309, 2103, 2104, 2107, 2109, 2110, 2123, 3201, and 4226, and Articles 24 and 45 of the Insurance Law, to take effect upon publication in the State Register.

Pursuant to the provisions of the State Administrative Procedure, prior notice of the proposed regulation was published in the State Register on September 24, 2008. No other publication or prior notice is required by statute.

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Eric Dinallo  
Superintendent of Insurance

Date: November 12, 2008