

Commonwealth of Puerto Rico  
**OFFICE OF THE COMMISSIONER OF INSURANCE**

DEPARTMENT OF STATE  
Number: 7478  
Date: March 12, 2008  
Approved: Hon, Fernando J. Bonilla  
Secretary of State  
By: Francisco Jose Martín-Caso  
Assistant Secretary for Services

**RULE NO. 88**

**TABLE OF CONTENTS**

SECTION 1. LEGAL BASIS ..... 1

SECTION 2. PURPOSE AND SCOPE ..... 1

SECTION 3. EXCEPTIONS..... 1

SECTION 4. DEFINITIONS..... 2

SECTION 5. UNFAIR PRACTICES IN THE SOLICITATION, SALE, AND UNDERWRITING OF LIFE INSURANCE TO MEMBERS OF THE UNITED STATES ARMED FORCES AND THEIR DEPENDENTS..... 4

SECTION 6. VOIDABILITY OF THE INSURANCE CONTRACT ..... 12

SECTION 7. PENALTIES..... 13

SECTION 8. SEVERABILITY..... 13

SECTION 9. EFFECTIVE DATE ..... 13

**COMMONWEALTH OF PUERTO RICO  
OFFICE OF THE INSURANCE COMMISSIONER  
Guaynabo, Puerto Rico**

**RULE NO. 88**

**“STANDARDS FOR THE PROTECTION OF THE MEMBERS OF THE  
UNITED STATES ARMED FORCES AND THEIR DEPENDENTS  
FROM UNFAIR PRACTICES IN THE SOLICITATION, SALES,  
AND UNDERWRITING OF LIFE INSURANCE”**

**SECTION 1- LEGAL BASIS**

The Office of the Insurance Commissioner of Puerto Rico, hereinafter OIC, hereby adopts Rule No. 88, under Section 27.010 and Section 27.400 of Public Law No. 77, enacted on June 19, 1957, as amended, known as the Puerto Rico Insurance Code; Public Law No. 170, enacted on August 12, 1988, as amended, known as the Uniform Administrative Procedures Act, as amended; and Public Law No. 109-290, enacted on September 29, 2006, known as the Military Personnel Financial Services Protection Act.

**SECTION 2- PURPOSE AND SCOPE**

This Rule is being adopted for the purpose of protecting the members of the United States Armed Forces and their dependents from dishonest and unfair practices in the solicitation, sales, and underwriting of life insurance.

This Rule shall be applicable to all Insurance Producers and authorized representatives who offer, process, solicit, negotiate, and/or sell life insurance to members of the United States Armed Forces and/or their dependents, as well as all insurers who underwrite this kind of insurance.

**SECTION 3- EXCEPTIONS**

This Rule shall not be applicable to the solicitation, sale, and underwriting of:

A. Credit insurance;

B. Group life insurance or group annuities where there is no direct solicitation by an insurance producer or authorized representative thereof;

C. An application to make effective a conversion clause on a policy currently in effect, 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;

D. Contracts used to fund:

- 1) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);
- 2) Qualified retirement plans established by the employer, pursuant to the Puerto Rico or Federal Income Tax Code, as the case may be;
- 3) A nonqualified deferred compensation plan, established by an employer or plan sponsor;
- 4) Settlements or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or
- 5) Prearranged funeral contracts.

#### **SECTION 4- DEFINITIONS**

For the purposes of this Rule, the terms listed below shall have the following meanings:

- A. "Insurer" - refers to a life insurance company required to be licensed under the laws of Puerto Rico to provide such insurance, including annuities.
- B. "Door to door" - means a solicitation or sales method whereby an insurance producer or authorized representative proceeds randomly or selectively from household to household without a prior specific appointment.
- C. "Specific Appointment" means a prearranged appointment agreed upon by both parties and definite as to place and time.
- D. "Insurance Code" - means the Puerto Rico Insurance Code, Public Law No. 77, enacted on June 19, 1957, as amended.

- E. "Dependent"- means any person who depends on his or her upkeep on a member of the United States Armed Forces, as defined in this Rule.
- F. "Reserve or side fund" - means a fund or reserve that is a part of or attached to a life insurance policy, (excluding individually issued annuities), whether by means of a rider, an endorsement or any other mechanism, which accumulates premiums or interest-bearing deposits in any other manner. The term does not include accumulated or cash value or secondary guarantees provided under a universal life insurance policy nor does it include cash values provided by a whole life policy which are subject to a nonforfeiture rule prohibiting cancellation of life insurance as a sanction.
- G. "United States Armed Forces"- refers to all of the components and/or branches of the United States Armed Forces, whose Commander in Chief is the President of the United States, including: the Marine Corps, the Army, the Air Force, the Coast Guard, the National Guard, and the Navy, as well as all reserve units of all of the components of the United States Armed Forces and the Defense Department.
- H. "Military facility"- means any federally owned, leased, or operated base, reservation, post, camp, building, or other facility used by the United States Armed Forces and the Defense Department for all of their purposes, including, but not limited to, residential and training practice purposes.
- I. "Member of the United States Armed Forces"- means all civilian personnel, who may be activated, and active and inactive military personnel, of the United States Armed Forces, as defined in this Rule.
- J. "My Pay"-is an electronic system provided by the Defense Department Finance and Accounting Service (DFAS) that allows the members of the United States Armed Forces to process certain discretionary pay transactions or provide updates to personal information data elements without using paper forms
- K. "OIC" - means the Office of the Insurance Commissioner of Puerto Rico.

- L. "Defense Department Personnel (DoD)" - means all active military personnel and all civilian employees, including employees whose salaries are derived from sources other than legislative appropriations, and special public employees of the Defense Department.
- M. "Insurance Producer"- means any person to whom an Insurance Producer license has been issued for the purpose of negotiating life insurance, including annuities.
- N. "Authorized representative"- means any person to whom an authorized representative license has been issued for the purpose of negotiating life insurance, including annuities.
- O. "Life insurance" - is insurance on human life or equivalent or related to such insurance. For the purposes of this Rule, the life insurance business includes annuities and endowment benefits, additional benefits for death or accidental mutilation, additional benefits for total or permanent disability of the insured, including benefits for payment or reimbursement for long term health care at the insured's home, nursing home or any similar facility and optional methods for the liquidation of the annuity.
- P. "Sale of insurance"- includes any offering, business transaction, negotiation, sale, and underwriting related to Life and/or disability insurance, as defined in this Rule, for a member the United States Armed Forces and/or his or her dependents, before as well as after the sale and/or underwriting of such insurance and independently of whether the sale and/or underwriting is closed.

**SECTION 5- UNFAIR PRACTICES IN THE SOLICITATION, SALE, AND UNDERWRITING OF LIFE INSURANCE TO MEMBERS OF THE UNITED STATES ARMED FORCES AND THEIR DEPENDENTS**

- A. The provisions of Chapter 27 of the Insurance Code shall be applicable to any solicitation, arrangement, and sale of life insurance to a member of the United States Armed Forces and/or the dependents thereof, by a producer or

authorized representative and the underwriting of such insurance by an insurer.

B. The following acts or practices of an insurer, producer or authorized representative are considered unfair when they carried out on a military facility:

- 1) Door to door solicitation of the purchase of a life insurance product without a prior appointment with the insurance prospect.
- 2) Solicitation for life insurance before a group of military personnel or mass audience or captive public, where attendance is not voluntary.
- 3) Making appointments with military personnel or offering life insurance to such during regular service hours.
- 4) Making appointments with military personnel or offering life insurance thereto in barracks, rest areas, transitory units or living quarters for military personnel, or other areas where the commander of the facility has prohibited solicitation.
- 5) Arranging for applications for life insurance without prior authorization.
- 6) Posting unauthorized bulletins, notices or advertising related to life insurance products.
- 7) Failing to provide Defense Department Form 2885, "Personal Commercial Solicitation Evaluation," to persons being solicited for life insurance or inciting persons who have been solicited for life insurance to not complete or submit Defense Department Form 2885.
- 8) Using Defense Department personnel, whether directly or indirectly, in the solicitation of life insurance among members of the United States Armed Forces.
- 9) Using an insurance producer or authorized representative in an educational or orientation activity sponsored by the United States Armed Forces.

- C. The following acts or practices of an insurer, producer or authorized representative, constitute unfair practices, regardless of where they are carried out:
1. Completing, submitting, processing or helping to complete, submit or process any form or mechanism used by the United States Armed Forces to pay the wages of a member of the United States Armed Forces to a third party, including using or helping to use the MyPay account of said member or any similar electronic medium for the purpose of establishing a direct deposit for the purchase of life insurance.
  2. Using any mechanism or method or entering into an agreement whereby the funds that are received from a member of the United States Armed Forces as part of funds for the payment of insurance premiums are identified on the Leave and Earnings Statement (LES) of the member or in any other equivalent or substitute statement as "Savings" or "Checking Account." or receiving funds from a member of the United States Armed Forces as a payment for premiums 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:
    - (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 there under; and
    - (b)permits the service member to make deposits and withdrawals unrelated to the payment or processing of insurance premiums.
  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, whether directly or indirectly, to solicit or sell 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 a value of more than one dollar to DoD personnel to procure their assistance in assisting or facilitating the solicitation or sale of life insurance to another member of the United States Armed Forces.
7. Offering or giving anything of a value of more than one dollar to a member of the United States Armed Forces 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 member of the United States Armed Forces at 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.
9. Making any representation or using any device that would tend to confuse a member of the United States Armed Forces or any of his or dependents or lead him or her to believe that the insurer, producer or life insurance offered is sponsored, endorsed, or recommended by the U.S. Government or any State or Federal agency or government entity or is any way affiliated with such.
10. Using a title or identification other than title under which the insurance producer or authorized representative has been authorized as such by the OIC, such as, "Battalion Insurance Counselor," "Unit Insurance Advisor,"

"Servicemen's Group Life Insurance Conversion Consultant" or "Veteran's Benefits Counselor."

11. 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.
12. 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.
13. 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."
14. Making any false or misleading representation regarding the suitability amount, cost, exclusions or limitations to coverage provided to a service member or dependents by Service Men's Group Life Insurance (SGLI) or Veterans Group life Insurance (VGLI).
15. Making any false, misleading or deceptive representation regarding conversion requirements for conversion to private insurers, including the costs of coverage, or exclusions or limitations to coverage of SGLI or VGLI.
16. Distributing, using or publishing any lead generating materials that do not clearly and conspicuously disclose that a producer or authorized representative will contact the recipient of such material for the purpose of soliciting the purchase of life insurance.
17. Failing to disclose that a solicitation for the sale of life insurance will be made by prior appointment with the person.

18. 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.
  19. Failing to make the written disclosures provided for in Section 5E of this Rule, as required by Section 10 of the "Military Personnel Financial Services Protection Act," Pub. L. No. 109-290 at the time of sale or offer.
  20. When the sale is made in person, failing to provide, a copy of the application, or a written disclosure that clearly and concisely sets forth the type and amount of coverage applied for and cost thereof, and in any event, an explanation of the grace period with instructions on cancellation.
- D. The following life insurance products are considered misleading:
- 1) Excluding individually issued annuities, recommending the purchase of any life insurance product which includes a side fund to members of the United States Armed Forces 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 member of the United States Armed Forces service in pay grades E-4 and below who is currently enrolled in SGLI, is presumed unsuitable.
    - a. The presumption of unsuitability regarding the sale of life insurance contracts which include a side fund to members of the United States Armed Forces in pay grades E-4 and below may be overcome if, after the completion of a needs assessment of the applicant, the insurer demonstrates that the applicant's SGLI death benefit, together with any other survivors benefits for members of the United States Armed Forces, savings and investments, survivors income, and other life insurance are insufficient to meet the applicant's insurable needs for life insurance.

- b. "Insurable needs" are the risks associated with premature death taking into consideration immediate financial obligations and future cash needs of the applicant's estate and/or survivors or dependents
  - c. Other military survivor's benefits provided by the federal government which must be included in a needs assessment for a member of the United States Armed Force 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.
- 2) 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 the purpose of 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 information will be provided for at least each policy year from one (1) to ten (10) and for every fifth policy year thereafter ending at the one-hundredth policy year or policy maturity or final expiration;
  - c. which by exception diverts or transfers funds accumulated in the side fund to pay, reduce or offset any premiums due.
- 3) 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.
- 4) Offering or selling a life insurance contract that excludes coverage for death as a consequence of war, whether declared or undeclared, or any act except for accidental death coverage, which may be excluded.
  - 5) Suggesting, recommending or encouraging a member of the United States Armed Forces to cancel or terminate his or her SGLI policy or issuing a life insurance policy which replaces a SGLI policy currently in effect.
  - 6) 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 a 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.

E. Disclosures required for the solicitation and sale of life insurance to a member of the United States Armed Forces and dependents:

1. That there is life insurance subsidized by the federal government for the benefit of the member of the United States Armed Forces such as the "Servicemember's Group Life Insurance program" (SGLI) under Subchapter III of Chapter 19, Title 38 of the United States Code (USC), as well as the amount of coverage under the SGLI program and the cost of said coverage for a member of the United States Armed Forces.
2. That the life insurance that is the object of the disclosure is not being offered, sponsored or recommended by the United States Government.
3. All terms and conditions of the policy, including clauses under which amounts are accumulated as a side fund or savings under the life insurance policy are subject to disclosure, may be deducted from for the payment of premiums in order to maintain coverage under said product.
4. That no person who is not duly licensed by the OIC has received a commission for the referral or an incentive for the solicitation, offer or sale of such product.

5. The disclosure required herein shall be written in clear and simple language and the type size shall be as least as large as the type used in the solicitation documents for the life insurance policy.
6. The address and telephone number of Office of the Insurance Commissioner that will respond to any complaint, including the address and telephone number of the Insurance Commissioner's Office that has primary jurisdiction, if the offering, transaction, arrangement, sale, negotiation and/or underwriting should take place outside of federal or United States territory, pursuant to Section 8 of the Military Personnel Financial Services Protection Act.

Any solicitation of life insurance that is offered, transacted, arranged, negotiated, sold and/or underwritten under the provisions of this Rule, shall be accompanied by the Disclosure Notice provided for in this Section, duly signed by the member of the United States Armed Forces and/or the member's dependent, for whom such insurance was offered, transacted, arranged, negotiated, sold and/or underwritten.

In addition to the obligations and duties set forth in the Insurance Code, all producers and authorized representatives who wish to offer, transact, negotiate, arrange and/or sell life insurance to a member of the United States Armed Forces and/or the member's dependents, shall have the obligation to deliver to said member the Disclosure described in this Section, at the moment any of the aforementioned acts is initiated.

Likewise, all producers and authorized representatives shall have the obligation to attach said Disclosure, duly signed, to each application for life insurance that has been offered, transacted, arranged, negotiated and/or sold, under the provisions of this Rule, and said Disclosure shall be made a part of the application.

Likewise, insurers shall have the obligation to verify that all life insurance underwritten by them, under the provisions of this Rule, be accompanied by the respective Disclosure.

This Section, shall not be applicable to life insurance contracted with and/or through the Government of the United States, in which case the respective federal regulations would be applicable to such insurance.

## **SECTION 6- VOIDABILITY OF THE INSURANCE CONTRACT**

Any sale of life insurance that is transacted in violation of this Rule may be found to be void from the initial date of the policy, at the sole request of the member of the

United States Armed Forces to whom the insurance was sold, or at the request of said member's dependents, as the case may be.

#### **SECTION 7- PENALTIES**

Failure by the insurer, producer or authorized representative to comply with the provisions of this Rule shall result in sanctions, as provided in Chapter 27 of the Insurance Code.

#### **SECTION 8- SEVERABILITY**

In the event that any part of this Rule were to be found null and void by a court of competent jurisdiction, said order will have no effect, nor will invalidate, the remaining provisions of this Rule, and the result of such ruling of the court shall be limited to the part found to be null and void.

#### **SECTION 9- EFFECT**

The provisions of this Rule shall enter into effect thirty (30) days after filing at the Department of State of the Commonwealth of Puerto Rico, pursuant to the provisions of Public Law 170, enacted on August 12, 1988, as amended, known as the Uniform Administrative Procedures Act of Puerto Rico.

#### **SIGNED**

**DORELISSE JUARBE-JIMÉNEZ**  
**INSURANCE COMMISSIONER**

Date approved: March 11, 2008

Date filed with the State Department:

Date filed with the Legislature Library: