

Section 4(H) of NAIC Model Unfair Trade Practices Act

Any of the following practices, if committed in violation of Section 3, are hereby defined as unfair trade practices in the business of insurance:

H. Rebates.

(1) Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any life insurance policy or annuity, or accident and health insurance or other insurance, or agreement as to such contract other than as plainly expressed in the policy issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to such policy, any rebate of premiums payable on the policy, or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the policy; or giving, or selling, or purchasing or offering to give, sell, or purchase as inducement to such policy or annuity or in connection therewith, any stocks, bonds or other securities of any company or other corporation, association or partnership, or any dividends or profits accrued thereon, or anything of value whatsoever not specified in the policy.

(2) Nothing in Subsection G, or Paragraph (1) of Subsection H shall be construed as including within the definition of discrimination or rebates any of the following practices:

(a) In the case of life insurance policies or annuities, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, provided that any such bonuses or abatement of premiums shall be fair and equitable to policyholders and for the best interests of the company and its policyholders;

(b) In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount that fairly represents the saving in collection expenses;

(c) Readjusting the rate of premium for a group insurance policy based on the loss or expense thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year; or

(d) Engaging in an arrangement that would not violate Section 106 of the Bank Holding Company Act Amendments of 1972 (12 U.S.C. 1972), as interpreted by the Board of Governors of the Federal Reserve System, or Section 5(q) of the Home Owners' Loan Act, 12 U.S.C. 1464(q).

(e) (1) The offer or provision by insurers or producers, by or through employees, affiliates or third party representatives, of value-added non-cash products or services at no or reduced cost when such products or services are not referenced specified in the policy of insurance if the product or service:

(a) Relates to the insurance coverage; and

(b) Is primarily intended^[MD1] to satisfy one or more of the following:

I. Provide loss mitigation or loss control;

II. Reduce claim costs or claim settlement costs;

III. Provide education about liability risks or risk of loss to persons or property;

Matthews, Denise 9/17/20
"primarily intended" continues to be a concern to some; would "designed" be a better word?

- IV. Monitor or assess risk, identify sources of risk, or develop strategies for eliminating or reducing risk;
- V. Enhance health ~~or financial wellness~~;
- VI. Enhance financial wellness through education on financial planning services;
- VII. Provide post-loss services;
- VIII. Incent behavioral changes to ~~hat~~ improve the health or reduce the risk of death or disability of ~~the~~ client (defined as policyholder, potential policyholder, certificate holder, potential certificate holder, insured, potential insured or applicant) ~~insured~~; or
- IX. Assist in the administration of ~~the underlying~~ employee or retiree benefit insurance coverage ~~policies or with compliance with a state of federal law or regulatory requirement~~.

- (2) If ~~t~~he insurer or producer is providing ~~making the offer must clarify that~~ the product or service offered, the insurer or producer ~~is not part of the insurance policy and~~ must ensure that the client is provided with contact information to assist the client with questions regarding the assistance, if any, that the insurer will provide should the consumer have an issue with the product or service.
- (3) The commissioner may adopt regulations when implementing the permitted practices set forth in this regulation to ensure consumer protection. Such regulations, consistent with applicable law, may address, among other issues, consumer data protections and privacy, consumer disclosure and unfair discrimination ~~consistent with applicable law~~.
- (4) ~~If the product or service is not made available to all clients (defined as policyholders, potential policyholders, certificate holders, potential certificate holders, insureds, potential insureds or applicants), its~~The availability of the value-added product or services must be based on written objective criteria and offered in a fair manner that is not unfairly discriminatory ~~manner that is fair and not unfairly discriminatory including, by example, offering the product or service based on risk characteristics of a client~~. The written criteria must be maintained by the insurer or producer and produced upon request of the Department.
- (5) If an insurer or producer does not have ~~such objectives~~ sufficient criteria, but has a good-faith belief that the product or service meets the criteria in (H)(2)(e)(1), the insurer or producer may provide the product or service in a fair manner that is not unfairly discriminatory ~~manner~~ as part of a pilot or testing program for a reasonable period of time upon approval of the commissioner.
- (6) The cost to the insurer or producer offering the product or service to any given client should be reasonable in comparison to that client's premiums or insurance coverage for the policy class without the provided product or service.
- (f) ~~Notwithstanding any other provision, a~~An insurer or a producer may:
 - (1) offer or give non-cash promotional or advertising items or meals to or charitable donations on behalf of a client, as long as the actual cost of the non-cash promotion or advertising items or meals or charitable donations, for all named or additional insureds in the policy in total, does not exceed an amount reasonably determined by the commissioner per policy year per person and purchase or renewal of an insurance policy is not required. The offer must be made in a fair

manner that is ~~fair and~~ not unfairly discriminatory ~~manner~~ and may not be contingent on the purchase, continued purchase or renewal of a policy;

Drafting note – The committee would suggest that, at the time of the drafting of this model, the lesser of 5% of the current or projected policyholder premium or \$250 would be an appropriate limit, however specific prohibitions may exist related to transactions ~~impacted~~ governed by the Real Estate Settlement Procedures Act of 1974 and the laws and regulations governing the Federal Crop Insurance Corporation Risk Management Agency.

- (2) offer or give gifts or services to commercial or institutional clients in connection with marketing for the sale or retention of contracts of insurance, as long as the cost is reasonable in ~~comparison to~~ light of the premium or proposed premium and the cost of the gift or service is not included in any amounts charged to another person or entity; and/or
- (3) conduct raffles or drawings to the extent permitted by state law, as long as there is no ~~financial participation~~ cost to entrants to participate, the drawing or raffle does not obligate participants to purchase insurance, the prizes are not valued in excess of a reasonable amount determined by the commissioner and the drawing or raffle is open to the public. The raffle or drawing must be offered in a fair manner that is ~~fair and~~ not unfairly discriminatory and may not be contingent on the purchase, continued purchase or renewal of a policy.

(g3) An insurer, producer or representative of either may not offer or provide insurance as an inducement to the purchase of another policy or ~~give or offer to give “free” insurance or otherwise using~~ the word “free” in an ~~advertisement~~ offer.

Drafting Note: Section 104 (d)(2)(B)(viii) of the Gramm-Leach-Bliley Act provides that any state restrictions on anti-tying may not prevent a depository institution or affiliate from engaging in any activity that would not violate Section 106 of the Bank Holding Company Act Amendments of 1970, as interpreted by the Board of Governors of the Federal Reserve System. The Board of Governors of the Federal Reserve System has stated that nothing in its interpretation on combined-balance discount arrangements is intended to override any other applicable state and federal law. FRB SR 95-32 (SUP). Section 5(q) of the Home Owners’ Loan Act is the analogous provision to Section 106 for thrift institutions. The Office of Thrift Supervision has a regulation 12 C.F.R. 563.36 that allows combined-balance discounts if certain requirements are met.

Drafting Note: Each state may wish to examine its rating laws to ~~ensure~~ assure that ~~it~~ they contains sufficient provisions against rebating. If a state ~~they does~~ not, this section ~~may~~ might be expanded to cover all lines of insurance.

W:\National Meetings\2020\Fall\TF\Innovation\Rebating Comments 082820\Post_ITTF_Mtg_UTPA_Section_4(H)_Exposure_Draft.docx