

DEPARTMENT OF INSURANCE**Legal Division, Enforcement Bureau**

45 Fremont Street, 21st Floor
San Francisco, CA 94105

**NOTICE**

To: Life Insurers and Life Agents

Date: February 4, 2019

Subject: Sales of Annuities and other Life Insurance Products to Veterans

1. Amendment to Department of Veterans Affairs' Regulations Governing Veterans' Net-Worth-Eligibility Requirements for Need Based Benefit Programs, Including the Veterans Aid and Attendance Program

Effective October 18, 2018, the Department of Veterans Affairs ("VA") amended its regulations on net-worth-eligibility requirements for need based veterans pensions, including the eligibility requirements to qualify for the Veterans Aid and Attendance Program. The amended regulations of the Department of Veterans Affairs can be found at:

<https://www.federalregister.gov/documents/2018/09/18/2018-19895/net-worth-asset-transfers-and-income-exclusions-for-needs-based-benefits> (the "Amended Regulations").

The VA specifically described the rulemaking as "an effort to discourage those who are financially secure from transferring assets to qualify for VA pensions." 83 Fed. Reg. 47254 (September 18, 2018). The Amended Regulations also provide that a pension is a needs-based benefit and is not intended to preserve the estates of individuals who can support themselves. Accordingly, a claimant may not create pension entitlement by transferring covered assets. 83 Fed. Reg. 47272.

The Amended Regulations impose a three-year look-back period in connection with the Net Worth calculation. If during the three-year look-back period, voluntary transfers are made to an annuity, and the applicant's net worth would have been in excess of the permitted amount without the transfer, a penalty period of up to five years may be imposed. The length of the assessed penalty period is based on the value of the transferred assets as of the transfer date in excess of the maximum net worth to qualify for a Veterans Aid and Attendance Benefit. During the penalty period, the VA will not pay the Veterans Aid and Attendance Benefit. Effective October 18, 2018, the maximum dollar amount of net worth an eligible applicant to the Veterans Aid and Attendance Program may have is \$123,600. The VA may increase the maximum dollar amount of net worth. The primary residence is excluded from the net worth calculation.

2. Pertinent California Laws

a. Insurance Code section 785.5: Procedural Safeguards Required to Ensure that Insurance Agents and Brokers Have No Financial Incentive to Refer Seniors to Veterans Benefit Programs Offered through the Government

California Insurance Code section 785.5 prohibits insurance brokers and agents from participating in, being associated with, or employing anyone who participates in, or is associated with obtaining veterans benefits for seniors, unless procedural safeguards are maintained and designed to ensure that the insurance agent or broker has no financial incentive to refer the policyholder or prospective policyholder, to any veterans benefit program offered through the government.

b. Insurance Code section 787: Limitations on Advertisements

Insurance Code section 787 includes several prohibitions against advertisements directed at veterans. Specifically, Insurance Code section 787 prohibits, among other things, advertisements employing words, letters, initials, symbols, or other devices that are so similar to those used by governmental agencies, a nonprofit or charitable institution, veterans organization or agency, senior organization, or other insurer that they could have the capacity or tendency to mislead the public by implying that: (1) the coverages are provided by or are endorsed by any governmental agencies, nonprofit or charitable institutions, veterans organizations or agencies, or senior organizations; or (2) the advertiser is the same as, is connected with, or is endorsed by: nonprofit or charitable institutions, veterans organizations or agencies, senior organizations, or a governmental agency, such as the federal Social Security Administration or the United States Department of Veterans Affairs.

c. Civil Code section 1770(a) (25): Failure to Provide Required Disclosures Constitutes Unfair Method of Competition

Any advertisement for an event, presentation, seminar, workshop, or other public gathering regarding veterans' benefits or entitlements is also required to comply with the requirements of Civil Code section 1770(a) (25). This law provides in pertinent part that advertising or promoting any event, presentation, seminar, workshop, or other public gathering regarding veterans' benefits or entitlements that does not include the following statement in the same type size and font as the term "veteran" or any variation of that term is an unfair method of competition and unfair and deceptive acts or practices in a transaction intended to result or that results in the sale or lease of goods or services to any consumer:

"I am not authorized to file an initial application for Veterans' Aid and Attendance benefits on your behalf, or to represent you before the Board of Veterans' Appeals within the United States Department of Veterans Affairs in any proceeding on any matter, including an application for such benefits. It would be illegal for me to accept a fee for preparing that application on your behalf." The requirements of this clause do not apply to a person licensed to act as an agent or attorney in proceedings before the Agency of Original Jurisdiction and the Board

of Veterans' Appeals within the United States Department of Veterans Affairs when that person is offering those services at the advertised event.

The foregoing statement must be disseminated, both orally and in writing, at the beginning of any event, presentation, seminar, workshop, or public gathering regarding veterans' benefits or entitlements.

Additionally, subject to certain exceptions, advertising or promoting any event, presentation, seminar, workshop, or other public gathering regarding veterans' benefits or entitlements that is not sponsored by, or affiliated with, the United States Department of Veterans Affairs, the California Department of Veterans Affairs, or any other congressionally chartered or recognized organization of honorably discharged members of the Armed Forces of the United States, or any of their auxiliaries that does not include the following statement, in the same type size and font as the term "veteran" or the variation of that term is an unfair method of competition and unfair and deceptive acts or practices:

"This event is not sponsored by, or affiliated with, the United States Department of Veterans Affairs, the California Department of Veterans Affairs, or any other congressionally chartered or recognized organization of honorably discharged members of the Armed Forces of the United States, or any of their auxiliaries. None of the insurance products promoted at this sales event are endorsed by those organizations, all of which offer free advice to veterans about how to qualify and apply for benefits." *Id.*

Similar to the disclosure regarding the lack of authorization to file for Veterans' Aid and Attendance benefits on behalf of a veteran, or to represent a veteran before the Board of Veterans' Appeals within the United States Department of Veterans Affairs in any proceeding on any matter, the foregoing statement must be disseminated, both orally and in writing, at the beginning of any event, presentation, seminar, workshop, or public gathering regarding veterans' benefits or entitlements.

Questions regarding this Notice should be directed to Jodi Lerner at (415) 538-4122 or Jodi.Lerner@insurance.ca.gov.