

December 19, 1957

SUBJECT: INSURANCE

To All Authorized Insurers Writing Group Life, Group Annuities and Group Accident and Health Insurance:

CODE OF ETHICAL PRACTICES WITH RESPECT TO THE INSURING OF THE BENEFITS OF UNION OR UNION-MANAGEMENT WELFARE AND PENSION FUNDS

The matter of fair practices with respect to the insuring of the benefits of union or union-management welfare and pension funds has been the subject of considerable study and consideration by this Department during the past several years. In addition, it has occupied the attention of the National Association of Insurance Commissioners during a substantial portion of this time.

As a result of these studies, the National Association of Insurance Commissioners, at its convention held in New York City on December 2-5, 1957, adopted the captioned Code, a copy of which is attached hereto.

The Code is intended to serve as a complement to state insurance laws and as a declaration of applicable principles in the proper conduct of insuring benefits of welfare and pension funds.

This Department subscribes fully to the principles enunciated in the Code, and believes adherence thereto to be in the public interest.

In order that the Code may be given the widest possible distribution, your company is requested to inform all officers, employees, representatives and agents of its adoption by the National Association of Insurance Commissioners and by this Department. In this connection, we would suggest that the Code be reproduced and a copy placed in the hands of all individuals in the categories mentioned above who have any occasion to deal with this subject.

Please acknowledge receipt of this letter and attachment.

Yours very truly,

[SIGNATURE]

First Deputy Superintendent of Insurance

Attachment

NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

CODE OF ETHICAL PRACTICES WITH RESPECT TO THE INSURING OF THE BENEFITS OF UNION OR UNION-MANAGEMENT WELFARE AND PENSION FUNDS

Preamble

The business of life insurance, annuities, and sickness and accident insurance is an important factor in the provision of economic security for millions of Americans and their families. It is an example of accomplishment on a voluntary

basis. It could not have attained its present degree of public acceptance if ethical standards of conduct had not generally been followed, and if it had not been motivated by a sense of public responsibility.

One of the most effective ways of providing this economic security has long been through group plans providing death, sickness, accident and pension benefits. While these benefits have been traditionally purchased by employers directly from insurers, in recent years an important new method for extending such benefits has been developed. This is the trustee union-management welfare or pension fund, established by collective bargaining between labor unions and employers. Many of these trust funds provide their benefits through group insurance policies or group annuity contracts issued by insurance companies.

This new method of providing employee and dependent benefits has raised a number of problems. In most instances fund trustees have scrupulously respected their fiduciary responsibilities, and insurance companies, agents and brokers dealing with them have likewise generally conducted themselves in the best traditions of the insurance business in observing in both letter and spirit the laws of the several states. However, such has not been true in every case. With the rapid growth of these union-management trust funds, public interest points to the desirability of expressing, in the form of a Code of Ethical Practice a statement of accepted good practices in the insuring of the benefits of trustee union-management welfare and pension funds.

In adopting any such Code, it should be emphasized that only a part of the abuses which have occurred in the field of union-management welfare and pension funds has related to insurance associated with those funds. Accordingly, in adopting this Code the National Association of Insurance Commissioners stresses its belief that parallel action should be taken to correct abuses other than those relating to insurance. Because in general our responsibility relates only to insurance, this Code is confined to that area.

Furthermore, it must be realized that the cases of abuse [ILLEGIBLE WORDS]hich have occurred in the insurance area have, with very few exceptions, come about through the activities of persons whose primary [ILLEGIBLE WORDS]usiness interests are outside the insurance business, and who have [ILLEGIBLE WORDS]rongfully twisted the traditional insurance mechanisms to their own [ILLEGIBLE WORDS]urposes. The basic purpose of this Code is to prevent a recurrence [ILLEGIBLE WORDS]f these insurance abuses, fortunately infrequent, through means [ILLEGIBLE WORDS]hich do not impair the normal operations of the insurance business as developed over many years.

The following Code of Ethical Practices, adopted by the National Association of Insurance Commissioners, is intended to serve as a declaration of applicable principles in the proper conduct of insuring welfare and pension funds, and will serve to complement such existing state insurance laws as require that insurance benefits be reasonable in relation to the premiums charged, and which prohibit unfair discrimination, rebates, misrepresentation, misleading or deceptive acts, and other unfair trade practices or unfair methods of competition, as being prejudicial to the interests of beneficiaries of insured welfare and pension funds.

Section 1. PAYMENT OF BENEFITS

It is the responsibility of the insurer to pay benefits under its policies promptly, fairly and without discrimination, in accordance with policy terms. Insurers should make periodic audits of benefit payments made on their behalf by fund administrators or others. The results of such audits should be available to the trustees of the fund.

Section 2. COMMISSIONS, FEES AND OTHER ALLOWANCES

It is recognized that the growth of insurance has been due in large measure to the insurance agency system, and that insurance agents and brokers ought to be fairly compensated for their services. However, excessive commissions, fees and other allowances tend to reduce the level of benefits payable to beneficiaries of welfare and pension funds. Consequently, it is in the best interests of the public and of the beneficiaries of such funds that commissions, fees and

other allowances be reasonable and not excessive.

A. Definitions:

"Commissions" for the purpose of this Code shall include all compensation of whatever nature, and by whatever name, payable by an insurer to an insurance agent or broker, compensated primarily on a commission basis.

"Fees and other allowances" for the purpose of this Code shall include administration fees, service fees, or any other payment of a similar character payable by an insurer to an insurance agent or broker, or to any other person, firm, or corporation.

"Insurer" for the purpose of this Code shall include any insurance company, non-profit hospital and/or medical and/or dental indemnity or service corporation, and any other organization licensed by any state to provide insurance benefits.

"Welfare fund" for the purpose of this Code shall mean any program providing life insurance, accidental death or dismemberment, cash disability, hospital, surgical, medical or dental benefits to the members (and/or their dependents) of a collective bargaining unit under a policy or policies issued to the trustees of a union or a union-management welfare fund, or to a union as policyholder as a direct result of a collective bargaining agreement.

"Pension fund" for the purpose of this Code shall mean any corresponding program providing pension benefits to such persons.

B. Commission Scales

(1) One of the fundamental characteristics of group insurance policies is the economy of operation inherent in providing insurance and pension, benefits to large numbers of persons under a master contract. The decremental commission scale, widely accepted and used in the group business from its inception, recognizes this characteristic of economy because of size by providing for decreases in the rates of commission as the size of the premium increases. Renewal commission rates, which are considerably lower than first-year rates, also decrease with increase in premium volume.

The table following illustrates on the basis of the effective rates for the indicated premium volume a generally accepted range of commission rates, first-year and renewal averaged over a ten-year commission-paying period, to insurance agents and brokers, derived from schedules currently in use on group life and group accident and sickness policies, which are considered to be reasonable and not excessive.

Annual Premium Volume	Average of First-Year and Renewal Commissions Over the Ten Years * Effective Rates for Indicated Premium Volume	
	From	To
\$ 20,000	3.2%	4.1%
30,000	3.0	3.7
50,000	2.6	3.2
100,000	1.7	2.3
150,000	1.3	2.0
250,000	.8	1.8
500,000	.5	1.2
1,000,000	.3	.8
2,500,000	.2	.5
5,000,000	.1	.4

* On an annual premium volume of less than \$ 20,000, the range of effective commission rates would be somewhat higher than the largest indicated above and, on an annual premium volume of

Annual Premium Volume

Average of First-Year and Renewal Commissions Over the Ten Years * Effective Rates for Indicated Premium Volume

From To more than \$ 5,000,000, the range of effective commission rates should be somewhat less than the lowest indicated above.

(2) Any commission rate schedule used by an insurer for welfare funds is considered unreasonable and excessive if (a) it provides for the payment of commission in excess of the range shown in the preceding table, or more than would have been paid under the insurer's commission schedule applicable to a similar group policy of like premium volume issued to an employer whichever is less, or if (b) the schedule is not uniformly used as the maximum for all welfare funds. An insurer may provide in such commission schedule that a portion of its total commissions, in accordance with a predetermined scale established for the purpose, is to be considered as the basic selling commissions, with the balance available for compensation for other services of the insurance agent or broker, such as assistance in designing, installing or servicing the welfare and pension program. Any commission rate schedule used by an insurer for group annuities issued in connection with pension funds should be appreciably lower than the commission rate schedule used by that insurer for welfare funds.

(3) Where two or more forms of group insurance are issued, concurrently or within six months from the issuance of any one of such forms of coverage, by an insurer to a welfare fund, the premiums for all the insurance coverages, whether under one or more policies, should be combined in determining the total commissions payable; and where two or more welfare funds are combined through a master or administrative trust or otherwise, they should be similarly considered as one fund for commission purposes.

(4) Any increase in premium resulting at any time from normal additions to the group of insured persons (e.g., from additions resulting from the insuring of new employees of participating employers, from a reduction in the eligibility requirements of the plan, from the inclusion of employees of a new participating employer in the plan unless under the collective bargaining agreement participation in the plan is optional with the employer, from salary increases, etc.) should be treated for commission purposes as part of the existing premium and not as a separate new premium.

(5) Where an existing policy is extended to insure a new classification of employees (e.g., where the plan is expanded beyond its original scope to include members of an additional union local, or employees of the employer members of an additional trade association, or additional classes of members within locals already participating, or additional classes of employees of employers already participating), or where the existing policy is revised to increase the schedule of insurance on those already insured, or where a new form of insurance is added, commissions payable with respect to the resulting additional premium should be not more than the amount determined by applying the insurer's commission scale to the additional premium as if there had been no previous insurance; provided that if such extension of policy takes place within 6 months after the original effective date of the policy or of another previous extension for which the additional premium was treated separately, under this rule, the additional premium for the current extension should not be treated separately for commission purposes but should be treated as a part of the previous new or additional premium.

(6) In lieu of its normal decremental commission schedule, providing for higher first-year commissions and lower renewal commissions, an insurer may use averaged decremental commission rates, applicable to the first policy year and nine renewal policy years, if such rates are the approximate mathematical equivalent of its normal schedule when applied to a uniform amount of premium over a ten-year period.

(7) Under no circumstances should the scale of commissions be contingent on the claim rate under the group policy.

(8) While in some circumstances the transfer of group insurance from one insurer may be of advantage to a welfare or pension fund, it results in duplicate acquisition costs. Accordingly, in cases of proposed transfer, the new insurer should so advise the prospective policyholder. Commission rates for the first and subsequent policy years should in all cases of transfer be payable only on a basis which averages the rates over the entire commission-paying period, and the total commissions payable over such commission-paying period should be not more than those which would be payable by the new insurer were there no prior insurance

(9) Commissions should not be paid to any person, firm, or corporation who or which is not actually in the business of selling insurance, or is not a licensed agent or broker at the time the sale was negotiated. Nor should commissions be paid, directly or indirectly, to any trustee, contributing employer, or labor union, or to an officer or employee of any such trustee, employer or labor union.

C. Fees and Other Allowances

(1) An insurer should not make any payment of fees or allowances of whatever nature, and by whatever name, to any person, firm, or corporation in connection with the sale, service or administration of a group policy issued to a welfare or pension fund, other than commissions to an insurance agent or broker as heretofore described, except in reimbursement for the reasonable value of one or more of the following services performed on behalf of the insurer.

(a) Issuing certificates.

- (b) Maintaining employee records.
- (c) Billing premiums.
- (d) Processing claims.

In no event should any payment for such services (a) exceed the amount that would have been credited to the policy-holder in the insurer's dividend, experience-rating, or premium-rate formula for the performance of the same services, or (b) be made to any person, firm, or corporation which does not maintain an organization equipped to furnish such services, or which does not in fact furnish such services.

(2) An insurer should not make any payment of fees or allowances of whatever nature, and by whatever name, to a policyholder, whether for doing work sometimes performed by an insurer or otherwise, except as part of a refund or dividend under the operation of the insurer's regular dividend or experience-rating formula.

(3) Where other administrative work involving normal policy-holder functions is paid for by the insurer, an identifiable charge in addition to the premium, properly labeled, for the reasonable value of the services performed should be made to the fund for such work. If the insurer engages a third party to perform such work, it should maintain control and responsibility for its proper performance, and the amount of the fee or allowance paid therefor shall be reasonable in relation to the services rendered and should be consistent with the charge made by the insurer to the fun[ILLEGIBLE WORDS]

D. Filings

Whenever there may be particular circumstances under which a[ILLEGIBLE WORDS] insurer believes that payments of commissions, fees or other allowances on a group policy, other than those conforming with the Code, are justifiable and should be paid, it should promptly furnish a complete explanation of the reasons therefor to the insurance supervisory official of the state in which the group insurance policy is delivered, and su[ILLEGIBLE WORDS] explanation also should be available on request to the insurance supervisory official of any state in which certificates under such policy are outstanding. This subsection is not applicable in the case of any state which by law, regulation, or ruling requires filing of all schedules of commissions, fees or other allowances on group policies.

E. Disclosure to Policyholder

An insurer should, upon request, disclose to a policyholder or prospective policyholder the commissions, fees, or other allowances paid or to be paid.

F. General Agents and Other Representatives

The common practice among insurers of paying salaries, providing other benefits, and making payments in the nature of an overriding commission to general agents and full-time home office representatives of the insurer who regularly design, install or service the welfare and pension plan, or who regularly assist insurance agents and brokers in selling, is a recognized and proper method of meeting overhead sales and service expense of the insurer and, therefore, is not intended to be affected by the preceding subsections B and E; provided, however, that any such overriding commissions should be determined on scales not higher than those applicable to group policies issued to employers, and provided further that the payment of any overriding commission is not used as a device for evading the intent of this Code.

Section 3. RELATIONSHIP BETWEEN THE TRUSTEES AND THE INSURER

An insurer should undertake to avoid any action which constitutes a condonation of conduct on the part of a trustee

or any other person occupying a fiduciary position with respect to a welfare or pension fund which would constitute an evident breach of trust, or an evident failure to discharge faithfully the obligations which his fiduciary position imposes upon him.

Section 4. IMPROPER INDUCEMENTS

In the acquisition of new business and in efforts to keep such business in force, insurers, insurance agents and brokers, and their representatives should adhere to those practices in their dealings with the persons connected with or exercising responsibility for the affairs of any welfare or pension fund (e.g., trustees, unions, employers or employees, or representatives of any of them) as will avoid undue or improper inducement, and should refrain from offering or making any inducements in the form of gifts, loans, or payments, directly or indirectly, and all lavish entertainment.

Section 5. COST PRESENTATIONS

It is in the best interests of the beneficiaries of welfare and pension plans and contributing employers and participating union locals, as well as in the best interests of the insurance business, that incomplete or misleading comparisons and projections of costs should not be made. Undue emphasis on low cost may prejudice the proper consideration of those features which can be more lasting and meaningful, such as the responsibility and stability of the insurer and its ability to provide services affecting the successful operation of the plan. In fact, relative costs tend to vary from year to year. Projections which presume to predict costs over a long period of years may have no real significance, and may instead create misleading impressions as to guarantees.

Since the cost of a proposed plan is affected by dividends or experience-rating credits as well as by the initial gross premium rate, an estimated net-cost presentation is often made. Such presentations should be clearly stated, and unless based upon a rating formula contractually guaranteed by the insurer, should set forth the limitations inherent therein and the assumptions upon which the presentation is based.

Section 6. EQUAL TREATMENT OF POLICYHOLDERS

An insurer should not unfairly discriminate between group insurance or group annuity policyholders, in the establishment of premium rates or in the payment or crediting of dividend or experience rating refunds.

Section 7. BENEFIT DESCRIPTIONS

Employee booklets or other literature intended to be explanatory of an insured welfare or pension plan should fairly and clearly describe the benefits and principal provisions and limitations of the plan.

Section 8. ACCOUNTING

An insurer insuring a welfare or pension fund should at th[ILLEGIBLE WORDS] end of each policy year furnish an accounting statement to the policy-holder. Such statement should include at least the following items, shown separately:

1. Premiums received.
2. Benefit payments.
3. Commissions, fees and other allowances paid.
4. Dividends, experience-rating refunds, or contractual returns of premium paid to the plan.

5. Resulting balance.

Insurers should encourage the trustees of each welfare or pension fund also to render a summary report of the operations of the fund, not less frequently than annually, to persons having a bona fide interest in the plan, and should to the fullest extent practicable [ILLEGIBLE WORDS] cooperate with the trustees in the preparation of such a report.