

OFFICE OF HUMAN RIGHTS

NOTICE OF PROPOSED RULEMAKING

The Director of the Office of Human Rights, pursuant to the authority set forth in sections 2(C), 6(b)(6) and §2-1935(b)(6) of the Language Access Act or "Act" (2007 Supp), effective June 19, 2004; (D.C. Law 15-167, D.C. Official Code § 2-1931(C)) *et seq.*, and Mayor's Order 2007-127, dated May 31, 2007, hereby gives notice of his intent to amend Title 4 of the District of Columbia Municipal Regulations by adding a new Chapter 12. The purpose of these regulations is to provide guidance and assistance to District agencies with the implementation of the Language Access Act for individuals with "Limited English Proficiency" (LEP) and "Non-English Proficiency" (NEP) individuals being served by the District of Columbia Government.

Final rulemaking action to adopt these amendments shall be taken in not less than thirty (30) days from the date of publication of this notice in the D.C. Register.

Title 4 of District of Columbia Municipal Regulations, (Human Rights) is amended by adding a new Chapter 12 to read as follows:

CHAPTER 12 LANGUAGE ACCESS ACT**1200 SCOPE**

1200.1 The provisions of this chapter shall apply to all District government agencies that constitute "covered entities" and "covered entities with major public contact" as defined in sections 2(2) and 2(3) of the Act (D.C. Official Code §§ 2-1931(2) and 2-1931(3)).

1201 PURPOSE

1201.1 In order for covered entities to meet their obligations under the Act and to provide enforcement thereof, the Office of Human Rights ("OHR") adopts this chapter:

- (a) To define the roles and responsibilities of parties assigned to oversee and implement the Language Access Act;
- (b) To provide assistance for data collection on the languages spoken by a limited or non-English proficient ("LEP/NEP") population as required under the Act;

- (c) To provide assistance and guidance to covered entities with major public contact in implementing a "Biennial Language Access Plan" ("BLAP") and on reporting requirements for all covered entities; and
- (d) To set forth guidelines for the investigation of complaints filed under the Act and its enforcement.

1202 ROLE OF THE OFFICE OF HUMAN RIGHTS (OHR)

- 1202.1 The Office of Human Rights ("OHR") shall provide oversight, central coordination, and technical assistance to covered entities in their implementation of the provisions of the Language Access Act.
- 1202.2 OHR shall ensure that the provision of services by covered entities meets acceptable standards of translation and interpretation by developing a quality procurement process for the Language Access Program and by developing an internal quality control mechanism for the District government that will monitor the accuracy of translations or interpretations received by contractors and vendors.
- 1202.3 OHR shall collect and publish statistical information regarding Language Access public complaints on an annual basis.

1203 ROLE OF THE DIRECTOR OF THE OFFICE OF HUMAN RIGHTS

- 1203.1 The Director of the Office of Human Rights ("OHR Director") shall designate a Language Access Director to coordinate activities under the Language Access Act. The Language Access Director will carry out all job functions under the direction and supervision of the OHR Director.
- 1203.2 The OHR Director shall report out annually to the Office of the City Administrator ("OCA") on the deficiencies found, progress made, and overall compliance with the Act for each covered entity.

1204 ROLE OF THE LANGUAGE ACCESS DIRECTOR

- 1204.1 The Language Access Director ("LA Director") shall monitor the performance and responsibilities of the Language Access Coordinators, as described in Section 1207, who shall be appointed for each covered agency with major public contact by the entity's agency head.
- 1204.2 The LA Director shall review and monitor each BLAP for compliance with the Act.
- 1204.3 The LA Director's responsibilities include reviewing entities' implementation reports and providing an annual synopsis to the OHR Director on the deficiencies found and progress made on implementing the Act.

- 1204.4 With regard to public complaints for alleged violations of the Act, the LA Director shall oversee the Language Access complaint procedures for the OHR.
- 1204.5 The LA Director shall conduct education and outreach to covered entities and community providers on their requirements under the Act.
- 1204.6 The LA Director shall consult with the D.C. Language Access Coalition, the Mayor's Office on African Affairs ("OAA"), the Mayor's Office on Asian and Pacific Islander Affairs ("OAPIA"), and the Mayor's Office on Latino Affairs ("OLA") regarding the implementation of the Language Access Act.
- 1204.7 The LA Director shall advise the District's Department of Human Resources and the personnel authorities of covered entities who have independent hiring authority on issues related to the recruitment and hiring of bilingual public contact personnel.
- 1204.8 The LA Director shall serve as the Language Access Coordinator for OHR and shall fulfill the responsibilities listed in Section 1207 for that agency.
- 1204.9 The LA Director shall produce a final compliance annual report at the end of each fiscal year regarding legal requirements that have and have not been met by the covered entities and provide copies to the OCA, OAA, OAPIA, and OLA. A copy will be made available to the public upon request by the OHR through the OCA.

1205 ROLES OF COVERED ENTITIES

- 1205.1 Pursuant to Section 2(2) of the Language Access Act, covered entities are any District government agency, department, or program that furnishes information or renders services, programs, or activities directly to the public or contracts with other entities, either directly or indirectly, to conduct programs, services or activities.
- 1205.2 The covered entity should ensure that contractors and grantees hired to carry out its responsibilities are required to comply with the same requirements of covered entities and that contractors and grantees certify that the same compliance requirements will be satisfied by their subcontractors and sub-grantees.
- 1205.3 Covered entities are distinguished from covered entities with major public contact.
- 1205.4 The covered entity shall annually collect data about the languages spoken and the number or proportion of LEP/NEP individuals speaking a given language in the population served or encountered by updating its databases and tracking applications to contain fields that will capture this information.

- 1205.5 The covered entity shall determine its target language requirements for its LEP/NEP constituents to access or participate in the services, programs, or activities they offer, based on the following factors and as determined by 1205.4 and section 3(c)(1) of the Language Access Act:
- (a) The number or proportion of LEP/NEP persons of the population served or encountered by the covered entity;
 - (b) The frequency with which LEP/NEP individuals come into contact with the covered entity;
 - (c) The importance of the service provided by the covered entity; and
 - (d) The resources available to the covered entity.
- 1205.6 To the extent that a covered entity requires additional personnel to meet the target language requirements of the entity's LEP/NEP constituency it shall, in consultation with its personnel authority, give preference to hiring qualified bilingual personnel into existing budgeted vacant public contact positions.
- 1205.7 The covered entity shall maintain a current account with a professional and qualified multilingual telephonic interpretation service that provides immediate oral language services to LEP/NEP constituents and District staff in a variety of languages and will assist in providing access to constituents who are both within and outside of LEP/NEP target languages as determined under 1205.5.
- 1205.8 In addition to the services described in Section 1205.7, the covered entity shall provide qualified and experienced in-person interpretation services to LEP/NEP constituents, as determined under 1205.5, to assist them in accessing the entity's services.
- 1205.9 The covered entity shall provide oral language services to LEP/NEP persons who seek to access or participate in public meetings and administrative hearings conducted by the covered entity and who make the request for these services three (3) business days in advance of the meeting or hearing.
- 1205.10 The covered entity shall provide written translation of vital documents into any non-English language spoken by a LEP/NEP population that constitutes 3% or 500 individuals, whichever is less, of the population served or encountered by the covered entity.
- 1205.11 The covered entity shall ensure that all vital documents that are translated into any non-English language spoken by a LEP/NEP population are widely distributed within the agency and accessible at points of entry.
- 1205.12 The covered entity shall notify LEP/NEP individuals of the oral and written language services that are available. This notification shall be in writing, exhibited in public locations, and translated into the non-English languages, that are determined under 1205.5 and 1205.10

1205.13 The covered entity must also obtain written acknowledgment from each LEP/NEP individual who waives his/her rights to oral and written language services prior to the individual accessing the entity's services.

1206 ROLES OF COVERED ENTITIES WITH MAJOR PUBLIC CONTACT

1206.1 Covered entities with major public contact are covered entities whose primary responsibility consists of meeting, contracting, and dealing with the public. "Dealing" with the public refers to providing direct services to and interacting with the public.

1206.2 Covered entities with major public contact are:

(a) Agencies listed in section (2)(3)(B) of the Act, which are as follows:

Alcoholic Beverage Regulation Administration;
Department of Health;
Department of Mental Health;
Department of Human Services;
Department of Employment Services;
Fire and Emergency Medical Services;
District of Columbia Housing Authority;
District of Columbia general ambulatory and emergency care centers;
Homeland Security and Emergency Management Agency;
Metropolitan Police Department;
District of Columbia Public Schools;
Department of Motor Vehicles;
Department of Housing and Community Development;
Department of Public Works;
Department of Corrections;
Office on Aging;
District of Columbia Public Library;
Department of Parks and Recreation;
Department of Consumer and Regulatory Affairs;
Child and Family Services Agency;
Office of Human Rights;
Department of Human Resources;
Office of Planning;
Office of Contracting and Procurement;
Office of Tax and Revenue; and
Office of the People's Counsel.

(b) Agencies designated by the LA Director under the direction of the OHR Director, which are as follows:

Department of Disability Services;

Department of Youth Rehabilitation Services;
Department of Transportation;
Office of Unified Communications;
Department of the Environment;
Office of the State Superintendent for Education; and
Office of Administrative Hearings.

1206.3 Covered entities with major public contact must meet all of the responsibilities for covered entities under the Act and these regulations, and in addition shall:

- (a) Establish and implement a complete BLAP that is approved by the LA Director and published in the D.C. Register every two years;
- (b) Designate a Language Access Coordinator; and
- (c) Conduct one (1) public meeting per fiscal year with reasonable advance notice to the public.

1206.4 Covered entities with major public contact shall develop a plan to conduct outreach to LEP/NEP communities about their BLAP and the benefits and services to be offered under the plan. Outreach activities may include, but are not limited to, the following:

- (a) Conducting public meetings;
- (b) Organizing events in LEP/NEP communities (including fairs, community meetings, forums, educational workshops);
- (c) Deploying entities' mobile unit/truck/van to visit specific community centers, community based organizations or schools;
- (d) Disseminating information through LEP media outlets (including local TV, newspapers, and radio);
- (e) Deploying outreach personnel to visit and/or perform regular walks through LEP/NEP communities;
- (f) Partnering with community based organizations for the implementation of projects and/or delivery of services;
- (g) Distributing flyers, brochures, and other printed material in diverse languages and at diverse locations;
- (h) Disseminating information through entities' websites;
- (i) Issuing press releases in diverse languages and directing those press releases to media outlets serving the LEP/NEP community;
- (j) Implementing a topic-specific campaign to raise awareness of a particular service or project in an LEP/NEP community;
- (k) Sponsoring educational, informational, cultural and/or social events in LEP/NEP communities;
- (l) Participating in LEP/NEP community events and/or meetings;
- (m) Inviting LEP/NEP community members to visit agency service site(s) and government facilities;

- (n) Cosponsoring community events with LEP/NEP community based organizations;
- (o) Participating in and/or co-sponsoring events that target the District's LEP/NEP communities with other District government agencies;
- (p) Organizing regular needs assessment meetings with LEP/NEP community based organizations.

1207 ROLE OF THE LANGUAGE ACCESS COORDINATORS

- 1207.1 Language Access Coordinators ("LAC") shall report directly to their agency director, and consult with the agency director on budgeting issues for the delivery of language access services as required by the Language Access Act.
- 1207.2 The LAC must also establish and implement the agency's BLAP in consultation with the LA Director, the D.C. Language Access Coalition, and with government offices that conduct outreach to communities with LEP/NEP populations.
- 1207.3 The LAC shall coordinate and assist in implementing all of the requirements for covered agencies with major public contact under the Act and these regulations.
- 1207.4 On a quarterly basis, the LAC shall submit a report to the LA Director regarding the agency's implementation of its BLAP.

1208 ROLE OF AGENCY DIRECTORS

- 1208.1 The Directors must meet all language access measures that are outlined in his/her individual performance contracts and scorecard goals developed by the OHR, through the OCA.
- 1208.2 The Directors shall ascertain that all applicable agency contracts and grants fully comply with all provisions of the Language Access Act.
- 1208.3 The Directors shall have ultimate authority and responsibility for the oversight and enforcement of their agency's BLAP.
- 1208.4 In the case of covered entities with major public contact, the Directors shall designate a LAC, and review and evaluate the role and performance of the LAC on an annual basis.

1209 ROLE OF LANGUAGE ACCESS COALITION

- 1209.1 The D.C. Language Access Coalition ("LA Coalition") will serve in an external non-governmental role consulting on the implementation of the Language Access Act. The LA Coalition will have no authority to make final decisions. In addition, the LA Coalition will have no obligation to fulfill governmental obligations to provide language access to LEP/NEP individuals, unless its members are

contractually or by means of a grant required to do so through the District government.

- 1209.2 The LA Director shall consult with the LA Coalition on the following:
- (a) Data Collection;
 - (b) Development and modification of BLAPs;
 - (c) Identification of additional covered entities to be named under the Language Access Act as "covered entities with major public contact;" and
 - (d) Overall implementation of the Language Access Act.
- 1209.3 Consultation with the LA Coalition requires that the Coalition be notified of activities that would significantly impact the implementation of the Language Access Act with sufficient notice so as to allow the Coalition to provide meaningful input. The Coalition's input will be received and considered in good faith and may lead to changes or modifications in decisions, where appropriate.
- 1210 ROLES OF THE MAYOR'S OFFICE ON AFRICAN AFFAIRS, THE MAYOR'S OFFICE ON ASIAN AND PACIFIC ISLANDER AFFAIRS, AND THE MAYOR'S OFFICE ON LATINO AFFAIRS**
- 1210.1 OAA, OAPIA, and OLA (collectively referred to as "consultative agencies") will serve as consultative bodies to the LA Director and the OHR Director to develop and update covered entities' BLAPs, and assist in the implementation of the Language Access Act according to the provisions set forth within the scope of the Act and the mandates of their respective agencies.
- 1210.2 The consultative agencies shall furnish data on their respective communities to covered entities.
- 1210.3 The consultative agencies shall also provide outreach to LEP/NEP communities in the District on the Language Access Act and assist the LACs to develop and implement outreach efforts, by providing technical support to facilitate those efforts to LEP/NEP communities.
- 1210.4 The consultative agencies shall assist OHR in the development of quality control instruments for their respective languages.
- 1210.5 The consultative agencies shall provide technical assistance to the Department of Human Resources and the personnel authorities of covered entities who have independent hiring authority regarding issues related to the recruitment and hiring of bilingual public contact personnel.
- 1210.6 The consultative agencies shall track and refer all language access allegations of noncompliance brought to their attention to the attention of the LA Director.

1210.7 The consultative agencies shall establish a telephonic, in-language assistance mechanism for LEP/NEP constituents to call in order to report alleged violations of the Language Access Act to the LA Director.

1211 ROLE OF PERSONNEL AUTHORITIES FOR COVERED ENTITIES

1211.1 The personnel authorities for all covered entities shall provide central coordination and technical assistance to the entities in their implementation of the provisions of this subchapter and shall report accordingly to the LA Director, OHR and OCA.

1211.2 Personnel authorities shall develop strategies for recruiting and maintaining bilingual personnel, including assessing the non-English language abilities of all future and current District personnel who self-identify as bilingual and who apply for or currently fill a "bilingual" or "bilingual preferred" position.

1211.3 The personnel authority in consultation with the covered entity shall conduct an assessment of each covered entity's existing public contact positions and determine if the oral language requirements under section 1205.6 have been met.

1211.4 If the oral language requirements of section 1205.6 have not been met, the personnel authority will assess the covered entity's budgeted vacant public contact positions and classify identified positions as "bilingual" or "bilingual preferred" to satisfy the requirement.

1211.5 In consultation with the LA Director and government entities that conduct outreach to communities with LEP/NEP populations, personnel authorities shall create a linguistic and cultural competency training curriculum available through the D.C. Department of Human Resources.

1212 BASELINE ASSESSMENTS

1212.1 Each covered entity with major public contact shall complete baseline assessments at the beginning of their implementation phase to provide data for comparison or as a control prior to creating and implementing its first BLAP.

1212.2 Upon the completion of the two-year plan cycle, each covered entity with major public contact shall update the information in the assessments with current information, which shall be included in the entity's BLAP.

1212.3 The LAC for each covered entity with major public contact shall facilitate the work required for completing the baseline assessments within the agency, as well as complete and submit the assessments to the LA Director as required in 1212.1.

1212.4 The LA Director shall meet with each LAC and respective agency director to review agency responses to the baseline assessments upon submission.

1213 BIENNIAL LANGUAGE ACCESS PLAN

1213.1 A covered entity with major public contact shall establish a biennial language access plan ("BLAP") by regulation. Each BLAP shall be established in consultation with:

- (a) The Language Access Director;
- (b) The D.C. Language Access Coalition;
- (c) The entity's Language Access Coordinator;
- (d) The entity's Director; and
- (e) Government offices that conduct outreach to communities with LEP/NEP populations.

1213.2 Each plan shall be updated every two (2) fiscal years and shall set forth, at minimum, the following:

- (a) The types of oral language services that the entity will provide and how the determination was reached;
- (b) The titles and types of each translated document that the entity will provide and how the determination was reached;
- (c) The number of public contact positions in the entity and the number of bilingual employees in public contact positions, including languages spoken;
- (d) The number, position, and location of bilingual employees the entity plans to hire in public contact positions;
- (e) An evaluation and assessment of the adequacy of services to be provided, including mechanisms used to assess adequacy;
- (f) A description of the budgetary sources specifying the various resources and expenditures upon which the covered entity intends to implement its BLAP;
- (g) A plan to conduct outreach to the District's LEP/NEP communities served or likely to be served by the covered entity; and
- (h) A plan to conduct cultural and linguistic competency trainings to the entity's staff who fill public contact positions.

1213.3 The LA Director shall meet with each LAC and respective agency director to review agency plans prior to approval of the BLAP.

1213.4 BLAPs shall be completed by the covered entity with major public contact and approved by the LA Director upon completion of the baseline assessments.

1214 QUARTERLY REPORTS

1214.1 The LAC for a covered entity with major public contact shall submit to the LA Director a quarterly report on the entity's BLAP at the end of each official quarter of the fiscal year or as designated by the LA Director.

1214.2 Quarterly reports shall provide the status of all tasks required of the entity in accordance with the entity's BLAP and requirements of the Act.

1214.3 Quarterly reports submitted in the last quarter of a fiscal year shall contain:

- (a) Information on progress made during the quarter; and
- (b) A summation of all activity performed within the fiscal year; including a self-assessment of what objectives were unmet with explanation. .

1215 ANNUAL REPORT

1215.1 Each covered entity with major public contact shall furnish a narrative report on progress made in the implementation of the Language Access Act at the end of each fiscal year to the LA Director. The report shall be included on a form designated by the LA Director and shall contain summary data on the following:

- (a) Total number of LEP/NEP individuals served or encountered from the total population served by the entity within the fiscal year (delineated by language);
- (b) A list of translated vital documents;
- (c) Oral language services offered through the entity's services and programs;
- (d) The names of all organizations to which the entity provides grants or contacts to provide language services to its LEP/NEP constituents;
- (e) An itemized budget allocated for Language Access purposes; and
- (f) A comprehensive list of the entity's bilingual staff employed in public contact positions.

1215.2 The LA Director shall provide copies of the annual report to the OCA, the LA Coalition, OAA, OAPIA, and OLA.

1215.3 Annual reports shall be made available to the public within thirty (30) days of a request.

1216 PERFORMANCE GOALS

1216.1 A covered entity's failure to comply with its requirements under the Act and these regulations shall be reported by the LA Director to the OCA.

1217 PUBLIC COMPLAINT OF NONCOMPLIANCE WITH THE LANGUAGE ACCESS ACT

1217.1 The Office of Human Rights shall accept information concerning alleged violations of the D.C. Language Access Act through the filing of a public complaint.

- 1217.2 By filing a public complaint, any person or organization may request an inquiry into individual or systemic noncompliance with the Language Access Act.
- 1217.3 The LA Director, under the direction and supervision of the OHR Director, shall coordinate the investigation and resolution of public complaints filed under this section.
- 1217.4 The filing of a public complaint does not supersede or preclude the filing of a complaint by any person or organization alleging intentional illegal discrimination under the D.C. Human Rights Act of 1977, as amended. Discrimination complaints shall be filed in accordance with the procedures in Chapter 7 of Title 4 of the District of Columbia Municipal Regulations.

1218 FILING PUBLIC COMPLAINTS

- 1218.1 The procedures in this section apply to the filing of a public complaint as described in Section 1217.
- 1218.2 Any person or organization may file with OHR a complaint of violation of the provisions of the Language Access Act. If a Complainant lacks capacity, the complaint may be filed on his/her behalf by a person or organization with an interest in the welfare of the Complainant.
- 1218.3 The complaint shall be in writing on a form obtained from OHR. The original complaint shall be signed and dated by the Complainant.
- 1218.4 The LA Director may initiate a signed complaint whenever he or she has reason to believe that any agency covered under the Act or its employee has committed an act of noncompliance with the Language Access Act.
- 1218.5 A complaint shall be deemed sufficient when OHR receives from the Complainant a written statement sufficiently precise to identify the parties, and to describe generally the action or practice complained of.
- 1218.6 A complaint shall be filed with the Office through its intake procedures.
- 1218.7 If the LA Director has jurisdiction to investigate the complaint, it shall be docketed and assigned to the LA Director, who may assign it to an OHR investigator.

1219 DISMISSAL FOR LACK OF JURISDICTION

- 1219.1 If the LA Director determines, on the face of the complaint, that he or she lacks jurisdiction, pursuant to section 6(b)(2) of the Language Access Act, an order dismissing the complaint shall be issued without an investigation being made. This determination shall be completed within seventy-two (72) business hours

from the time of intake. No cases shall be docketed until this process is completed.

1219.2 If the complaint fails to state a noncompliance claim under the Language Access Act or does not satisfy jurisdictional requirements, the case shall not be docketed and the Parties shall both be notified.

1220 ADMINISTRATIVE DISMISSALS

1220.1 A case shall be terminated without prejudice by the LA Director if the Complainant submits a written request to withdraw the complaint, or for the following administrative reasons:

- (a) The Complainant is absent and has failed to contact or cannot be contacted by the Office;
- (b) The Complainant fails to state a claim of noncompliance; or
- (c) After preliminary investigation, the LA Director determines that he or she lacks jurisdiction over the matter pursuant to the Act.

1220.2 An Order dismissing a complaint for administrative reasons shall be in writing and served on the Parties stating the reasons for dismissal.

1220.3 A Complainant may request that a complaint previously closed for administrative reasons or voluntarily withdrawn be reopened, provided that the Complainant submits a written request within thirty (30) days of receipt of the order dismissing the complaint and stating specifically the reasons why the complaint should be reopened.

1220.4 The LA Director, upon receipt of a request to reopen a complaint, may, within his or her discretion, reopen the case for good reasons or in the interest of justice, provided that no determination has previously been made on the merits of the claim.

1220.5 The decision of the LA Director to reopen a complaint shall be served on all Parties to the complaint.

1221 WITHDRAWAL OF COMPLAINTS

1221.1 Complaints filed with the OHR under the provisions of the Language Access Act may be voluntarily withdrawn at the request of the Complainant at any time prior to the completion of the LA Director's investigation and findings, except that the circumstances accompanying a withdrawal may be fully investigated by the LA Director.

1222 INVESTIGATION

1222.1 When a public complaint is filed, the LA Director shall:

- (a) Facilitate the resolution of the complaint if possible;
- (b) When resolution is not possible, supervise and monitor the investigation of the complaint; and
- (c) When the investigation is completed, issue written findings;

1222.2 If the alleged act(s) of noncompliance was committed by OHR, the complaint shall be brought before OCA for investigation.

1222.3 Upon assignment and docketing of the case, the investigator shall serve (by certified mail) on the Respondent a copy of the complaint.

1222.4 Under the direction of the LA Director, the investigation shall include, but not be limited to, on site visits, interviews of witnesses, and inspection of Respondent's records.

1222.5 After the receipt of all requested documents from the Respondent, the investigator shall provide the Complainant with an opportunity to rebut relevant information submitted by the Respondent.

1222.6 After the completion of the investigation and legal review, the results shall be submitted to the LA Director.

1223 DETERMINATION

1223.1 Upon receipt of a report and recommendation from the investigator and Legal Unit, the LA Director shall determine whether Respondent is in noncompliance with the Language Access Act or whether there is no evidence indicating noncompliance and the complaint should be dismissed.

1223.2 The LA Director shall mail the written findings to both Parties. All reports and findings shall be forwarded to the City Administrator.

1224 FINDINGS

1224.1 If a finding of noncompliance with the Language Access Act is made, the LA Director shall issue an Order containing terms and conditions to the Respondent to provide the services in question within a reasonable timeframe to the Complainant. If Respondent does not provide the services outlined in the Order within the designated timeframe, Respondent's actions will be reported to the OCA for further action.

1224.2 If the LA Director determines that no violation against the Language Access Act has taken place, an Order will be issued to the Parties dismissing the complaint.

1225 RIGHTS AND RESPONSIBILITIES OF PARTIES

1225.1 All Parties are entitled to, and shall receive, a fair and impartial investigation by the LA Director.

1225.2 All Parties have a duty to cooperate with and furnish OHR with the following:
(a) All documents, records, names of witnesses and any other necessary information needed to investigate the complaint; and (b) Current contact information.

1225.3 Failure by both Parties to perform any of the duties described in subsection 1225.2 may adversely affect the outcome of the case, up to and including dismissal.

1225.4 The Complainant shall not be required to take further action once OHR is properly advised of the complaint.

1225.5 Respondent shall comply with all requests from the LA Director or OHR during the investigation of the complaint. Noncompliance by the Respondent shall be reported to the City Administrator for further action.

1299 DEFINITIONS

When used in this chapter, the following terms and phrases shall have the meanings ascribed:

Administrative Hearing - a hearing before any governmental agency or before an administrative law judge.

Agency - a designated District of Columbia entity which has specified functions and/or provides particular services to the public.

Baseline Assessment - a collection of data regarding specific characteristics of a covered entity as of the date the Language Access Act becomes effective for that entity.

Biennial Language Access Plan (BLAP) - a two-year mandatory compliance plan for each covered entity with major public contact that is to be revised and published in the D.C. Register biennially by the entity.

Bilingual Employee - an employee who is assessed and certified as "proficient" in both the English language and a language other than English by the Department

of Human Resources or the personnel authority of the entity in which he/she is employed.

Complainant –an individual or organization who brings or files a public complaint alleging violations of the Language Access Act against an agency, generally titled the Defendant or Respondent.

Covered entity – means any District government agency, department, or program that furnishes information or renders services, programs, or activities directly to the public or contracts with other entities, either directly or indirectly, to conduct programs, services, or activities. The term “covered entity” shall not include the Advisory Neighborhood Commissions.

Covered entity with major public contact - a covered entity whose primary responsibility consists of meeting, contracting, and dealing with the public.

D.C. Language Access Coalition- the established alliance of diverse community-based organizations in the District that work with the District government to foster and promote the civil rights of immigrant and LEP/NEP communities by advocating for meaningful language access within the District.

Interpretation- oral/verbal conversion of the meaning of a dialogue from one language to another language and vice versa. There are three (3) types of interpretation:

Sight translation: an interpreter reads a document written in one language and translates it orally into another language.

Consecutive interpretation: an interpreter translates a speaker’s words orally after the foreign language speaker has stopped speaking.

Simultaneous interpretation: an interpreter speaks simultaneously with the source language speaker.

Limited English Proficient (LEP) individuals- means individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English.

Linguistic and cultural competence training- training that educates, informs, instructs or guides agency staff on how to provide readily available, culturally appropriate oral and written language services to LEP/NEP individuals through such means as bilingual/bicultural staff, trained interpreters, and qualified translators.

Non-English Proficient (NEP) individuals- persons who cannot speak or understand the English language at any level.

Oral Language Services- the provision of oral information necessary to enable LEP/NEP individuals to access or participate in programs or services offered by a covered entity. The types of oral language services include:

Commercial Interpretation Services: Professional businesses that offer oral interpretation as part of their array of services;

Community Interpretation Services: Community interpreters are members of a given language community who serve as liaisons between monolingual speakers of their native language and English;

Multilingual Telephonic Interpretation Services: An over-the-phone interpretation service that provides professionally trained and qualified interpreters in various languages;

Staff Interpreter: An employee who has been trained and proven competence in interpretation. Certification, training, or assessments indicate the employee's proficiency as an interpreter; and

Party- the individual or organization named in a public complaint charging non-compliance with the Language Access Act, and is generally the plaintiff-Complainant or the defendant-Respondent.

Personnel Authority- The District's Department of Human Resources or individual departments within covered entities with independent hiring authority responsible for human resource matters, including, but not limited to hiring, and promotion.

Public Complaint- an administrative complaint under the rules of procedure established by Section 6(b)(2) of the D.C. Language Access Act of 2004, the OHR Director, and section 1217 of the Language Access Act municipal regulations filed by a person or organization claiming lack of access to a covered entity(ies) due to significant language barriers posed by the entity(ies), which may result in noncompliance with the Language Access Act of 2004.

Public Contact Position- position in a covered entity for which the primary responsibilities include greeting, meeting, serving or providing information or services to the public. These are positions that require personal contacts with the public, community and civic organizations, or any combination of these groups.

Public Meeting- a meeting scheduled by a covered entity and a LEP/NEP community to allow for input or feedback from community members on issues of interest relating to the Language Access Act and service(s) provided by the entity.

Quarterly Report- a summary report required by the Office of Human Rights for all covered entities with major public contact.

Respondent- The Defendant agency against whom the Plaintiff-Complainant files a public complaint charging non-compliance with the Language Access Act

Translation- the written conversion of texts in the source language into texts written in the target language, retaining the meaning and intent of the original source text. All translators providing translation services to the District must be certified and/or otherwise qualified.

Vital documents- applications, notices, complaint forms, legal contracts, correspondence, and outreach materials published by a covered entity in a tangible format, including but not limited to those which inform individuals about their rights and responsibilities or eligibility requirements for benefits and participation. The term "vital documents" shall include tax-related educational and outreach materials produced by the Office of Tax and Revenue, but shall not include tax forms and instructions.

All persons desiring to comment on the subject matter of this proposed rulemaking action shall submit written comments, no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*, to Aryan Rodriguez, Language Access Program Director, Office of Human Rights, 441 4th Street, N.W., Washington, D.C. 20001 or call (202) 727-4559. Copies of the proposed rules may be obtained between the hours of 9:00 a.m. and 5:00 p.m. at the address listed above.

DEPARTMENT OF INSURANCE, SECURITIES, AND BANKING

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Insurance, Securities, and Banking, pursuant to the authority set forth under sections 102(9), 103(1), and 125 of the Insurance Trade and Economic Development Amendment Act of 2000, effective April 3, 2001 (D.C. Law 13-265; D.C. Official Code §§ 31-2231.01(9), 31-2231.03(1), and 31-2231.25 (2001)) and in accordance with section 6 of the District of Columbia Administrative Procedure Act, effective October 21, 1968, (82 Stat. 1206, Pub. L. 90-614, D.C. Official Code § 2-505(a) (2001)), hereby gives notice of his intent to adopt a new Chapter 52 of Title 26 of the District of Columbia Municipal Regulations (DCMR) (Insurance and Securities).

Responding to thirty (30) years of documented abuse regarding the sale of life insurance to members of the military by a very small segment of the insurance industry, Congress passed and President Bush signed on September 29, 2006, the Military Personnel Financial Services Protection Act (Pub. L. No. 109-290). Congress found it imperative that members of the United States Armed Forces be shielded from "abusive and misleading sales practices" and protected from certain life insurance products that are "improperly marketed as investment products, providing minimal death benefits in exchange for excessive premiums that are front-loaded in the first few years, making them entirely inappropriate for most military personnel." Congress required that the "States collectively work with the Secretary of Defense to ensure implementation of appropriate standards to protect members of the Armed Forces from dishonest and predatory insurance sales practices while on a military installation," and that each state report to Congress by September 29, 2007, on the progress made regarding its adoption of the standards collectively developed.

The National Association of Insurance Commissioners (NAIC) developed a model regulation to meet these dual Congressional mandates. The model makes actionable certain acts and practices which until now have not been declared to be false, misleading, deceptive or unfair under state trade practices statutes. The model also addresses Congressional concerns regarding suitability and product standards. The model makes it a deceptive or unfair trade practice to recommend the purchase of any life insurance product which includes a side fund to junior enlisted service members in pay grades E-4 and below, unless the insurer has reasonable grounds for believing that the life insurance portion of the product, standing alone, is suitable. Additionally, the model tracks or incorporates relevant Department of Defense solicitation regulations which identify sales practices directed at active duty service members.

The proposed rulemaking will implement the District of Columbia's adoption of the standards collectively developed by the NAIC. Final rulemaking action to adopt this new chapter shall be taken no less than thirty (30) days from the date of publication of this notice in the *D.C. Register*. However, the effective date of these rules shall be January 1, 2008.

26 DCMR, Chapter 52, Military Sales Practices, is adopted as follows:

CHAPTER 52 MILITARY SALES PRACTICES**Secs.**

5200	Purpose
5201	Scope
5202	Authority
5203	Exemptions
5204	Practices Declared False, Misleading, Deceptive or Unfair on a Military Installation
5205	Practices Declared False, Misleading, Deceptive or Unfair Regardless of Location
5206	Severability
5207	Effective Date
5299	Definitions

5200 PURPOSE

- 5200.1 The purpose of this regulation is to set forth standards to protect active duty service members of the United States Armed Forces from dishonest and predatory insurance sales practices by declaring certain identified practices to be false, misleading, deceptive or unfair.
- 5200.2 Nothing herein shall be construed to create or imply a private cause of action for a violation of this regulation.

5201 SCOPE

- 5201.1 This regulation shall apply only to the solicitation or sale of any life insurance or annuity product by an insurer or insurance producer to an active duty service member of the United States Armed Forces.

5202 AUTHORITY

- 5202.1 This regulation is issued under the authority of the Insurance Trade and Economic Development Amendment Act of 2000, effective April 3, 2001 (D.C. Law 13-265, D.C. Official Code § 31-2231 *et seq.* (2001)).

5203 EXEMPTIONS

- 5203.1 This regulation shall not apply to solicitations or sales involving:

(a) Credit insurance;

- (b) 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 contract or certificate does not include a side fund;
- (c) An application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised; 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) Individual stand-alone health policies, including disability income policies;
- (e) Contracts offered by Service members' Group Life Insurance (SGLI) or Veterans' Group Life Insurance (VGLI), as authorized by 38 U.S.C. §§ 1965 *et seq.*;
- (f) Life insurance contracts offered through or by a non-profit military association, qualifying under Section 501 (c) (23) of the Internal Revenue Code (IRC), and which are not underwritten by an insurer; or
- (g) Contracts 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 Sections 401(a), 401(k), 403(b), 408(k) or 408(p) of the IRC, as amended, if established or maintained by an employer;
 - (iii) A government or church plan defined in Section 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the IRC;
 - (iv) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;
 - (v) Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or
 - (vi) Prearranged funeral contracts.

5203.2

Nothing herein shall be construed to abrogate the ability of nonprofit organizations (and/or other organizations) to educate members of the United States Armed Forces in accordance with Department of Defense DoD Instruction

1344.07 – PERSONAL COMMERCIAL SOLICITATION ON DOD INSTALLATIONS or successor directive.

5203.3 For purposes of this regulation, 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.

5204 PRACTICES DECLARED FALSE, MISLEADING, DECEPTIVE, OR UNFAIR ON A MILITARY INSTALLATION

5204.1 The following acts or practices when committed on a military installation by an insurer or insurance producer with respect to the in-person, face-to-face solicitation of life insurance are declared to be false, misleading, deceptive or unfair:

- (a) Knowingly soliciting the purchase of any life insurance product “door to door” or without first establishing a specific appointment for each meeting with the prospective purchaser.
- (b) Soliciting service members in a group or “mass” audience or in a “captive” audience where attendance is not voluntary.
- (c) Knowingly making appointments with or soliciting service members during their normally scheduled duty hours.
- (d) Making appointments with or soliciting service members in barracks, day rooms, unit areas, or transient personnel housing or other areas where the installation commander has prohibited solicitation.
- (e) Soliciting the sale of life insurance without first obtaining permission from the installation commander or the commander’s designee.
- (f) Posting unauthorized bulletins, notices or advertisements.
- (g) Failing to present DD Form 2885, Personal Commercial Solicitation Evaluation, to service members solicited or encouraging service members solicited not to complete or submit a DD Form 2885.
- (h) Knowingly accepting an application for life insurance or issuing a policy of life insurance 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 which confirms that the applicant has received counseling or fulfilled any other similar requirement for the sale of life insurance established by regulations, directives or rules of the DoD or any branch of the Armed Forces.

5204.2 The following acts or practices when committed on a military installation by an insurer or insurance producer constitute corrupt practices, improper influences or inducements and are declared to be false, misleading, deceptive or unfair:

- (a) Using 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 life insurance to service members.
- (b) Using an insurance producer to participate in any United States Armed Forces sponsored education or orientation program.

5205 PRACTICES DECLARED FALSE, MISLEADING, DECEPTIVE, OR UNFAIR REGARDLESS OF LOCATION

5205.1 The following acts or practices by an insurer or insurance producer constitute corrupt practices, improper influences or inducements and are declared to be false, misleading, deceptive or unfair:

- (a) Submitting, processing or assisting 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 life insurance. The foregoing includes, but is not limited to, using or assisting in using a service member's "MyPay" account or other similar internet or electronic medium for such purposes. This subsection does not prohibit assisting a service member by providing insurer or premium information necessary to complete any allotment form.
- (b) Knowingly receiving 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:
 - (1) 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 thereunder; and
 - (2) permits the service member to make deposits and withdrawals unrelated to the payment or processing of insurance premiums.

- (c) Employing any device or method or entering 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 as defined in subsection 7 (A)(2).
- (d) 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.
- (e) Using 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 life insurance to service members who are junior in rank or grade, or to the family members of such personnel.
- (f) Offering or giving anything of value, directly or indirectly, to DoD personnel to procure their assistance in encouraging, assisting or facilitating the solicitation or sale of life insurance to another service member.
- (g) Knowingly offering or giving 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 life insurance is solicited.
- (h) Advising 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 life insurance.

5205.2 The following acts or practices by an insurer or insurance producer lead to confusion regarding source, sponsorship, approval or affiliation and are declared to be false, misleading, deceptive or unfair:

- (a) Making any representation, or using 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 product 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, but are not limited to, "Battalion Insurance Counselor," "Unit Insurance Advisor," "Servicemen's Group Life Insurance Conversion Consultant" or "Veteran's Benefits Counselor."

Nothing herein 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, but are not limited to, Chartered Life Underwriter (CLU), Chartered Financial Consultant (ChFC), Certified Financial Planner (CFP), Master of Science In Financial Services (MSFS), or Masters of Science Financial Planning (MS).

- (b) Soliciting the purchase of any life insurance product through the use of or in conjunction with any 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 product is affiliated, connected or associated with, endorsed, sponsored, sanctioned or recommended by the U.S. Government, or the United States Armed Forces.

5205.3 The following acts or practices by an insurer or insurance producer lead to confusion regarding premiums, costs or investment returns and are declared to be false, misleading, deceptive or unfair:

- (a) 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.
- (b) 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."

5205.4 The following acts or practices by an insurer or insurance producer regarding SGLI or VGLI are declared to be false, misleading, deceptive or unfair:

- (a) Making 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.
- (b) Making any representation regarding conversion requirements, including the costs of coverage, or exclusions or limitations to coverage of SGLI or VGLI to private insurers which is false, misleading or deceptive.
- (c) Suggesting, recommending or encouraging a service member to cancel or terminate his or her SGLI policy or issuing a life insurance policy which 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.

5205.5

The following acts or practices by an insurer and or insurance producer regarding disclosure are declared to be false, misleading, deceptive or unfair:

- (a) Deploying, using or contracting for any lead generating materials designed exclusively for use with service members that do not clearly and conspicuously disclose that the recipient will be contacted by an insurance producer, if that is the case, for the purpose of soliciting the purchase of life insurance.
- (b) Failing to disclose that a solicitation for the sale of life insurance will be made when establishing a specific appointment for an in-person, face-to-face meeting with a prospective purchaser.
- (c) Excluding individually issued annuities, failing to clearly and conspicuously disclose the fact that the product being sold is life insurance.
- (d) Failing 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.
- (e) Excluding individually issued annuities, when the sale is conducted in-person face-to-face with an individual known to be a service member, failing to provide the applicant at the time the application is taken:
 - (1) an explanation of any free look period with instructions on how to cancel if a policy is issued; and
 - (2) 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 life insurance, the death benefit applied for and its expected first year cost. A basic illustration that meets the requirements of [insert reference to state's illustration or disclosure regulation] shall be deemed sufficient to meet this requirement for a written disclosure.

5205.6

The following acts or practices by an insurer or insurance producer with respect to the sale of certain life insurance products are declared to be false, misleading, deceptive or unfair:

- (a) Excluding individually issued annuities, recommending the purchase of any life insurance product which includes a side fund to a service member in pay grades E-4 and below unless the insurer has reasonable grounds for believing that the life insurance death benefit, standing alone, is suitable.

- (b) Offering for sale or selling a life insurance product which 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 demonstrates that the applicant's SGLI death benefit, together with any other military survivor benefits, savings and investments, survivor income, and other life insurance are insufficient to meet the applicant's insurable needs for life insurance.
- (1) "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 and/or survivors or dependents.
 - (2) "Other military survivor benefits" 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 Housing Benefits and Allowances, Federal Income Tax Forgiveness, and Social Security Survivor Benefits.
- (c) Excluding individually issued annuities, offering for sale or selling any life insurance contract which includes a side fund:
- (1) unless interest credited accrues from the date of deposit to the date of withdrawal and permits withdrawals without limit or penalty;
 - (2) 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 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 schedule will be provided for at least each policy year from one (1) to ten (10) and for every fifth policy year thereafter ending at age 100, policy maturity or final expiration; and
 - (3) which by default diverts or transfers funds accumulated in the side fund to pay, reduce or offset any premiums due.
- (d) 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.
- (e) Selling any life insurance product to an individual known to be a service member that excludes coverage if the insured's death is related to war,

declared or undeclared, or any act related to military service except for an accidental death coverage, *e.g.*, double indemnity, which may be excluded.

5206 SEVERABILITY

5206.1 If any provision of these sections or the application thereof to any person or circumstance is held invalid for any reason, the invalidity shall not affect the other provisions or any other application of these sections which can be given effect without the invalid provisions or application. To this end all provisions of these sections are declared to be severable.

5207 EFFECTIVE DATE

5207.1 This regulation shall become effective January 1, 2008, and shall apply to acts or practices committed on or after the effective date.

5299 DEFINITIONS

When used in this chapter, the following words and phrases shall have the meaning ascribed:

Active Duty - 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. The term does not include members of the reserve component who are performing active duty or active duty for training under military calls or orders specifying periods of less than 31 calendar days.

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

Door to Door - a solicitation or sales method whereby an insurance producer proceeds randomly or selectively from household to household without prior specific appointment.

General Advertisement - 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.

Insurer - an insurance company required to be licensed under the laws of this state to provide life insurance products, including annuities.

Insurance producer - a person required to be licensed under the laws of this state to sell, solicit or negotiate life insurance, including annuities.

Known or "Knowingly" - 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:

- (a) is a service member; or
- (b) is a service member with a pay grade of E-4 or below.

Life Insurance - insurance coverage on human lives including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income and unless otherwise specifically excluded, includes individually issued annuities.

Military Installation - 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.

MyPay - 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.

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

Side Fund - a fund or reserve that is part of or otherwise attached to a life insurance policy (excluding individually issued annuities) by rider, endorsement or other mechanism which accumulates premium or deposits with interest or by other means. The term does not include:

- (a) accumulated value or cash value or secondary guarantees provided by a universal life policy;
- (b) cash values provided by a whole life policy which are subject to standard nonforfeiture law for life insurance; or
- (c) a premium deposit fund which:
 - (1) contains only premiums paid in advance which accumulate at interest;
 - (2) imposes no penalty for withdrawal;
 - (3) does not permit funding beyond future required premiums;
 - (4) is not marketed or intended as an investment; and
 - (5) does not carry a commission, either paid or calculated.

Specific Appointment - a prearranged appointment agreed upon by both parties and definite as to place and time.

United States Armed Forces - all components of the Army, Navy, Air Force, Marine Corps, and Coast Guard.

All persons interested in commenting on the subject matter in the proposed rulemaking may file comments in writing, not later than thirty (30) days after the publication of this notice in the *D.C. Register*, with Leslie Johnson, Hearing Officer, Department of Insurance, Securities and Banking, 810 First Street, NE, Washington, D.C. 20002. Comments may also be sent electronically to leslie.johnson@dc.gov. Copies of the proposed rulemaking are available, at cost, by writing to the above address.