



July 3, 2020

Via e mail to dmatthews@naic.org

John Godfread, Commissioner
North Dakota Insurance Department
Chair, NAIC Innovation and Technology (EX) Task Force
600 East Boulevard Avenue, 5th Floor
Bismarck, ND 58505

Re: Draft UTPA Language Addressing Rebating

Dear Commissioner Godfread:

I am writing on behalf of the National Association of Insurance and Financial Advisors (NAIFA) to provide NAIFA's comments on the draft revisions to the NAIC Model Unfair Trade Practices Act (UTPA), which address issues regarding rebating.

NAIFA commends the NAIC for undertaking a review of the UTPA provisions that deal with rebating, with an eye towards revising/modernizing the model in recognition of technological and risk/loss mitigation advances that have occurred in recent years.

In general, NAIFA supports the approach taken in the draft as well as the scope of the proposed expansion of the types of practices, products and/or services that would not be considered an impermissible rebate. We do have several specific items we would like to raise, and ask that you consider the following comments concerning the draft:

1. Section H (2) (e) (4): This section states that with respect to a product or service that shall not be considered a rebate, the cost of providing the product/service "should be reasonable in comparison to the average policy premiums...". NAIFA is concerned that the meaning of the word "reasonable"

as used here is so vague as to provide little if any guidance to the producer of where the line is between permissible and impermissible actions. This lack of clarity and clear guidelines will raise concerns among producers that their activities in this area will be viewed negatively in hindsight by regulators, which will likely cause producers to be needlessly cautious with respect to the products and/or services they would feel comfortable providing to clients. We would ask that the Task Force include more detailed, objective guidance here for producers and insurers.

2. Section H (2) (e) (5): This section sets \$250 as the dollar limit for when gifts, etc., in connection with the marketing of insurance would or would not be considered *de minimus*. While NAIFA recognizes the need for an appropriate dollar limit here in order that the exception doesn't "swallow up the rule", we think that in light of the current cost of restaurants, sports tickets and the like, \$500 is a more appropriate amount to use as the *de minimus* limit. This recommended amount would both more accurately reflect current costs while also being sufficiently small so as to avoid any risk of any such gift being seen as exerting an undue influence. (NAIFA is aware of the drafting note following this provision to the effect that states may wish to alter the dollar amount referenced in this provision; however, we feel that for the reason stated about \$500 would be a more appropriate starting point.)
3. We are not clear as to the interplay between Section H (2) (e) (5) and Section H (2) (f) (1). If others make the same comment, some clarification would be helpful.

We appreciate your consideration of this letter and our comments; please contact me if you have any questions.

Sincerely,



Gary A. Sanders
Counsel and Vice President, Government Relations--NAIFA