



OFFICE OF INSURANCE REGULATION

KEVIN M. McCARTY  
COMMISSIONER

IN THE MATTER OF:

CASE NO.: 101789-09

AMERICAN FIDELITY LIFE  
INSURANCE COMPANY  
\_\_\_\_\_ /

CONSENT ORDER

THIS CAUSE came on for consideration as the result of an agreement reached between AMERICAN FIDELITY LIFE INSURANCE COMPANY (hereinafter referred to as "AMERICAN FIDELITY") and the OFFICE OF INSURANCE REGULATION (hereinafter referred to as the "OFFICE") with respect to the Order issued by the OFFICE on January 7, 2009, in this matter. Following a complete review of the entire record, and upon consideration thereof, and being fully advised in the premises, the OFFICE hereby finds as follows:

1. The OFFICE has jurisdiction over the subject matter and parties to this proceeding.
2. AMERICAN FIDELITY is a foreign corporation with a principal place of business at 4060 Barrancas Avenue, Pensacola, Florida 32507-3467. AMERICAN FIDELITY is authorized to transact life and health insurance in the state of Florida.

3. The OFFICE issued an Order to AMERICAN FIDELITY on May 8, 2008, which alleged that AMERICAN FIDELITY engaged in unfair or deceptive acts or practices in violation of Military Sales Practices Rule 69O-142.200, Florida Administrative Code (the "Regulation"). AMERICAN FIDELITY denied the allegations of the Order and petitioned for a hearing. On January 7, 2009, the OFFICE notified AMERICAN FIDELITY that the Order issued on May 8, 2008, had been dismissed and issued the Order in this matter on that same day.

4. On September 15, 2008, AMERICAN FIDELITY notified the OFFICE that as of May 8, 2008, it had ceased all sales of insurance products in Florida and that it would, without prejudice, accrue and pay interest as required by the Regulation, cease charging any withdrawal or surrender charge, and credit or refund amounts not properly accrued, paid, or charged in compliance with the Regulation.

5. On October 10, 2008, AMERICAN FIDELITY, without prejudice, voluntarily amended its Flexible Dollar Builder Life Insurance Policy ("FDB Policy") to meet all requirements set forth by the Regulation and subsequently represented to the OFFICE that appropriate refunds or credits had been made voluntarily to all affected Florida military service members.

6. On January 7, 2009, the OFFICE issued an Order alleging that AMERICAN FIDELITY committed violations of the Regulation, in the offer and sale of its FDB Policy to active duty service members of the U.S. Armed Forces in Florida.

7. The Order notified AMERICAN FIDELITY to show cause why the OFFICE should not enter a Final Order suspending or revoking its Certificate of Authority, imposing any appropriate penalties under the Florida Insurance Code and Florida Administrative Code, or taking other administrative actions as deemed appropriate by law.

8. AMERICAN FIDELITY timely filed a Petition for Hearing in accordance with the Notice of Rights in the Order, which denied all material allegations respecting violation of the Regulation. This matter was referred to the Division of Administrative Hearings ("DOAH") and assigned Case No. 09-1395.

9. The OFFICE and AMERICAN FIDELITY agree, without AMERICAN FIDELITY admitting any violation of the Regulation, that this Consent Order resolves all matters directly related to the Order issued by the OFFICE and DOAH Case No. 09-1395.

10. AMERICAN FIDELITY agrees that upon the execution of this Consent Order, it shall be subject to each of the terms and conditions herein.

11. Within ten (10) days of the date of this Consent Order, AMERICAN FIDELITY shall pay to the OFFICE a penalty in the amount of Twenty-five Thousand Dollars (\$25,000) and attorneys' fees, litigation costs, and investigative costs in the amount of Fifty Thousand Dollars (\$50,000) for a total amount of Seventy-five Thousand Dollars (\$75,000).

12. AMERICAN FIDELITY represents that for all policies sold in Florida to active duty service members of the U.S. Armed Forces on or after November 1, 2007, AMERICAN FIDELITY has refunded or credited the following to each affected military service member: 1) interest on each Accumulation Fund not paid or not credited as required by the Regulation; 2) any fees charged for withdrawals from each Accumulation Fund; and 3) any amounts transferred from each Accumulation Fund to pay, reduce, or offset past due premium charges.

13. AMERICAN FIDELITY shall submit a summary report to the OFFICE of the refunds and credits made pursuant to paragraph 12., *supra*, within thirty (30) days of the execution of this Consent Order. The report shall indicate each policyholder's name, policy number, refund amount, and payment or credit date. In the event that AMERICAN FIDELITY is unable to locate former policyholders who are entitled to refunds pursuant to this Consent Order, AMERICAN FIDELITY shall submit their refunds to the state of Florida as unclaimed property.

14. AMERICAN FIDELITY shall direct and ensure that its agents use and retain a copy of the interactive needs assessment on the U.S. Department of Veteran's Affairs website located at <http://www.insurance.va.gov/SGLISITE/calculator/needsCalc.htm> or a comparable needs assessment as approved by the OFFICE for all Florida solicitations and sales of the FDB Policy to active duty service members of the U.S. Armed Forces. An electronic .pdf or hard copy of the needs assessment signed by the AMERICAN FIDELITY agent and policyholder shall be retained in each policyholder's file.

15. AMERICAN FIDELITY shall provide all Florida active duty military service member applicants at least a seven (7) day waiting period prior to issuing their FDB Policies, during which time the applicants may cancel their FDB Policy applications. AMERICAN FIDELITY shall not be liable for any death claims arising during this waiting period.

16. AMERICAN FIDELITY shall, as represented to the OFFICE, continue to notify all Florida active duty military service member applicants in writing that they may contact a military financial advisor in their Office of Accounting and Finance prior to purchasing an FDB Policy.

17. For all active duty Florida military policyholders, AMERICAN FIDELITY shall only use a policyholder's social security number in connection with a bank authorization or allotment. AMERICAN FIDELITY may retain and use Florida military policyholders' social security numbers as may be required for tax purposes.

18. AMERICAN FIDELITY will indemnify policyholders of the FDB Policy in Florida during the period of October 1, 2007, through May 8, 2008, for taxes and penalties assessed as a direct result of a violation by AMERICAN FIDELITY of the Regulation.

19. AMERICAN FIDELITY shall comply with any and all applicable nonforfeiture laws in the state of Florida.

20. AMERICAN FIDELITY shall comply with all provisions of the Regulation.

21. Within eighteen (18) months of the execution of this Consent Order, the OFFICE may conduct an examination of AMERICAN FIDELITY's military sales practices in Florida. The costs and expenses associated with such examination shall be paid by AMERICAN FIDELITY.

22. AMERICAN FIDELITY shall file a Notice of Voluntary Dismissal of its Amended Petition for Hearing in OFFICE Case No. 101789-09, within ten (10) days of the issuance of this Consent Order.

23. AMERICAN FIDELITY expressly waives a hearing in this matter, and the making of Findings of Fact and Conclusions of Law by the OFFICE and all further or other proceedings to which AMERICAN FIDELITY may be entitled by law or the rules of the OFFICE. AMERICAN FIDELITY hereby knowingly and voluntarily waives all rights to challenge or contest this Consent Order, in any forum presently or in the future, including the right to any administrative proceeding, state or federal court action, or any appeal.

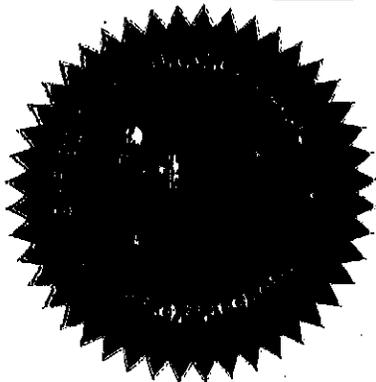
24. AMERICAN FIDELITY agrees that failure to adhere to one or more of the terms and conditions of this Consent Order shall constitute a violation of a lawful Order of the OFFICE subjecting AMERICAN FIDELITY to all administrative penalties and remedies available under the Florida Insurance Code.

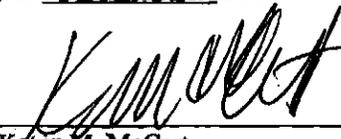
25. Except as noted above, each party to this action shall bear its own costs.

THEREFORE, the agreement between AMERICAN FIDELITY and the OFFICE, the terms and conditions of which are set forth above, is approved.

FURTHER, all terms and conditions contained herein are hereby ORDERED.

DONE and ORDERED this 28TH day of DECEMBER 2009.



  
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Kevin M. McCarty  
Commissioner  
Office of Insurance Regulation



**COPIES FURNISHED TO:**

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