



March 18, 2021

Financial Services Regulatory Authority of Ontario (FSRA)
25 Sheppard St. W., Suite 100
Toronto ON M2N 6S6

Submitted via the FSRA website

Subject: Consultation on FSRA's proposed UDAP Rule [2020-002]

Independent Financial Brokers of Canada (IFB) appreciates the opportunity to comment on the proposed Rule.

Who we are

IFB is a national, not for profit association with 3000+ members. IFB members are provincially licensed financial advisors, who are often life insurance licensees and/or mutual fund representatives. A smaller number are IIROC registrants or hold other insurance/financial licenses. Many have acquired additional credentials and designations, such as the CFP®, to address the broader spectrum of the financial planning needs and circumstances of their clients.

IFB supports its members, and the financial services industry more generally, by providing high quality accredited educational opportunities, comprehensive and affordable individual and corporate professional liability insurance, compliance support and regulatory updates. An important part of the work IFB does on behalf of its members is its public policy advocacy and support for independent distribution with regulatory bodies, government, industry, and other stakeholders.

As a national association, IFB prefers regulatory solutions which harmonize legislation in all Canadian jurisdictions. It is a concern, therefore, that Ontario may introduce a more permissive UDAP standard than is in place in most other provincial jurisdictions. These legislative differences can lead to increased costs and set a different level of protection for consumers of like products based on their residence.

General comments

At the outset of this consultation, it appeared the changes were aimed at the P&C sector, specifically automobile insurance. However, since it has now become clear that FSRA intends for the UDAP rule to apply to all insurance sectors, our comments will focus on our specific concerns with the UDAP rule in relation to the life and health insurance sector.

IFB recognizes that the intent of the proposed Rule is to modernize the current UDAP Rule. Concerns have been expressed by some stakeholders that the current Rule is too prescriptive and presents a barrier to innovation. Certainly, in today's world, consumers have become increasingly accustomed to conducting transactions in a seamless and more efficient way. For the insurance industry, the restrictions on face-to-face interactions brought about by the COVID-19 pandemic necessitated quick action to allow consumers and insurance advisors to conduct business in a virtual way. Many of these

changes, such as digital onboarding and electronic signatures, have resulted in welcome efficiencies for life and health insurance consumers and advisors.

However, IFB shares the concerns of some others that permitting rebating in Ontario will increase the risk of unfair sales practices, predatory pricing, and the likelihood of consumer harm.

In 2004, the Canadian Council of Insurance Regulators (CCIR) undertook a consultation to review issues related to inducements, rebating, and tied selling. The paper cites that rebating has long been prohibited:

- To protect consumers from making inappropriate purchasing decisions based on the offer of the inducement or rebate.
- To ensure parity between different-sized insurers and intermediaries who compete for the same business: i.e., competition is based on risk pricing.
- On the basis that the cost of the incentive would be borne by consumers in the pricing of the product.
- On the basis that rebates should be offered equally to all similar risks and not arbitrarily to certain consumers.¹

In our view, the public policy rationale for prohibiting rebating continues to be relevant today.

FSRA has suggested that the revised UDAP Rule would remove barriers to innovation in the area of customer incentives, including rebates and incentives provided that they:

- do not lead to decisions that are against the interests of consumers;
- are not prohibited by law;
- are transparently communicated; and
- are not unfairly discriminatory, anti-competitive or reliant on prohibited factors²

IFB agrees that these are important safeguards and appreciate that FSRA is committed to removing barriers to innovation and to transitioning towards principles-based regulation. However, we are concerned that this reworking of the Rule would lead to more complex regulatory oversight and more frequent consumer complaints. The issues related to rebating and inducements are different for the P&C industry than the life and health industry, largely because P&C insurance is typically written on an annual basis whereas life and health insurance products are intended to be held for years, and even decades. Traditionally, rebates have been viewed as running counter to the interests of a consumer because they are generally offered to a particular consumer (whether the consumer is an individual, or employer, for example if a group plan) to entice a purchase.

The ability to incentivize a prospective policyholder by offering a rebate encourages an insurer or intermediary to be focussed on the initial sale, perhaps to the detriment of the ongoing requirement to service the policy or to keep it in force. We note that FSRA does not propose reviewing the current

¹CCIR Consultation Paper: Issues related to Inducements, Rebating and Tied Selling, 2004. <https://www.ccir-ccra.org/Documents/View/2862>

² FSRA Notice of Proposed Rule and Request for Comment [2020-002] Unfair or Deceptive Acts or Practices. Page 3.



prohibitions on inducements for life/health agents. In practice, the Proposed Rule will provide greater flexibility and benefit only for insurers.

The life/health insurance industry is highly competitive. Consumers have the choice to purchase insurance products online, through direct channels, through employees or career agents, or through independent agents/brokers. Healthy competition is good for consumers. In recent years, there has been a trend toward larger industry players purchasing smaller MGAs and group benefits firms. Permitting rebating would introduce a new competitive risk in that those with the “deepest pockets” could drive out smaller, locally based firms who either cannot afford to compete on price or are prohibited from doing so through the existing Agent Regulation 347/04. We urge FSRA to consider the potential impact on consumers, small businesses, and the many insurance brokerages which support their local communities, that could stem from such unintended consequences.

In the group insurance market, IFB members work with many smaller or mid-sized employers to help them acquire group benefits coverage for their employees at competitive, sustainable rates. These advisors provide a valuable service by searching the market for appropriate coverage and advocating on behalf of their employer-clients. Under the proposed Rule, insurers would have the ability to incent, or rebate, clients directly. This raises the risk that the Rule could inadvertently advantage direct sales to consumers, or, in this case plan sponsors. At the same time, Ontario Regulation 347/04 prohibits life insurance agents from offering incentives or inducements to secure business, and most agents are restricted by insurers from offering rebates through their contractual agreements or insurer codes of conduct. It is our view that if agents are prohibited from rebating (as we agree they should be), then this should apply to insurers as well. To do otherwise creates an unfair, uncompetitive business environment.

Considerations to address market innovation

At the outset of this response, we acknowledged the desire by some in the insurance industry to offer more innovative and flexible services. IFB agrees that this is consistent with today’s consumer demands and with the opportunities that new technologies can provide.

We suggest options exist that would provide more flexibility, while maintaining an appropriate level of consumer protection. For example, a premium reduction could be permitted if it were offered to all those with similar risks, as in the CCIR consultation paper referenced above. This would allow innovative approaches to address market changes, such as occurred when some automobile insurers offered a premium reduction for consumers whose driving habits changed by working from home. It would also permit insurers to provide incentives that lower risks for a group of policyholders, such as tools to promote health and wellness and home safety, or offer value-added services or products, without infringing on the UDAP rule.

Other options could include:

- allowing incentives that are restricted to offering a value-added service or benefit, not tied to the purchase or continuance of a policy. This would enable insurers and advisors to provide incentives directly related to reducing or controlling risk for the benefit of the client, such as enhancing their health or wellness, improving safety, or reducing claims or settlement costs.



- requiring that any incentives be offered to policyholders in the same risk and experience category as determined by the underwriting process. This way the premium paid would be reasonable in relation to the level of risk.

We trust our comments will be helpful as FSRA considers the next steps in the Rule development and we look forward to continuing to work with FSRA to address this important issue.

Please contact the undersigned, or Susan Allemang, Director, Policy & Regulatory Affairs (email: sallemang@ifbc.ca) should you have questions or wish to discuss our comments further.

Yours truly,

A handwritten signature in black ink that reads 'Nancy Allan'.

Nancy Allan

Executive Director

allan@ifbc.ca

905.279.2727 Ext. 102

www.ifbc.ca