

MODEL REGULATION ON THE USE OF SENIOR SPECIFIC CERTIFICATIONS AND PROFESSIONAL DESIGNATIONS IN THE SALE OF LIFE INSURANCE AND ANNUITIES

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Section 1. Purpose

The purpose of this regulation is to set forth standards to protect consumers from misleading and fraudulent marketing practices with respect to the use of senior-specific certifications and professional designations in the solicitation, sale or purchase of, or advice made in connection with, a life insurance or annuity product.

Section 2. Scope

This regulation shall apply to any solicitation, sale or purchase of, or advice made in connection with, a life insurance or annuity product by an insurance producer.

Section 3. Authority

- A. This regulation is issued under the authority of [insert reference to enabling legislation].

Drafting Note: States may wish to use the Unfair Trade Practices Act as enabling legislation or may pass a law with specific authority to adopt this regulation.

- B. Nothing in this regulation shall limit the commissioner's authority to enforce existing provisions of law.

Drafting Note: States should use the appropriate designation for the chief insurance regulatory official as a substitute for the word "commissioner" above.

Section 4. Definition

For purposes of this regulation, "insurance producer" means a person required to be licensed under the laws of this State to sell, solicit or negotiate insurance, including annuities.

Section 5. Prohibited Uses of Senior-Specific Certifications and Professional Designations

- A. (1) It is an unfair and deceptive act or practice in the business of insurance within the meaning of [insert the reference to State unfair trade practices act] for an insurance producer to use a senior-specific certification or professional designation that indicates or implies in such a way as to mislead a purchaser or prospective purchaser that the insurance producer has special certification or training in advising or servicing seniors in connection with the solicitation, sale or purchase of a life insurance or annuity product or in the provision of advice as to the value of or the advisability of purchasing or selling a life insurance or annuity product, either directly or indirectly through publications or writings, or by issuing or promulgating analyses or reports related to a life insurance or annuity product.
- (2) The prohibited use of senior-specific certifications or professional designations includes, but is not limited to, the following:
- (a) Use of a certification or professional designation by an insurance producer who has not actually earned or is otherwise ineligible to use such certification or designation;
- (b) Use of a nonexistent or self-conferred certification or professional designation;

- (c) Use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training or experience that the insurance producer using the certification or designation does not have; and
 - (d) Use of a certification or professional designation that was obtained from a certifying or designating organization that:
 - (i) Is primarily engaged in the business of instruction in sales or marketing;
 - (ii) Does not have reasonable standards or procedures for assuring the competency of its certificants or designees;
 - (iii) Does not have reasonable standards or procedures for monitoring and disciplining its certificants or designees for improper or unethical conduct; or
 - (iv) Does not have reasonable continuing education requirements for its certificants or designees in order to maintain the certificate or designation.
- B. There is a rebuttable presumption that a certifying or designating organization is not disqualified solely for purposes of subsection A(2)(d) when the certification or designation issued from the organization does not primarily apply to sales or marketing and when the organization or the certification or designation in question has been accredited by:
- (1) The American National Standards Institute (ANSI);
 - (2) The National Commission for Certifying Agencies; or
 - (3) Any organization that is on the U.S. Department of Education’s list entitled “Accrediting Agencies Recognized for Title IV Purposes.”
- C. In determining whether a combination of words or an acronym standing for a combination of words constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing seniors, factors to be considered shall include:
- (1) Use of one or more words such as “senior,” “retirement,” “elder,” or like words combined with one or more words such as “certified,” “registered,” “chartered,” “advisor,” “specialist,” “consultant,” “planner,” or like words, in the name of the certification or professional designation; and
 - (2) The manner in which those words are combined.
- D. (1) For purposes of this regulation, a job title within an organization that is licensed or registered by a State or federal financial services regulatory agency is not a certification or professional designation, unless it is used in a manner that would confuse or mislead a reasonable consumer, when the job title:
- (a) Indicates seniority or standing within the organization; or
 - (b) Specifies an individual’s area of specialization within the organization.
- (2) For purposes of this subsection, financial services regulatory agency includes, but is not limited to, an agency that regulates insurers, insurance producers, broker-dealers, investment advisers, or investment companies as defined under the Investment Company Act of 1940.

Section 6. Effective Date

This regulation shall become effective [insert effective date of the regulation].

Chronological Summary of Action (all references are to the Proceedings of the NAIC)

2008 Proc. 3rd Quarter 3-17 to 3-21, 6-9 to 6-11, 6-12 to 6-14, 6-17 to 6-19 (adopted).