

# For Your Information

**TO:** New Jersey Licensed Producers  
**FROM:** Assurity Marketing  
**DATE:** May 11, 2011  
**RE:** Use of Senior Specific Designations

Effective immediately, producers licensed in New Jersey who sell life insurance or annuities to senior markets are prohibited from the use of senior-specific certifications, designations and credentials that imply that the producer has special certification or training in advising or servicing seniors or retirees.

See the attached regulation for more information.



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### **Regulatory Activity NJAC 11:4-60.1 Dated 10-04-2010**

#### **RULE ADOPTIONS**

#### **INSURANCE DEPARTMENT OF BANKING AND INSURANCE OFFICE OF CONSUMER PROTECTION SERVICES**

#### **Adopted New Rules: N.J.A.C. 11:4-60**

#### **Limitations on the Use of Specific Terms or Designations in the Sale of Life Insurance**

Proposed: October 4, 2010 at 42 N.J.R. 2306(a).

Adopted: February 10, 2011 by Douglas A. Wheeler, Director, Division of Insurance.

Filed: February 10, 2011 as R.2011 d.088, **with a substantive change** not requiring additional public notice or comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 17:1-8.1, 17:1-15e, 17B:30-4 and 17B:30-15.

Effective Date: March 7, 2011.

Expiration Date: March 14, 2011.

#### **Summary of Public Comment and Agency Response:**

The Department of Banking and Insurance (Department) timely received a written comment from the America Council of Life Insurers.

COMMENT: The commenter supported the adoption of the proposed rule but suggested that the following language be deleted as the commenter believed that such language would be more appropriate when applied to annuities, rather than life insurance. First, the commenter suggested that the definition of "direct-response solicitation" be deleted as the term is not used in the rules.

Secondly, the commenter suggested that the phrase "or its value or suitability" in N.J.A.C. 11:4-60.3(a) also be deleted. The commenter stated that this phrase does not apply to life insurance. The commenter stated that suitability is a term of art that is mainly used with respect to annuity products. The commenter believed that, in order to avoid any confusion, this phrase should be deleted.

RESPONSE: The Department appreciates the support of its proposal. With respect to the suggested deletion of the definition of "direct-response solicitation," the Department agrees and has made this change upon adoption. As the Department noted in the proposal Summary, and as recognized by the commenter in its comment, the rules essentially track the statute governing solicitation of annuities at N.J.S.A. 17B:25-36. In addition, as was the noted by the commenter, the term is not used in the rule, and thus is unnecessary. Accordingly, it is appropriate to delete this definition to avoid any confusion.

With respect to the suggested deletion of "or its value or suitability" in N.J.A.C. 11:4-60.3(a), the Department has determined that no change is required because references to "value or suitability" might be made in the solicitation or the sale of life insurance. In any event, retaining the phrase in the rule does not add any new requirement or restriction, insofar as the rule prohibits the use of false, misleading or deceptive designations or advertising regarding the qualifications of persons or entities engaged in the sale, solicitation or negotiation of life

insurance.

### **Federal Standards Statement**

A Federal standards analysis is not required because the adopted new rules are not subject to any Federal requirements or standards.

**Full text** of the adopted new rules follows (deletion from proposal indicated in brackets with asterisk \*[thus]\*):

~~SUBCHAPTER 60. -- LIMITATIONS ON THE USE OF SPECIFIC TERMS OR DESIGNATIONS IN THE SALE OF LIFE INSURANCE~~

#### 11:4-60.1 Purpose and scope

(a) The purpose of this subchapter is to establish limitations, consistent with N.J.S.A. 17B:25-36 and the Unfair Trade Practices Act, N.J.S.A. 17B:30-1 et seq., on the use of certifications, professional designations, or forms of advertising by insurance producers, representatives of fraternal benefit societies and insurers expressing that the person or entity has special education, training or experience in advising or servicing senior citizens or retirees in connection with the solicitation, negotiation of sale of life insurance.

(b) This subchapter shall apply to the sale, solicitation, or negotiation of life insurance by a person or entity set forth in (a) above.

#### 11:4-60.2 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Commissioner" means the Commissioner of the New Jersey Department of Banking and Insurance.

"Department" means the New Jersey Department of Banking and Insurance.

\*["Direct-response solicitation" means a solicitation solely through mail, telephone, the Internet, or other mass communication media.]\*

"Insurance producer" means a person licensed to sell, solicit, or negotiate insurance pursuant to N.J.S.A. 17:22A-26 et seq.

"Insurer" means any corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd's insurer, fraternal benefit society or other person authorized to engage in the business of insurance in this State.

"Life insurance" is as defined in N.J.A.C. 11:4-40.2.

"Negotiate" means the act of conferring directly with or offering advice directly to a consumer as the purchaser or prospective purchaser of a particular life insurance policy concerning any of the substantive benefits, terms or conditions of the life insurance policy, provided that the person engaged in that act either: sells life insurance or obtains life insurance from insurers for purchasers.

"Sell" means to exchange a life insurance policy by any means, for money or its equivalent, on behalf of an insurer.

"Solicit" means attempting to sell a life insurance policy or asking or urging a consumer to apply for a particular life insurance policy from a particular insurer.

11:4-60.3 Limitation on use of terms or designations

(a) Consistent with the unfair trade practices set forth in N.J.S.A. 17B:30-1 et seq., an insurance producer, or an agent, representative or member of a fraternal benefit society not required to be licensed as an insurance producer in accordance with N.J.S.A. 17:44B-32, or an insurer, if no producer or non-licensed society agent, representative or member is involved, shall not use a certification, professional designation, or form of advertising expressing or implying in an untrue, deceptive, misleading, or false manner that the producer, non-licensed society agent, representative or member, or insurer has special education, training, or experience in advising or servicing senior citizens or retirees in connection with the solicitation, negotiation, or sale of life insurance, or its value or suitability, either directly or indirectly, including through a publication or writing, or by issuing or promulgating an analysis or report relating to a life insurance policy.

(b) The provisions of (a) above shall not apply to:

1. A title or designation conferred through an academic degree, certifying the completion of a course of study from an accredited institution of higher education, so long as the title or designation is not used in an untrue, deceptive, misleading, or false manner in connection with the solicitation, negotiation, or sale of a life insurance policy; or

2. A professional job title presented by an employer or other organization that is licensed or registered by a state or Federal financial services regulatory agency, including any agency that regulates financial institutions, insurers, investment companies as defined under the Investment Company Act of 1940, Title I of Pub. L.76-768 (15 U.S.C. §§ 80a-1 et seq.), investment advisers as defined under the Investment Advisers Act of 1940, Title II of Pub. L.76-768 (15 U.S.C. §§ 80b-1 et seq.), and broker-dealers, and that indicates seniority or standing within the employer or other organization's operation or specifies an area of specialization recognized by that employer or other organization, so long as the professional job title is not used in an untrue, deceptive, misleading, or false manner in connection with the solicitation, negotiation, or sale of a life insurance policy.

(c) For purposes of this subchapter, an untrue, deceptive, misleading, or false use of a certification, designation, or form of advertising shall include, but shall not be not limited to:

1. The use of a certification or professional designation not actually earned or otherwise available for use;

2. The use of a nonexistent or self-conferred certification or professional designation;

3. The use of a certification or professional designation that expresses or implies a level of occupational qualification obtained through education, training, or experience, but which is not actually obtained; and

4. The use of a certification or professional designation 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 a holder of its certificate or professional designation;

iii. Does not have reasonable standards or procedures for monitoring and disciplining a holder of its certificate or professional designation for improper or unethical conduct; or

iv. Does not have reasonable continuing education requirements for a holder of its certificate or professional designation in order to maintain the certification or designation.

(d) Notwithstanding (c) above, there shall be a rebuttable presumption that the use of a certification or professional designation obtained from a certifying or designating organization is not in violation of this section if the certificate or professional designation issued to the holder does not apply primarily to sales or marketing and is accredited by:

1. The American National Standards Institute, or its successor;
2. The National Commission for Certifying Agencies, or its successor;
3. Any organization recognized as an accrediting agency by the United States Department of Education pursuant to section 496 of the Higher Education Act of 1965, Pub. L. 89-329 (20 U.S.C. § 1099b); or
4. Any other organization approved by the Commissioner by regulation.

(e) In order to determine a violation of this subchapter, the Commissioner may consider the use of one or more words, combination of words, or acronyms representing these words, and the manner or context of their use with respect to a certification, professional designation, or form of advertising, including, but not limited to, "senior," "retirement," "elder" or words of similar import, "certified," "registered," "chartered" or words of similar import, and "adviser," "specialist," "consultant," "planner" or words of similar import.

#### 11:4-60.4 Penalties

Failure to comply with this subchapter may result in the imposition of penalties as authorized by law, including penalties authorized pursuant to N.J.S.A. 17:22A-45 and 17B:30-17.

**Description** Prohibits deceptive or misleading certification, professional designation, or advertising in the sale, solicitation, or negotiation of life insurance to senior citizens or retirees. Adopts the following new insurance rules: NJAC 11:4-60.1 (purpose and scope): Pursuant to unfair trade practices law, limits the use of such certification, professional designation, or advertising by insurers, fraternal benefit societies, producers, and representatives so that there are no misleading implications that the person or entity has special [senior-specific] education, training, or experience with life insurance. NJAC 11:4-60.2 (definitions): Defines terms related to these rules, including 'commissioner,' 'department,' 'insurance producer,' 'insurer,' 'life insurance,' 'negotiate,' 'sell,' and 'solicit.' NJAC 11:4-60.3 (limitation on use of terms or designations): Lists examples of certification, designation, or advertising that is considered untrue, deceptive, misleading, or false. Examples include the use of a certification or professional designation obtained from a certifying or designating organization that is primarily engaged in the instruction of sales or marketing or that does not have appropriate CE requirements, etc. Lists appropriate accreditation organizations. Exempts from the limitations: 1) A title or designation conferred through an academic degree. 2) A professional job title from an employer or other organization licensed or registered by a financial services regulatory agency that indicates seniority or standing or specifies an area of specialization recognized by that employer/organization, as long as such designations are not deceptive, misleading, or false, etc. Prohibits the misleading use of the words 'senior,' 'retirement,' 'elder,'

'certified,' 'registered,' 'chartered,' 'adviser,' 'specialist,' 'consultant,' 'planner,' or words of similar import. NJAC 11:4-60.4 (penalties): Those who violate these rules may be subject to specified statutory penalties. The new rules are effective March 7, 2011.

<b>Lines of Business</b>	<b>Life</b>
<b>Subject Category</b>	020 - Life insurance / insurers 300 - The policy 400 - Insurance representatives 700 - Trade practices 720 - Information practices 900 - Benefit societies / assessment plan insurers 960 - Federal Law citations
<b>Status</b>	Adopted
<b>Actions</b>	New
<b>Citations Affected</b>	NJAC 11:4-60.1; NJAC 11:4-60.2; NJAC 11:4-60.3; NJAC 11:4-60.4
<b>Proposed</b>	10/04/2010
<b>Adopted</b>	02/10/2011
<b>Effective</b>	03/07/2011

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