

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).

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This chart is intended to provide readers with additional information to more easily access state statutes, regulations, bulletins or administrative rulings related to the NAIC model. Such guidance provides readers with a starting point from which they may review how each state has addressed the model and the topic being covered. The NAIC Legal Division has reviewed each state’s activity in this area and has determined whether the citation most appropriately fits in the Model Adoption column or Related State Activity column based on the definitions listed below. The NAIC’s interpretation may or may not be shared by the individual states or by interested readers.

This chart does not constitute a formal legal opinion by the NAIC staff on the provisions of state law and should not be relied upon as such. Nor does this state page reflect a determination as to whether a state meets any applicable accreditation standards. Every effort has been made to provide correct and accurate summaries to assist readers in locating useful information. Readers should consult state law for further details and for the most current information.

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KEY:

MODEL ADOPTION: States that have citations identified in this column adopted the most recent version of the NAIC model in a **substantially similar manner**. This requires states to adopt the model in its entirety but does allow for variations in style and format. States that have adopted portions of the current NAIC model will be included in this column with an explanatory note.

RELATED STATE ACTIVITY: Examples of Related State Activity include but are not limited to: older versions of the NAIC model, statutes or regulations addressing the same subject matter, or other administrative guidance such as bulletins and notices. States that have citations identified in this column **only** (and nothing listed in the Model Adoption column) have **not** adopted the most recent version of the NAIC model in a **substantially similar manner**.

NO CURRENT ACTIVITY: No state activity on the topic as of the date of the most recent update. This includes states that have repealed legislation as well as states that have never adopted legislation.

NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Alabama	ALA. ADMIN. CODE r. 830-X-3-.28 (2008) (portions of model).	
Alaska	ALASKA ADMIN. CODE tit. 3 §§ 26.820 to 26.825 (2009/2012).	
American Samoa	NO CURRENT ACTIVITY	
Arizona		BULLETIN 2008-07 (11/24/08).
Arkansas	054-00-096 ARK. CODE R. (2009).	
California		CAL. INS. CODE § 787.1 (2008/2010).
Colorado	3 COLO. CODE REGS. § 1-2-18 (2009).	
Connecticut	CONN. AGENCIES REGS. §§ 38a-432b-1 to 38a-432b-4 (2010).	CONN. GEN. STAT. § 36b-4 (2009) (similar to model).
Delaware	55-200-001 DEL. CODE REGS. § 800 (2009).	
District of Columbia	D.C. MUN. REGS. tit. 26A, §§ 5800.1 to 5801 (2010/2013).	

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NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Florida	FLA. ADMIN. CODE ANN. r. 69W-600.0133 (2009/2014).	
Georgia		GA. COMP. R. & REGS. 590-4-5-.16(3) (2011).
Guam	NO CURRENT ACTIVITY	
Hawaii	HAW. REV. STAT. ANN. § 431:10D-642 (2011).	
Idaho	NO CURRENT ACTIVITY	
Illinois	ILL. ADMIN. CODE tit. 14, § 130.855 (2009) (portions of model).	
Indiana	760 IND. ADMIN. CODE 1-79-1 to 1-79-4 (2012).	
Iowa	IOWA ADMIN. CODE r. 191-10.19 (2009).	
Kansas	KAN. ADMIN. REGS. § 40-9-23 (2010).	
Kentucky	806 KY. ADMIN. REGS. 9:020 (2011); 808 KY. ADMIN. REGS. 10:042 (2009).	
Louisiana	NO CURRENT ACTIVITY	
Maine	02-032-512 ME. CODE R. § 1 (2008).	
Maryland	MD. CODE REGS. 02.02.02.09 (2009/2011) (portions of model).	MD. CODE ANN. INS., INS. § 27-223 (2010); MD. CODE ANN., CORP. & ASSNS. § 11-305 (2009).
Massachusetts	NO CURRENT ACTIVITY	
Michigan	NO CURRENT ACTIVITY	

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NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Minnesota	MINN. STAT. § 72A.204 (2009).	
Mississippi	NO CURRENT ACTIVITY	
Missouri	MO. CODE REGS. ANN. tit. 20, § 700-1.140(6) (2009).	
Montana	MONT. ADMIN. R. 6.10.601 to 6.10.607 (2008).	
Nebraska	NO CURRENT ACTIVITY	
Nevada	NEV. ADMIN. CODE § 686A.1 to 686A.5 (2010).	
New Hampshire	N.H. CODE ADMIN. R. INS. 311.01 to 311.04 (2010).	
New Jersey	N.J. ADMIN. CODE § 49:3-52.2 (2010).	
New Mexico	N.M. CODE R. §§ 12.11.17.1 to 12.11.17.12 (2008).	
New York	N.Y. COMP. CODES R. & REGS. tit. 11, 225.0 to 225.3 (2011/2012).	
North Carolina	N.C. GEN. STAT. § 58-63-75 (2009); 11 N.C. ADMIN. CODE 12.0461 (2010).	
North Dakota		BULLETIN 2008-2 (2008).
Northern Marianas	NO CURRENT ACTIVITY	
Ohio	OHIO ADMIN. CODE 3901:5-11 (2009).	
Oklahoma	OKLA. ADMIN. CODE §§ 365:25-21-1 to 365:25-21-6 (2009).	
Oregon	OR. ADMIN. R. 836-080-0160 (2009) (portions of model).	Memorandum 9-15-2009 (2009).

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NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Pennsylvania		Notice 5-14-2011 (2011).
Puerto Rico	NO CURRENT ACTIVITY	
Rhode Island	11-5-112 R.I. CODE R. §§ 1 to 7 (2009).	
South Carolina	S.C. CODE ANN. REGS. 69-40.1 (2010).	
South Dakota	S.D. ADMIN. R. 20:08:03:07.01 (2010).	
Tennessee	TENN. COMP. R. & REGS. 0780-01-94.01 to 0780-01-94.05 (2017).	
Texas	TEX. INS. CODE ANN. § 1117 (2009).	
Utah	UTAH ADMIN. CODE r. 590-252-1 to 590-252-8 (2014).	
Vermont	VT. CODE R. 4-4-6:1 (2011).	VT. STAT. ANN. tit. 8, § 24 (2010).
Virgin Islands	NO CURRENT ACTIVITY	
Virginia	15 VA. ADMIN. CODE §§ 5-43-10 to 5-43-30 (2009).	
Washington	WASH. ADMIN. CODE 460-25A-010 to 460-25A-060 (2008).	
West Virginia	W. VA. CODE R. §§ 114-89-1 to 114-89-2 (2010).	
Wisconsin	WIS. ADMIN. CODE INS. §§ 10.01 to 10.02 (2008/2009); § 6.90 (2009/2010).	
Wyoming	62 WYO. CODE R. §§ 1 to 6 (2010).	

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Proceedings Citations

Cited to the Proceedings of the NAIC

The Life Insurance and Annuities (A) Committee discussed a new charge to “consider the development of a new model regulation on the use of senior-specific and professional designations in connection with the offer, sale or purchase of life insurance or an annuity to seniors or the provision of advice to seniors in connection with an offer, sale or purchase of life insurance or an annuity.” **2008 Proc. 2nd Quarter 6-13.**

The A Committee adopted this model during a conference call. **2008 Proc. 3rd Quarter 6-16.**

The Executive/Plenary Committee adopted this model during the 2008 Fall National Meeting. **2008 Proc. 3rd Quarter 2-1.**

Section 1. Purpose

The A Committee discussed a provision that stated that nothing in the regulation should be construed to create or imply a private cause of action for a violation of its provisions. **2008 Proc. 2nd Quarter 6-3.**

The A Committee deleted a reference in Section 1(B) which stated that a violation of the proposed model could not be construed to create or imply a private cause of action. **2008 Proc. 3rd Quarter 6-6.**

Section 2. Scope

The A Committee discussed comments submitted by an interested party. The party was concerned with limiting the scope of the model to seniors. A commissioner explained that the provisions of the model were based on the model rule adopted by the North American Securities Administrators Association (NASAA). **2008 Proc. 2nd Quarter 6-3.**

An interested party stated that the model should not be limited to senior-specific certifications and professional designations. It should apply to all designations. A commissioner acknowledged the party’s comments, but stated that the proposed model should remain focused on senior-specific certifications and professional designations. **2008 Proc. 3rd Quarter 6-6 to 6-7.**

Section 3. Authority

The A) Committee discussed the general approach of this model. This model contemplates the use of a state’s Unfair Trade Practices Act as the statutory authority. **2008 Proc. 2nd Quarter 6-3.**

Section 4. Definition

NAIC staff explained that the language for defining “senior” in the Drafting Note was based on language in S. 2794, the “Senior Investor Protection Act of 2008.” **2008 Proc. 2nd Quarter 6-3.**

The A Committee deleted the exemptions that were previously in this section. **2008 Proc. 3rd Quarter 6-6.**

A regulator asked the A Committee to consider deleting the definition of “Senior” in Section 4(C). **2008 Proc. 3rd Quarter 6-7.**

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

NAIC staff pointed out that the organizations listed in this section represented safe harbors in using a senior-specific designation or credential. If the designation or credential had been issued by one of these organizations, then it would not be presumed disqualified for use. **2008 Proc. 2nd Quarter 6-3.**

An interested party expressed concern with Section 5(D). A commissioner suggested that language from the North American Securities Administrators Association (NASAA) rule be added specifically stating that the model’s provisions do not limit the commissioner’s authority to enforce existing provisions of law. **2008 Proc. 3rd Quarter 6-7.**

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Section 5 (cont.)

A regulator asked whether the reference in Section 5(B) should be “rebuttable presumption” instead of “reasonable presumption.” A regulator questioned the language in Section 5(B)(2). Another regulator cautioned the Committee on making changes from the NASAA rule. **2008 Proc. 3rd Quarter 6-7.**

A Commissioner suggested that the A Committee delete the word “insurer” in Section 5(A)(1) and replace it with “person.” The A Committee deleted this word. **2008 Proc. 6-7.**

An interested party suggested adding language to Section 5(D). Another interested party questioned why Section 5(D) was necessary. A commissioner stated that Section 5(D) was a safe harbor for these otherwise benign titles. **2008 Proc. 3rd Quarter 6-7.**

An interested party’s comment letter urged the A Committee to delete Section 5(D). This Subsection carves out from the scope of the proposed model academic degrees from a regionally accredited college or university or job titles within an organization that is licensed or registered by a state or federal financial services regulatory agency when the academic degree or job title indicates seniority or standing within the college or university or organization or specifies an individual’s area of specialization within the college or university or organization. A commissioner acknowledged the interested party’s comments concerning the removal of insurers from within the scope of the proposed model. **2008 Proc. 3rd Quarter 6-15.**

A commissioner requested additional information from NASAA about its concerns with the inclusion of academic degrees in Section 5(D). **2008 Proc. 3rd Quarter 6-15.**

An interested party said that consistency with the NASAA rule should not be the compelling reason for the Committee not to consider changes to the proposed model that would make it stronger to protect the consumer. **2008 Proc. 3rd Quarter 6-16.**

Section 6. Effective Date

Chronological Summary of Action

Third Quarter 2008: Model adopted.