

State of Rhode Island and Providence Plantations
DEPARTMENT OF BUSINESS REGULATION
Division of Insurance
1511 Pontiac Avenue, Bldg. 69-2
Cranston, Rhode Island 02920

Public Notice of Proposed Rule-Making

Pursuant to the provisions of R.I. Gen. Laws § 27-29-1 *et seq.* and 42-14-17, and in accordance with the Administrative Procedures Act Chapter 42-35 of the General Laws, the Department of Business Regulation hereby gives notice of its intent to adopt Insurance Regulation 112 Senior Specifications.

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. The regulation is based upon the National Association of Insurance Commissioners Model with the goal of providing continuity with other states.

The proposed regulation and concise summary of non-technical amendments are available for public inspection at www.dbr.ri.gov, in person at Department of Business Regulation, 1511 Pontiac Avenue, Cranston, Rhode Island 02920, or by email edwyer@dbr.state.ri.us or by calling Elizabeth Kelleher Dwyer at (401) 462 9520.

In the development of the proposed adoption consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.

All interested parties are invited to submit written or oral comments concerning the proposed regulations by April 30, 2009 to Elizabeth Kelleher Dwyer, Department of Business Regulation, 1511 Pontiac Avenue, Cranston, Rhode Island 02920, edwyer@dbr.state.ri.us. A public hearing to consider the proposed adoption shall be held on April 30, 2009 at 10:00 a.m. at 1511 Pontiac Avenue, Cranston, Rhode Island 02920 at which time and place all persons interested therein will be heard. The room is accessible to the disabled and interpreter services for the hearing impaired will be provided if requested 48 hours prior to the hearing. Requests for this service can be made in writing or by calling (401) 462 9520 or TDD 711.

A. Michael Marques
Director, Department of Business Regulation

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INSURANCE REGULATION 112

SENIOR SPECIFICATIONS

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Section 1 *Authority*

- A. This Regulation is promulgated in accordance with R.I. Gen. Laws §§ 27-29-1 *et seq.* and 42-14-17.

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

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 *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 4 *Definitions*

As used in this Regulation:

- A. "Insurance Commissioner" or "Commissioner" means the Director of the Department of Business Regulation or his or her designee.
- B. "Insurance Producer" shall mean a person required to be licensed under the laws of this State to sell, solicit or negotiate insurance, including annuities.
- C. "Life insurance or annuity product" shall mean any policy, plan, certificate, including a fraternal benefit certificate, contract, agreement, statement of coverage, rider or endorsement which provides for life insurance or annuity benefits.

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 R.I. Gen. Laws §§ 27-29-1 *et seq.* 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 *Severability*

If any provision of this Regulation or the application thereof to any person or circumstances is held invalid or unconstitutional, the invalidity or unconstitutionality shall not affect other provisions or applications of this Regulation which can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this Regulation are severable.

Section 7 *Effective Date*

This regulation is effective as indicated below.

EFFECTIVE DATE: May 1, 2009