

**INSURANCE**

**DEPARTMENT OF BANKING AND INSURANCE**

**OFFICE OF CONSUMER PROTECTION SERVICES**

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

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

Authorized By: Douglas A. Wheeler, Director, Division of Insurance.

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

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2010-232.

Submit comments by December 3, 2010 to:

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The agency proposal follows:

**Summary**

N.J.S.A. 17B:25-36 provides that, consistent with the prohibitions upon 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, 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 an annuity. N.J.S.A. 17B:25-36 provides specific limitations on the use of such designations related to the sale of annuities. These limitations are also consistent with the Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities adopted by the National Association of Insurance Commissioners (NAIC). The Department of Banking and Insurance (Department), pursuant to N.J.S.A. 17B:30-4 and 17B:30-15, has determined that it is appropriate to apply these same limitations on the use of senior-specific designations related to the negotiation, solicitation or sale of to life insurance. The purpose of the proposed new rules is the same as that of N.J.S.A. 17B:25-36. Together, the statute and proposed new rules will help ensure that persons or entities negotiating, soliciting or selling annuities or life insurance do not mislead senior citizens or retirees as to their expertise in senior-related issues by using designations that are misleading or untrue.

Proposed N.J.A.C. 11:4-60.1 sets forth the purpose and scope of the proposed new rules.

Proposed N.J.A.C. 11:4-60.2 sets forth the definitions of terms used throughout the subchapter.

Proposed N.J.A.C. 11:4-60.3 sets forth limitations on the use of certain terms or designations by specified persons or entities in the sale, solicitation, or negotiation of life

insurance. These requirements track the restrictions set forth in N.J.S.A. 17B:25-36 as it relates to the sale, solicitation or negotiation of annuities, and are also consistent with the restrictions in the NAIC Model rule referenced above.

Specifically, the proposed rule provides that a person or entity to which the rule applies shall not use a certification, professional designation, or form of advertising expressing or implying in an untrue, deceptive, misleading or false manner 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, 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.

The rule provides that these restrictions do not apply to: (1) a title or designation conferred through an academic degree, so long as the title or designation is not used in an untrue, deceptive, misleading or false manner; 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 as set forth in the proposed new rule, so long as the title or designation is not used in an untrue, deceptive, misleading or false manner.

The proposed rule also provides that an untrue, deceptive, misleading or false use of a certification, designation, or form of advertising shall include, but not be 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; or (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.

In addition, the proposed rule provides that 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 the proposed rule if the certificate or professional designation issued to the holder does not apply primarily to sales or marketing and is accredited by the American National Standards Institute, or its successor; the National Commission for Certifying Agencies, or its successor; any organization recognized as an accrediting agency by the United States Department of Education pursuant to applicable laws; or any other organization approved by the Commissioner of Banking and Insurance (Commissioner) by rule.

Finally, the proposed rule provides that in order to determine a violation of the subchapter, the Commissioner may consider the use of one or more words, or combination of words, or acronyms representing specified words.

Proposed N.J.A.C. 11:4-60.4 sets forth the penalties for violations of the subchapter.

A 60-day comment period is provided for this notice of proposal, and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, the proposal is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

### **Social Impact**

The proposed new rules will provide the same protections currently afforded consumers with respect to the sale of annuities regarding the use of designated terms in the solicitation, negotiation or sale of life insurance. This will provide a positive social impact by helping to ensure that persons or entities engaged in the negotiation, solicitation and sale of life insurance do not use false, misleading, or untrue designations implying a level of expertise regarding senior citizen or retiree issues that does not actually exist.

### **Economic Impact**

The proposed new rules will apply the same standards and limitations that currently exist with respect to the designations used by persons or entities selling, soliciting, and negotiating annuities to the sale, solicitation and negotiation of life insurance. This will help ensure that senior citizens are not misled in their review of the potential purchase of these products and are afforded the same level of protections that are currently afforded to them in the sale of annuities pursuant to N.J.S.A. 17B:25-36. The Department does not believe that the proposed new rules will impose any undue burden on producers or insurers in that such entities are currently subject to the same restrictions with respect to the sale of annuities, and the requirements set forth in the proposed new rules reflect the requirements set forth in N.J.S.A. 17B:25-36 with respect to the sale of annuities, as well as the national standard established by the NAIC with respect to the sale of life insurance and annuities. The Department does not believe that regulated persons or entities will be required to employ additional professional services to comply with the proposed new rules. The professional services needed to comply with the proposed new rules are the same as those required to comply with N.J.S.A. 17B:25-36, and would include legal services. To

varying extents, persons and entities to which the rules apply already obtain or employ such services. To the extent that any additional costs are imposed on person or entities to which the rules apply, the Department believes that such costs are outweighed by the benefits to be achieved in consumer protection as set forth above.

### **Federal Standards Statement**

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

### **Jobs Impact**

The Department does not anticipate that any jobs will be generated or lost as a result of the proposed new rules.

The Department invites commenters to submit any data or studies on the potential jobs impact of the proposed new rules together with their comments on other aspects of the proposal.

### **Agriculture Industry Impact**

The proposed new rules will not have any impact on the agriculture industry in New Jersey.

### **Regulatory Flexibility Analysis**

The proposed new rules will apply to “small businesses,” as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. To the extent that the proposed new rules apply to small businesses, they will apply to New Jersey resident insurance producers, New

Jersey resident representatives or members of a fraternal benefit society not required to be licensed as an insurance producer, and New Jersey domestic insurers, as applicable. The new rules' compliance requirements are described in the Summary above. The economic impact on small businesses is described in the Economic Impact set forth above. As set forth therein, the Department does not believe that any significant additional costs will be imposed on regulated entities because the limitations on the use of certain designations currently applies with respect to the sale of annuities, and these proposed requirements reflect the national standard established in the NAIC Model. The Department does not believe that any additional professional services will be required to be obtained or maintained by regulated entities to comply with the proposed new rules.

The proposed new rules provide no differentiation in compliance requirements based on business size. As noted above, the goal of the proposed new rules is to afford the same levels of consumer protection regarding the use of misleading or untrue designations in the sale of life insurance as are currently applicable with respect to the sale of annuities. These goals do not vary based on business size.

### **Smart Growth Impact**

The proposed new rules will not have an impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

### **Housing Affordability Impact**

The proposed new rules will not have an impact on housing affordability in this State in that the proposed new rules relate to the selling of life insurance to consumers in this State.

### **Smart Growth Development Impact**

The proposed new rules will not have an impact on smart growth in this State and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2 or within designated centers under the State Development and Redevelopment Plan in New Jersey in that the proposed new rules relate to the selling of life insurance to consumers in this State.

**Full text** of the proposed new rules follows:

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.