

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #4

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OFFICE OF THE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Insurance Commission TITLE NUMBER: 114

CITE AUTHORITY W.Va. Code §§33-2-10 and 33-12-35

AMENDMENT TO AN EXISTING RULE: YES _____ NO X

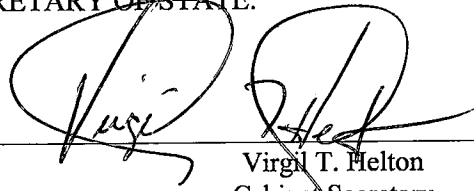
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 89

TITLE OF RULE BEING PROPOSED: Use of Senior-Specific Certifications and Professional Designations in the
Sale of Life Insurance and Annuities

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE
RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND
COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED
MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.



Virgil T. Melton
Cabinet Secretary

West Virginia Department of Revenue

**TITLE 114
LEGISLATIVE RULE
OFFICE OF THE INSURANCE COMMISSIONER**

**SERIES 89
USE OF SENIOR-SPECIFIC CERTIFICATIONS AND PROFESSIONAL
DESIGNATIONS IN THE SALE OF LIFE INSURANCE AND ANNUITIES**

Section

- 114-89-1. General.
- 114-89-2. Definition.
- 114-89-3. Prohibited Uses of Senior-Specific Certifications and Professional Designations.

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TITLE 114

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LEGISLATIVE RULE

OFFICE OF THE INSURANCE COMMISSIONER
SECRETARY OF STATE

SERIES 89

USE OF SENIOR-SPECIFIC CERTIFICATIONS AND PROFESSIONAL DESIGNATIONS IN THE SALE OF LIFE INSURANCE AND ANNUITIES

§114-89-1. General.

1.1. Purpose. -- The purpose of this rule 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.

1.2. Scope. -- This rule applies to any solicitation, sale or purchase of, or advice made in connection with, a life insurance or annuity product by an insurance producer. The rule is based on the "Model Regulation on the Use of Senior Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities (#278)," as adopted by the National Association of Insurance Commissioners in the 3rd quarter of 2008.

1.3. Authority. -- W. Va. Code §§33-2-10 and 33-12-35.

1.4. Filing Date. --

1.4. Effective Date. --

§114-89-2. Prohibited Uses of Senior-Specific Certifications and Professional Designations.

2.1. No producer may use a senior-specific certification or professional designation that indicates or implies in such a way as to mislead a purchaser or prospective purchaser to believe 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.

2.2. 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;

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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:

1. Is primarily engaged in the business of instruction in sales or marketing;
2. Does not have reasonable standards or procedures for assuring the competency of its certificants or designees;
3. Does not have reasonable standards or procedures for monitoring and disciplining its certificants or designees for improper or unethical conduct; or
4. Does not have reasonable continuing education requirements for its certificants or designees in order to maintain the certificate or designation.

2.3. There is a rebuttable presumption that a certifying or designating organization is not disqualified solely for purposes of subdivision d, subsection 2.2 of this rule 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:

- a. The American National Standards Institute (ANSI);
- b. The National Commission for Certifying Agencies; or
- c. Any organization that is on the U.S. Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes."

2.4. 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:

- a. 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
- b. The manner in which those words are combined.

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2.5. a. For purposes of this rule, 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 indicates seniority or standing within the organization or specifies an individual's area of specialization within the organization.

b. 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.