

## LIFE INSURANCE AND ANNUITIES REPLACEMENT MODEL REGULATION

### Table of Contents

Section 1.	Purpose and Scope
Section 2.	Definitions
Section 3.	Duties of Producers
Section 4.	Duties of Insurers that Use Producers
Section 5.	Duties of Replacing Insurers that Use Producers
Section 6.	Duties of the Existing Insurer
Section 7.	Duties of Insurers with Respect to Direct Response Solicitations
Section 8.	Violations and Penalties
Section 9.	Severability
Section 10.	Effective Date
Appendix A.	Important Notice Regarding Replacements
Appendix B.	Notice Regarding Replacements for Direct Response Insurers
Appendix C.	Important Notice Regarding Replacements for Direct Response Insurers

### Section 1. Purpose and Scope

- A. The purpose of this regulation is:
- (1) To regulate the activities of insurers and producers with respect to the replacement of existing life insurance and annuities.
  - (2) To protect the interests of life insurance and annuity purchasers by establishing minimum standards of conduct to be observed in replacement or financed purchase transactions. It will:
    - (a) Assure that purchasers receive information with which a decision can be made in his or her own best interest;
    - (b) Reduce the opportunity for misrepresentation and incomplete disclosure; and
    - (c) Establish penalties for failure to comply with requirements of this regulation.
- B. Unless otherwise specifically included, this regulation shall not apply to transactions involving:
- (1) Credit life insurance;
  - (2) Group life insurance or group annuities where there is no direct solicitation of individuals by an insurance producer. Direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating or enrolling individuals or, when initiated by an individual member of the group, assisting with the selection of investment options offered by a single insurer in connection with enrolling that individual. Group life insurance or group annuity certificates marketed through direct response solicitation shall be subject to the provisions of Section 7;
  - (3) Group life insurance and annuities used to fund prearranged funeral contracts;
  - (4) An application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised; or, when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the commissioner; or, when a term conversion privilege is exercised among corporate affiliates;
  - (5) Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company;

- (6) (a) Policies or contracts used to fund (i) an employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA); (ii) a plan described by Sections 401(a), 401(k) or 403(b) of the Internal Revenue Code, where the plan, for purposes of ERISA, is established or maintained by an employer; (iii) a governmental or church plan defined in Section 414, a governmental or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the Internal Revenue Code; or (iv) a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.
  - (b) Notwithstanding Subparagraph (a), this regulation shall apply to policies or contracts used to fund any plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pre-tax or after-tax basis, and where the insurer has been notified that plan participants may choose from among two (2) or more insurers and there is a direct solicitation of an individual employee by an insurance producer for the purchase of a contract or policy. As used in this subsection, direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating individuals about the plan or arrangement or enrolling individuals in the plan or arrangement or, when initiated by an individual employee, assisting with the selection of investment options offered by a single insurer in connection with enrolling that individual employee;
  - (7) Where new coverage is provided under a life insurance policy or contract and the cost is borne wholly by the insured's employer or by an association of which the insured is a member;
  - (8) Existing life insurance that is a non-convertible term life insurance policy that will expire in five (5) years or less and cannot be renewed;
  - (9) Immediate annuities that are purchased with proceeds from an existing contract. Immediate annuities purchased with proceeds from an existing policy are not exempted from the requirements of this regulation; or
  - (10) Structured settlements.
- C. Registered contracts shall be exempt from the requirements of Sections 5A(2) and 6B with respect to the provision of illustrations or policy summaries; however, premium or contract contribution amounts and identification of the appropriate prospectus or offering circular shall be required instead.

## Section 2. Definitions

- A. "Direct-response solicitation" means a solicitation through a sponsoring or endorsing entity or individually solely through mails, telephone, the Internet or other mass communication media.
- B. "Existing insurer" means the insurance company whose policy or contract is or will be changed or affected in a manner described within the definition of "replacement."
- C. "Existing policy or contract" means an individual life insurance policy (policy) or annuity contract (contract) in force, including a policy under a binding or conditional receipt or a policy or contract that is within an unconditional refund period.
- D. "Financed purchase" means the purchase of a new policy involving the actual or intended use of funds obtained by the withdrawal or surrender of, or by borrowing from values of an existing policy to pay all or part of any premium due on the new policy. For purposes of a regulatory review of an individual transaction only, if a withdrawal, surrender or borrowing involving the policy values of an existing policy is used to pay premiums on a new policy owned by the same policyholder and issued by the same company within four (4) months before or thirteen (13) months after the effective date of the new policy, it will be deemed *prima facie* evidence of the policyholder's intent to finance the purchase of the new policy with existing policy values. This *prima facie* standard is not intended to increase or decrease the monitoring obligations contained in Section 4A(5) of this regulation.

- E. “Illustration” means a presentation or depiction that includes non-guaranteed elements of a policy of life insurance over a period of years as defined in [insert reference to state law equivalent to the NAIC Life Insurance Illustrations Model Regulation].
- F. “Policy summary,” for the purposes of this regulation;
- (1) For policies or contracts other than universal life policies, means a written statement regarding a policy or contract which shall contain to the extent applicable, but need not be limited to, the following information: current death benefit; annual contract premium; current cash surrender value; current dividend; application of current dividend; and amount of outstanding loan.
  - (2) For universal life policies, means a written statement that shall contain at least the following information: the beginning and end date of the current report period; the policy value at the end of the previous report period and at the end of the current report period; the total amounts that have been credited or debited to the policy value during the current report period, identifying each by type (e.g., interest, mortality, expense and riders); the current death benefit at the end of the current report period on each life covered by the policy; the net cash surrender value of the policy as of the end of the current report period; and the amount of outstanding loans, if any, as of the end of the current report period.
- G. “Producer,” for the purpose of this regulation, shall be defined to include agents, brokers and producers.
- H. “Replacing insurer” means the insurance company that issues or proposes to issue a new policy or contract that replaces an existing policy or contract or is a financed purchase.
- I. “Registered contract” means an annuity contract or life insurance policy subject to the prospectus delivery requirements of the Securities Act of 1933.

**Drafting Note:** Registered contracts include, but are not limited to, contingent deferred annuities.

- J. “Replacement” means a transaction in which a new policy or contract is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer if there is no producer, that by reason of the transaction, an existing policy or contract has been or is to be:
- (1) Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer or otherwise terminated;
  - (2) Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;
  - (3) Amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;
  - (4) Reissued with any reduction in cash value; or
  - (5) Used in a financed purchase.
- K. “Sales material” means a sales illustration and any other written, printed or electronically presented information created, or completed or provided by the company or producer and used in the presentation to the policy or contract owner related to the policy or contract purchased.

### **Section 3. Duties of Producers**

- A. A producer who initiates an application shall submit to the insurer, with or as part of the application, a statement signed by both the applicant and the producer as to whether the applicant has existing policies or contracts. If the answer is “no,” the producer’s duties with respect to replacement are complete.

- B. If the applicant answered “yes” to the question regarding existing coverage referred to in Subsection A, the producer shall present and read to the applicant, not later than at the time of taking the application, a notice regarding replacements in the form as described in Appendix A or other substantially similar form approved by the commissioner. However, no approval shall be required when amendments to the notice are limited to the omission of references not applicable to the product being sold or replaced. The notice shall be signed by both the applicant and the producer attesting that the notice has been read aloud by the producer or that the applicant did not wish the notice to be read aloud (in which case the producer need not have read the notice aloud) and left with the applicant.
- C. The notice shall list all life insurance policies or annuities proposed to be replaced, properly identified by name of insurer, the insured or annuitant, and policy or contract number if available; and shall include a statement as to whether each policy or contract will be replaced or whether a policy will be used as a source of financing for the new policy or contract. If a policy or contract number has not been issued by the existing insurer, alternative identification, such as an application or receipt number, shall be listed.
- D. In connection with a replacement transaction the producer shall leave with the applicant at the time an application for a new policy or contract is completed the original or a copy of all sales material. With respect to electronically presented sales material, it shall be provided to the policy or contract owner in printed form no later than at the time of policy or contract delivery.
- E. Except as provided in Section 5C, in connection with a replacement transaction the producer shall submit to the insurer to which an application for a policy or contract is presented, a copy of each document required by this section, a statement identifying any preprinted or electronically presented company approved sales materials used, and copies of any individualized sales materials, including any illustrations related to the specific policy or contract purchased.

**Section 4. Duties of Insurers that Use Producers**

Each insurer shall:

- A. Maintain a system of supervision and control to insure compliance with the requirements of this regulation that shall include at least the following:
  - (1) Inform its producers of the requirements of this regulation and incorporate the requirements of this regulation into all relevant producer training manuals prepared by the insurer;
  - (2) Provide to each producer a written statement of the company’s position with respect to the acceptability of replacements providing guidance to its producer as to the appropriateness of these transactions;
  - (3) A system to review the appropriateness of each replacement transaction that the producer does not indicate is in accord with Paragraph (2) above;
  - (4) Procedures to confirm that the requirements of this regulation have been met; and
  - (5) Procedures to detect transactions that are replacements of existing policies or contracts by the existing insurer, but that have not been reported as such by the applicant or producer. Compliance with this regulation may include, but shall not be limited to, systematic customer surveys, interviews, confirmation letters, or programs of internal monitoring;
- B. Have the capacity to monitor each producer’s life insurance policy and annuity contract replacements for that insurer, and shall produce, upon request, and make such records available to the Insurance Department. The capacity to monitor shall include the ability to produce records for each producer’s:
  - (1) Life replacements, including financed purchases, as a percentage of the producer’s total annual sales for life insurance;
  - (2) Number of lapses of policies by the producer as a percentage of the producer’s total annual sales for life insurance;

- (3) Annuity contract replacements as a percentage of the producer's total annual annuity contract sales;
  - (4) Number of transactions that are unreported replacements of existing policies or contracts by the existing insurer detected by the company's monitoring system as required by Subsection A(5) of this section; and
  - (5) Replacements, indexed by replacing producer and existing insurer;
- C. Require with or as a part of each application for life insurance or an annuity a signed statement by both the applicant and the producer as to whether the applicant has existing policies or contracts;
  - D. Require with each application for life insurance or an annuity that indicates an existing policy or contract a completed notice regarding replacements as contained in Appendix A;
  - E. When the applicant has existing policies or contracts, each insurer shall be able to produce copies of any sales material required by Section 3E, the basic illustration and any supplemental illustrations related to the specific policy or contract that is purchased, and the producer's and applicant's signed statements with respect to financing and replacement for at least five (5) years after the termination or expiration of the proposed policy or contract;
  - F. Ascertain that the sales material and illustrations required by Section 3E of this regulation meet the requirements of this regulation and are complete and accurate for the proposed policy or contract;
  - G. If an application does not meet the requirements of this regulation, notify the producer and applicant and fulfill the outstanding requirements; and
  - H. Maintains records in paper, photograph, microprocess, magnetic, mechanical or electronic media or by any process that accurately reproduces the actual document.

**Section 5. Duties of Replacing Insurers that Use Producers**

- A. Where a replacement is involved in the transaction, the replacing insurer shall:
  - (1) Verify that the required forms are received and are in compliance with this regulation;
  - (2) Notify any other existing insurer that may be affected by the proposed replacement within five (5) business days of receipt of a completed application indicating replacement or when the replacement is identified if not indicated on the application, and mail a copy of the available illustration or policy summary for the proposed policy or available disclosure document for the proposed contract within five (5) business days of a request from an existing insurer;
  - (3) Be able to produce copies of the notification regarding replacement required in Section 3B, indexed by producer, for at least five (5) years or until the next regular examination by the insurance department of a company's state of domicile, whichever is later; and
  - (4) Provide to the policy or contract owner notice of the right to return the policy or contract within thirty (30) days of the delivery of the contract and receive an unconditional full refund of all premiums or considerations paid on it, including any policy fees or charges or, in the case of a variable or market value adjustment policy or contract, a payment of the cash surrender value provided under the policy or contract plus the fees and other charges deducted from the gross premiums or considerations or imposed under such policy or contract; such notice may be included in Appendix A or C.
- B. In transactions where the replacing insurer and the existing insurer are the same or subsidiaries or affiliates under common ownership or control, allow credit for the period of time that has elapsed under the replaced policy's or contract's incontestability and suicide period up to the face amount of the existing policy or contract. With regard to financed purchases, the credit may be limited to the amount the face amount of the existing policy is reduced by the use of existing policy values to fund the new policy or contract.

- C. If an insurer prohibits the use of sales material other than that approved by the company, as an alternative to the requirements made of an insurer pursuant to Section 3E, the insurer may:
- (1) Require with each application a statement signed by the producer that:
    - (a) Represents that the producer used only company-approved sales material; and
    - (b) States that copies of all sales material were left with the applicant in accordance with Section 3D; and
  - (2) Within ten (10) days of the issuance of the policy or contract:
    - (a) Notify the applicant by sending a letter or by verbal communication with the applicant by a person whose duties are separate from the marketing area of the insurer, that the producer has represented that copies of all sales material have been left with the applicant in accordance with Section 3D;
    - (b) Provide the applicant with a toll free number to contact company personnel involved in the compliance function if such is not the case; and
    - (c) Stress the importance of retaining copies of the sales material for future reference; and
  - (3) Be able to produce a copy of the letter or other verification in the policy file for at least five (5) years after the termination or expiration of the policy or contract.

**Section 6. Duties of the Existing Insurer**

Where a replacement is involved in the transaction, the existing insurer shall:

- A. Retain and be able to produce all replacement notifications received, indexed by replacing insurer, for at least five (5) years or until the conclusion of the next regular examination conducted by the Insurance Department of its state of domicile, whichever is later.
- B. Send a letter to the policy or contract owner of the right to receive information regarding the existing policy or contract values including, if available, an in force illustration or policy summary if an in force illustration cannot be produced within five (5) business days of receipt of a notice that an existing policy or contract is being replaced. The information shall be provided within five (5) business days of receipt of the request from the policy or contract owner.
- C. Upon receipt of a request to borrow, surrender or withdraw any policy values, send a notice, advising the policy owner that the release of policy values may affect the guaranteed elements, non-guaranteed elements, face amount or surrender value of the policy from which the values are released. The notice shall be sent separate from the check if the check is sent to anyone other than the policy owner. In the case of consecutive automatic premium loans, the insurer is only required to send the notice at the time of the first loan.

**Section 7. Duties of Insurers with Respect to Direct Response Solicitations**

- A. In the case of an application that is initiated as a result of a direct response solicitation, the insurer shall require, with or as part of each completed application for a policy or contract, a statement asking whether the applicant, by applying for the proposed policy or contract, intends to replace, discontinue or change an existing policy or contract. If the applicant indicates a replacement or change is not intended or if the applicant fails to respond to the statement, the insurer shall send the applicant, with the policy or contract, a notice regarding replacement in Appendix B, or other substantially similar form approved by the commissioner.

- B. If the insurer has proposed the replacement or if the applicant indicates a replacement is intended and the insurer continues with the replacement, the insurer shall:
- (1) Provide to applicants or prospective applicants with the policy or contract a notice, as described in Appendix C, or other substantially similar form approved by the commissioner. In these instances the insurer may delete the references to the producer, including the producer's signature, and references not applicable to the product being sold or replaced, without having to obtain approval of the form from the commissioner. The insurer's obligation to obtain the applicant's signature shall be satisfied if it can demonstrate that it has made a diligent effort to secure a signed copy of the notice referred to in this paragraph. The requirement to make a diligent effort shall be deemed satisfied if the insurer includes in the mailing a self-addressed postage prepaid envelope with instructions for the return of the signed notice referred to in this section; and
  - (2) Comply with the requirements of Section 5A(2), if the applicant furnishes the names of the existing insurers, and the requirements of Sections 5A(3), 5A(4) and 5B.

### **Section 8. Violations and Penalties**

- A. Any failure to comply with this regulation shall be considered a violation of [cite twisting section of state's unfair trade practices act]. Examples of violations include:
- (1) Any deceptive or misleading information set forth in sales material;
  - (2) Failing to ask the applicant in completing the application the pertinent questions regarding the possibility of financing or replacement;
  - (3) The intentional incorrect recording of an answer;
  - (4) Advising an applicant to respond negatively to any question regarding replacement in order to prevent notice to the existing insurer; or
  - (5) Advising a policy or contract owner to write directly to the company in such a way as to attempt to obscure the identity of the replacing producer or company.
- B. Policy and contract owners have the right to replace existing life insurance policies or annuity contracts after indicating in or as a part of applications for new coverage that replacement is not their intention; however, patterns of such action by policy or contract owners of the same producer shall be deemed *prima facie* evidence of the producer's knowledge that replacement was intended in connection with the identified transactions, and these patterns of action shall be deemed *prima facie* evidence of the producer's intent to violate this regulation.
- C. Where it is determined that the requirements of this regulation have not been met the replacing insurer shall provide to the policy owner an in force illustration if available or policy summary for the replacement policy or available disclosure document for the replacement contract and the appropriate notice regarding replacements in Appendix A or C.
- D. Violations of this regulation shall subject the violators to penalties that may include the revocation or suspension of a producer's or company's license, monetary fines and the forfeiture of any commissions or compensation paid to a producer as a result of the transaction in connection with which the violations occurred. In addition, where the commissioner has determined that the violations were material to the sale, the insurer may be required to make restitution, restore policy or contract values and pay interest at [insert reference to a rate set by an applicable statute or regulation] on the amount refunded in cash.

**Drafting Note:** States should consider whether they have the authority to adopt the provisions of Subsection D.

**Section 9. Severability**

If any section or portion of a section of this regulation, or its applicability to any person or circumstances, is held invalid by a court, the remainder of this regulation, or the applicability of its provisions to other persons, shall not be affected.

**Section 10. Effective Date**

This regulation shall be effective [insert date].

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*Chronological Summary of Actions (all references are to the Proceedings of the NAIC).*

1970 Proc. I 301, 345-350, 379 (adopted).  
1972 Proc. I 15, 16, 555, 606-607 (amended).  
1979 Proc. I 44, 47, 373, 554-555, 557-569 (revised and reprinted).  
1984 Proc. II 9, 19-20, 502, 502-506 (amended, renamed and reprinted).  
1998 Proc. 2<sup>nd</sup> Quarter 10-11, 13, 654, 725, 726-735 (replaced with new regulation).  
2000 Proc. 1<sup>st</sup> Quarter 9, 27, 59, 138-147 (amended and reprinted).  
2006 Proc. 2<sup>nd</sup> Quarter 39, 51-54, 321 (amended).  
2015 Proc. 1<sup>st</sup> Quarter, Vol. I 117-118, 131-134, 328, 344-350 (amended).



**APPENDIX A**

**IMPORTANT NOTICE:  
REPLACEMENT OF LIFE INSURANCE OR ANNUITIES**

This document must be signed by the applicant and the producer, if there is one,  
and a copy left with the applicant.

You are contemplating the purchase of a life insurance policy or annuity contract. In some cases this purchase may involve discontinuing or changing an existing policy or contract. If so, a replacement is occurring. Financed purchases are also considered replacements.

A replacement occurs when a new policy or contract is purchased and, in connection with the sale, you discontinue making premium payments on the existing policy or contract, or an existing policy or contract is surrendered, forfeited, assigned to the replacing insurer, or otherwise terminated or used in a financed purchase.

A financed purchase occurs when the purchase of a new life insurance policy involves the use of funds obtained by the withdrawal or surrender of or by borrowing some or all of the policy values, including accumulated dividends, of an existing policy to pay all or part of any premium or payment due on the new policy. A financed purchase is a replacement.

You should carefully consider whether a replacement is in your best interests. You will pay acquisition costs and there may be surrender costs deducted from your policy or contract. You may be able to make changes to your existing policy or contract to meet your insurance needs at less cost. A financed purchase will reduce the value of your existing policy and may reduce the amount paid upon the death of the insured.

We want you to understand the effects of replacements before you make your purchase decision and ask that you answer the following questions and consider the questions on the back of this form.

1. Are you considering discontinuing making premium payments, surrendering, forfeiting, assigning to the insurer, or otherwise terminating your existing policy or contract?    \_\_\_ YES \_\_\_ NO
2. Are you considering using funds from your existing policies or contracts to pay premiums due on the new policy or contract? \_\_\_ YES \_\_\_ NO

If you answered “yes” to either of the above questions, list each existing policy or contract you are contemplating replacing (include the name of the insurer, the insured or annuitant, and the policy or contract number if available) and whether each policy or contract will be replaced or used as a source of financing:

INSURER NAME	CONTRACT OR POLICY #	INSURED OR ANNUITANT	REPLACED (R) OR FINANCING (F)
1.			
2.			
3.			

Make sure you know the facts. Contact your existing company or its agent for information about the old policy or contract. If you request one, an in force illustration, policy summary or available disclosure documents must be sent to you by the existing insurer. Ask for and retain all sales material used by the agent in the sales presentation. Be sure that you are making an informed decision.

The existing policy or contract is being replaced because \_\_\_\_\_.

I certify that the responses herein are, to the best of my knowledge, accurate:

\_\_\_\_\_  
Applicant’s Signature and Printed Name \_\_\_\_\_  
Date

\_\_\_\_\_  
Producer’s Signature and Printed Name \_\_\_\_\_  
Date

I do not want this notice read aloud to me. \_\_\_ (Applicants must initial only if they do not want the notice read aloud.)  
Life Insurance and Annuities Replacement Model Regulation

A replacement may not be in your best interest, or your decision could be a good one. You should make a careful comparison of the costs and benefits of your existing policy or contract and the proposed policy or contract. One way to do this is to ask the company or agent that sold you your existing policy or contract to provide you with information concerning your existing policy or contract. This may include an illustration of how your existing policy or contract is working now and how it would perform in the future based on certain assumptions. Illustrations should not, however, be used as a sole basis to compare policies or contracts. You should discuss the following with your agent to determine whether replacement or financing your purchase makes sense:

- PREMIUMS:** Are they affordable?  
Could they change?  
You're older—are premiums higher for the proposed new policy?  
How long will you have to pay premiums on the new policy? On the old policy?
- POLICY VALUES:** New policies usually take longer to build cash values and to pay dividends.  
Acquisition costs for the old policy may have been paid, you will incur costs for the new one.  
What surrender charges do the policies have?  
What expense and sales charges will you pay on the new policy?  
Does the new policy provide more insurance coverage?
- INSURABILITY:** If your health has changed since you bought your old policy, the new one could cost you more, or you could be turned down.  
You may need a medical exam for a new policy.  
Claims on most new policies for up to the first two years can be denied based on inaccurate statements.  
Suicide limitations may begin anew on the new coverage.

**IF YOU ARE KEEPING THE OLD POLICY AS WELL AS THE NEW POLICY:**

- How are premiums for both policies being paid?
- How will the premiums on your existing policy be affected?
- Will a loan be deducted from death benefits?
- What values from the old policy are being used to pay premiums?

**IF YOU ARE SURRENDERING AN ANNUITY OR INTEREST SENSITIVE LIFE PRODUCT:**

- Will you pay surrender charges on your old contract?
- What are the interest rate guarantees for the new contract?
- Have you compared the contract charges or other policy expenses?

**OTHER ISSUES TO CONSIDER FOR ALL TRANSACTIONS:**

- What are the tax consequences of buying the new policy?
- Is this a tax free exchange? (See your tax advisor.)
- Is there a benefit from favorable "grandfathered" treatment of the old policy under the federal tax code?
- Will the existing insurer be willing to modify the old policy?
- How does the quality and financial stability of the new company compare with your existing company?

**APPENDIX B**

**NOTICE REGARDING REPLACEMENT  
REPLACING YOUR LIFE INSURANCE POLICY OR ANNUITY?**

Are you thinking about buying a new life insurance policy or annuity and discontinuing or changing an existing one? If you are, your decision could be a good one—or a mistake. You will not know for sure unless you make a careful comparison of your existing benefits and the proposed policy or contract's benefits.

Make sure you understand the facts. You should ask the company or agent that sold you your existing policy or contract to give you information about it.

Hear both sides before you decide. This way you can be sure you are making a decision that is in your best interest.

**APPENDIX C**

**IMPORTANT NOTICE:  
REPLACEMENT OF LIFE INSURANCE OR ANNUITIES**

You are contemplating the purchase of a life insurance policy or annuity contract. In some cases this purchase may involve discontinuing or changing an existing policy or contract. If so, a replacement is occurring. Financed purchases are also considered replacements.

A replacement occurs when a new policy or contract is purchased and, in connection with the sale, you discontinue making premium payments on the existing policy or contract, or an existing policy or contract is surrendered, forfeited, assigned to the replacing insurer, or otherwise terminated or used in a financed purchase.

A financed purchase occurs when the purchase of a new life insurance policy involves the use of funds obtained by the withdrawal or surrender of or by borrowing some or all of the policy values, including accumulated dividends, of an existing policy, to pay all or part of any premium or payment due on the new policy. A financed purchase is a replacement.

You should carefully consider whether a replacement is in your best interests. You will pay acquisition costs and there may be surrender costs deducted from your policy or contract. You may be able to make changes to your existing policy or contract to meet your insurance needs at less cost. A financed purchase will reduce the value of your existing policy and may reduce the amount paid upon the death of the insured.

We want you to understand the effects of replacements and ask that you answer the following questions and consider the questions on the back of this form.

1. Are you considering discontinuing making premium payments, surrendering, forfeiting, assigning to the insurer, or otherwise terminating your existing policy or contract?  
\_\_\_ YES \_\_\_ NO
2. Are you considering using funds from your existing policies or contracts to pay premiums due on the new policy or contract? \_\_\_ YES \_\_\_ NO

Please list each existing policy or contract you are contemplating replacing (include the name of the insurer, the insured, and the policy or contract number if available) and whether each policy or contract will be replaced or used as a source of financing:

INSURER NAME	CONTRACT OR POLICY #	INSURED OR ANNUITANT	REPLACED (R) OR FINANCING (F)
1.			
2.			
3.			

Make sure you know the facts. Contact your existing company or its agent for information about the old policy or contract. If you request one, an in force illustration, policy summary or available disclosure documents must be sent to you by the existing insurer. Ask for and retain all sales material used by the agent in the sales presentation. Be sure that you are making an informed decision.

I certify that the responses herein are, to the best of my knowledge, accurate:

\_\_\_\_\_  
Applicant's Signature and Printed Name

\_\_\_\_\_  
Date

A replacement may not be in your best interest, or your decision could be a good one. You should make a careful comparison of the costs and benefits of your existing policy or contract and the proposed policy or contract. One way to do this is to ask the company or agent that sold you your existing policy or contract to provide you with information concerning your existing policy or contract. This may include an illustration of how your existing policy or contract is working now and how it would perform in the future based on certain assumptions. Illustrations should not, however, be used as a sole basis to compare policies or contracts. You should discuss the following with your agent to determine whether replacement or financing your purchase makes sense:

**PREMIUMS:** Are they affordable?  
Could they change?  
You're older—are premiums higher for the proposed new policy?  
How long will you have to pay premiums on the new policy? On the old policy?

**POLICY VALUES:** New policies usually take longer to build cash values and to pay dividends.  
Acquisition costs for the old policy may have been paid, you will incur costs for the new one.  
What surrender charges do the policies have?  
What expense and sales charges will you pay on the new policy?  
Does the new policy provide more insurance coverage?

**INSURABILITY:** If your health has changed since you bought your old policy, the new one could cost you more, or you could be turned down.  
You may need a medical exam for a new policy.  
Claims on most new policies for up to the first two years can be denied based on inaccurate statements.  
Suicide limitations may begin anew on the new coverage.

**IF YOU ARE KEEPING THE OLD POLICY AS WELL AS THE NEW POLICY:**

How are premiums for both policies being paid?  
How will the premiums on your existing policy be affected?  
Will a loan be deducted from death benefits?  
What values from the old policy are being used to pay premiums?

**IF YOU ARE SURRENDERING AN ANNUITY OR INTEREST SENSITIVE LIFE PRODUCT:**

Will you pay surrender charges on your old contract?  
What are the interest rate guarantees for the new contract?  
Have you compared the contract charges or other policy expenses?

**OTHER ISSUES TO CONSIDER FOR ALL TRANSACTIONS:**

What are the tax consequences of buying the new policy?  
Is this a tax free exchange? (See your tax advisor.)  
Is there a benefit from favorable "grandfathered" treatment of the old policy under the federal tax code?  
Will the existing insurer be willing to modify the old policy?  
How does the quality and financial stability of the new company compare with your existing company?

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## LIFE INSURANCE AND ANNUITIES REPLACEMENT MODEL REGULATION

**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.**

**LIFE INSURANCE AND ANNUITIES REPLACEMENT MODEL REGULATION**

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**LIFE INSURANCE AND ANNUITIES REPLACEMENT MODEL REGULATION**

**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. 482-1-133-.01 to 482-1-133-.11 (2005/2008) (previous version of model).
Alaska		ALASKA ADMIN. CODE tit. 3, §§ 26.790 to 26.819 (2008/2011) (portion of model) (previous version of model).
American Samoa	NO CURRENT ACTIVITY	
Arizona		ARIZ. REV. STAT. ANN. §§ 20-1241 to 20-1241.09 (2003/2004) (Most of model and authority to adopt regulations); ARIZ. ADMIN. CODE § 20-6-215 (1983/2004) (Adopted NAIC replacement forms by reference) (previous version of model).
Arkansas		054-00-97 ARK. CODE R. § 1 to 11 (2010) (previous version of model). ARK. CODE ANN. § 23-66-307 (1987/2009); BULLETIN 8-2004 (2004); BULLETIN 8-2009 (2009); BULLETIN 1-2010 (2010).
California		CAL. INS. CODE §§ 10509 to 10509.9 (1990) (previous version of model).
Colorado		4 COLO. CODE REGS. § 1-4 (1982/2009) (previous version of model). 4 COLO. CODE REGS. § 2-1 (2001/2010).
Connecticut		CONN. AGENCIES REGS. §§ 38A-435-1 to 435-8 (2013).
Delaware		DEL. CODE REGS. tit. 18, § 1204 (1984/2003) (previous version of model).

**LIFE INSURANCE AND ANNUITIES REPLACEMENT MODEL REGULATION**

NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
District of Columbia	NO CURRENT ACTIVITY	
Florida		FLA. ADMIN. CODE ANN. r. §§ 69O-151.001 to 69O-151.012 (1981/2004) (Does not include variable life or annuities) (previous version of model).FLA. ADMIN. CODE ANN. r. §§ 69O-151.201 to 69O-151.203 (1996) (Churning); Memorandum 2010-007 (2010).
Georgia		GA. COMP. R. & REGS. 120-2-24 (1972/2007) (previous version of model).
Guam	NO CURRENT ACTIVITY	
Hawaii		HAWAII. REV. STAT. §§ 431:10D-501 to 431:10D-510 (2001/2008) (previous version of model).
Idaho		IDAHO ADMIN. CODE r.18.01.41 (1983/1993) (previous version of model).
Illinois		ILL. ADMIN. CODE tit. 50, §§ 917.20 to 917.110 (1970/2002).
Indiana		760 IND. ADMIN. CODE 1-16.1-1 to 1-16.1-13.5 (2007/2013) (previous version of model).
Iowa		IOWA ADMIN. CODE r. 191-16.21 to 191-16.30 (2000) (previous version of model). BULLETIN 2009-4 (2009).
Kansas		KAN. ADMIN. REGS. § 40-2-12 (1971/1993) (previous version of model).
Kentucky		KY. REV. STAT. ANN. § 304.12-030 (1970/2005) (Part of current model); 806 KY. ADMIN. REGS. 12:080 (1983/2006) (previous version of model). Advisory Opinion 2014-2 (2014).
Louisiana		LA. ADMIN. CODE §§ 37:XIII.8901 to 37:XIII.8925 (Regulation 70) (2000/2001) (previous version of model).
Maine		02-031 ME. CODE R. §§ 1 to 10 (2007) (previous version of model).
Maryland		MD. CODE REGS. 31.09.05.01 to 31.09.05.12 (1962/2008) (previous version of model).

**LIFE INSURANCE AND ANNUITIES REPLACEMENT MODEL REGULATION**

<b>NAIC MEMBER</b>	<b>MODEL ADOPTION</b>	<b>RELATED STATE ACTIVITY</b>
Massachusetts		211 MASS. CODE REGS. 34.01 to 34.09 (1987) (previous version of model).
Michigan		MICH. ADMIN. CODE r. 500.601 to 500.606 (1971/1984) (previous version of model).
Minnesota		MINN. STAT. §§ 61A.53 to 61A.60 (1996) (Different replacement notice) (previous version of model).
Mississippi		19-2:14 MISS. CODE R. §§ 01-13 (2012) (previous version of model).
Missouri		MO. CODE REGS. ANN. tit. 20, § 400-5.400 (1979/2003) (previous version of model).
Montana		MONT. ADMIN. R. 6.6.301 to 6.6.310 (1978/2001) (previous version of model). MONT. ADMIN. R. 33-20-105 (1959/2005).
Nebraska		210 NEB. CODE R. § 19 (1984/2008) (previous version of model). BULLETIN CB-56 (Amended) (1999).
Nevada		NEV. ADMIN. CODE §§ 686A.510 to 686A.570 (1980/2006) (previous version of model). BULLETIN 2008-007 (2008).
New Hampshire		N.H. CODE R. INS. 302.01 to 302.09 (2001/2017) (previous version of model).
New Jersey		N.J. ADMIN. CODE §§ 11:4-2.1 to 11:4-2.9 (1972/2008) (previous version of model).
New Mexico		N.M. CODE R. §§ 13.9.6.1 to 13.9.6.14 (1997/2004) (previous version of model).
New York		N.Y. ADMIN. LAW §§ 51.1 to 51.8 & Appendices 10A, 10B, 10C and 11 (Regulation 60) (1998/2003) (Some similarities to NAIC model) (previous version of model). Gen. Counsel Opinion 5-30-2006 (2006).
North Carolina		11 N.C. ADMIN. CODE 12.0601 to 12.0611 (1985/2004) (previous version of model).
North Dakota	NO CURRENT ACTIVITY	
Northern Marianas	NO CURRENT ACTIVITY	

**LIFE INSURANCE AND ANNUITIES REPLACEMENT MODEL REGULATION**

<b>NAIC MEMBER</b>	<b>MODEL ADOPTION</b>	<b>RELATED STATE ACTIVITY</b>
Ohio		OHIO ADMIN. CODE § 3901:6-05 (1983/2014) (previous version of model).
Oklahoma		OKLA. ADMIN. CODE §§ 4031 to 4038 (1983/1984).
Oregon		OR. ADMIN. R. 836-80-0001 to 836-80-0043 (1968/2005) (previous version of model).
Pennsylvania		31 PA. CODE §§ 81.1 to 81.9 (1986) (previous version of model). 40 PA. STAT. ANN. §§ 37-117 to 37-118 (1921/1996).
Puerto Rico		P.R. RULE XLII (1957).
Rhode Island		11-5 R.I. CODE R. §§ 29:1 to 29:12 (2013) (previous version of model).
South Carolina		S.C. CODE ANN. REGS. 69-12.1 (1986/2009).
South Dakota		S.D. ADMIN. R. 20:06:08:49 to 20:06:08:65 (1989/2013) (previous version of model). S.D. CODIFIED LAWS § 58-1-16 (2009) (previous version of model).
Tennessee		TENN. COMP. R. & REGS. 0780-1-24 (1985) (previous version of model).
Texas		TEX. INS. CODE ANN. §§ 1114.001 to 1114.007 (2007) (previous version of model). 28 TEX. ADMIN. CODE §§ 3.9501 to 3.9506 (2007).
Utah		UTAH ADMIN. CODE r. 590-93-1 to 590-93-12 (1984/2013) (previous version of model).
Vermont		VT. CODE R. § 2001-3 (1989/2002) (previous version of model).
Virgin Islands	NO CURRENT ACTIVITY	
Virginia		14 VA. ADMIN. CODE §§ 5-30-10 to 5-30-100 (1982/2008) (previous version of model).
Washington		WASH. ADMIN. CODE 284-23-400 to 284-23-485 (1980/1987) (previous version of model).
West Virginia		W. VA. CODE R. §§ 114-8-1 to 114-8-9 (1970/2008) (previous version of model). W. VA. CODE R. § 33-13-48 (2005) (Requires adoption of most recent NAIC model).

**LIFE INSURANCE AND ANNUITIES REPLACEMENT MODEL REGULATION**

<b>NAIC MEMBER</b>	<b>MODEL ADOPTION</b>	<b>RELATED STATE ACTIVITY</b>
Wisconsin		WIS. ADMIN. CODE INS. § 2.07 (2009) (previous version of model). BULLETIN 9-29-2009 (2009).
Wyoming		WYO. CODE R. § 12 (1986/2013) (previous version of model). MEMORANDUM 02-2013 (2013).

**LIFE INSURANCE AND ANNUITIES REPLACEMENT MODEL REGULATION**

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## LIFE INSURANCE AND ANNUITIES REPLACEMENT MODEL REGULATION

### Proceeding Citations

Cited to the Proceedings of the NAIC

#### Section 1. Purpose and Scope

When the model was initially drafted it contained only provisions regarding replacement of life insurance. Comments from several insurance departments indicated that replacement of annuities and accident and health insurance should be included in discussions for possible inclusion in the regulation. **1969 Proc. II 825.**

A. The preamble to the first draft of the regulation indicated concern over the harmful and adverse effects upon policyholders and upon the life insurance industry generally, of the increasing replacement of existing policies of life insurance. While an individual replacement may not be contrary to public interest, it becomes so when it is accomplished improperly. Although in some instances it may be to the advantage of the policyholder to lapse or surrender an existing policy of permanent life insurance and replace it with new life insurance, ordinarily it is not in the interest of the insured. **1969 Proc. II 826.**

The three main objectives the drafters of this regulation tried to accomplish were: (1) Providing the policyholder with complete and accurate information concerning all aspects of the transaction, including a comparison statement and a notice to policyholders giving advice with respect to replacement, (2) Providing that the policyholder shall receive such information in the form of written documents, and (3) Placing on the insurer and its representatives the responsibility for ascertaining that the insurer does in fact receive such information in writing and that each insurer that has a policy in place which is to be affected is advised that a replacement is contemplated and has an opportunity to comment on all information pertinent to the sale of a replacement policy. **1969 Proc. II 826.**

By 1976 members of the life insurance subcommittee had some reservations about the replacement regulation and whether it was serving its purpose. Some even suggested eliminating the regulation because it may act as a “license to steal,” or at least drastically overhauling the model. The committee suggested it was used by the professional twister and provided him with a defense in case his sales techniques were questioned. **1976 Proc. II 544.**

By the end of that year a task force had been appointed to review the regulation and, if improvement was required, to draft a replacement. The newly drafted model emphasized disclosure. The task force goal was to require the disclosure of all pertinent facts concerning the sale of new life insurance including the status of the policy subject to replacement. Timely disclosure was also made a priority. The task force favored some type of cost disclosure, but was unable to develop any formula which would be appropriate for cost comparison in replacement situations. **1977 Proc. I 611.**

An industry advisory committee was appointed and at their organizational meeting they made two decisions: (1) Replacements cannot be prohibited because of such legal principles as freedom of contract and should not be prohibited in any event since there are instances where it would benefit an insured to replace an existing policy with a new one, and (2) Replacements should be subject to regulatory disclosure standards since the transaction can be complicated and unfair trade practice can arise, and the buyer should have the benefit of all relevant and useful information about the policies involved before making a decision. **1978 Proc. I 502.**

The revised regulation adopted in 1978 differed significantly from the earlier regulation. Its provisions focused on demanding that all pertinent information be fully disclosed to the buyer in a fair and accurate manner, and provided ample time to review the information before making a final decision. This purpose differed significantly from the original regulation, the purpose of which had been to establish minimum standards of conduct to be observed. **1978 Proc. I 502.**

In 1982 a committee was again charged with the task of evaluating the replacement regulation. Concern was expressed that the existing regulation did not meet the needs of the public. In addition none of the disclosure requirements properly or adequately handled annuity policies. **1982 Proc. II 357.**

In 1997 a working group began consideration of amendments to the model regulation. The chair drew up a list of proposed amendments, which were considered over the next months. The version adopted in 1998 made few changes to Section 1. **1997 Proc. 1<sup>st</sup> Quarter 679-680.**

## LIFE INSURANCE AND ANNUITIES REPLACEMENT MODEL REGULATION

### Proceeding Citations

Cited to the Proceedings of the NAIC

#### Section 1 (cont.)

B. Some in attendance when the model was adopted felt this model should also apply to variable contracts and other equity investments. The version adopted in December of 1970 did not. The drafters felt it advisable to temporarily exclude reference to variable annuities to get the initial regulation out, and then amend it to add reference to variable products and other situations as they developed in the future. **1971 Proc. I 344.**

The section adopted in 1978 was drafted to parallel as much as possible the exemptions included in the Model Solicitation Regulation (which later was called the Life Insurance Disclosure Regulation). One of the charges to the drafters had been to make the information required to be disclosed on replacement consistent with the information required upon solicitation. The 1978 model excluded annuities and variable life policies. The drafters considered this a temporary exclusion which would be changed once disclosure requirements for those products were finalized. **1978 Proc. I 504.**

An insurance association representing the industry recommended inclusion of a provision exempting replacements within the same company from being subject to the replacement regulations. The philosophy was that the company would normally closely control its agents to eliminate abuses of the insured, and that in some cases replacement would actually be good because of new products designed by the company to improve the position of the insured. **1983 Proc. II 604.**

One insurance department comment did not agree with the idea to exempt intracompany replacements. He felt the policyholder should receive the information whether the proposed replacement was with another company or with the same company. **1983 Proc. II 610.**

When redrafting the model in 1997, there was extensive discussion about the appropriate focus for the regulation. One thing upon which there was immediate agreement was to eliminate the exemption for internal replacements. **1997 Proc. 1<sup>st</sup> Quarter 679-680.**

There was discussion over the appropriate wording for the group exemption. An industry trade association said the phrase “where there is no direct solicitation” is vague and it is difficult to decide what is direct solicitation. The chair suggested adding language to clarify that direct solicitation did not include any meeting held by producers solely for the purpose of educating or enrolling individuals. **1997 Proc. 4<sup>th</sup> Quarter 794.**

Extensive discussion took place on the exemption for group policies. The draft under consideration included an exemption for policies marketed through direct solicitation. An insurer representative said direct response carriers had always been exempt from the replacement regulation. She predicted that a change to this section would put direct response companies out of business. The policies offered are typically low face amount policies with a narrow profit margin and little underwriting. To the extent there are more regulatory requirements, sales will not be profitable. The working group decided to say that direct response writers would be subject to the requirements of Section 8. **1998 Proc. 1<sup>st</sup> Quarter 688.**

An interested party said preneed coverage was very much like credit life and asked that it also be exempted from the regulation. A regulator suggested adding a drafting note to alert states to the possibility of exempting preneed coverage. **1998 Proc. 1<sup>st</sup> Quarter 684.**

The interested party presented draft language for the regulators’ consideration. The chair responded that the original request had been limited to group preneed plans. That led the chair to believe that these were covered under the group exemption, so a drafting note was appropriate. He expressed concern about making the exemption cover individual plans too. The chair modified the industry suggestion to a form acceptable to the working group. **1998 Proc. 1<sup>st</sup> Quarter 684.**

The parent committee asked for comment on the draft regulation. A discussion occurred relative to the inclusion of annuities within the scope of the regulation. A member of the drafting group pointed out that annuities were included in the predecessor model. She opined that it was important to provide consumers with these protections during an annuity accumulation phase. **1998 Proc. 2<sup>nd</sup> Quarter II 735-736.**



## LIFE INSURANCE AND ANNUITIES REPLACEMENT MODEL REGULATION

### Proceeding Citations

Cited to the Proceedings of the NAIC

#### Section 1B (cont.)

At the instruction of the parent committee, the working group spent more time considering the model's applicability to term insurance and annuities. The chair said the prior model included annuities and had served well over the years. He noted that term insurance could not be used for a financed purchase because there was no cash value, and recommended leaving the application to term insurance as drafted. The working group members agreed with this analysis. The chair recommended deletion of reference to annuities in the definition of financed purchase, but leaving the applicability of the rest of the regulation to annuities. **1998 Proc. 2<sup>nd</sup> Quarter II 735-736.**

An exemption for corporate owned life insurance was added with the 1998 amendments. **1997 Proc. 4<sup>th</sup> Quarter 794.**

A limited exemption for variable contracts was included in the redraft, similar to the exemption that had been included in earlier versions. **1997 Proc. 2<sup>nd</sup> Quarter 652.**

A regulator questioned whether the exemption for variable products should be broader. The draft being reviewed contained a sixty-day free look, and an interested party opined that the Securities and Exchange Commission did not look kindly toward that type of provision. Canceling the policy during the free look would have to include a market value adjustment in case the market had gone down during that period. **1997 Proc. 3<sup>rd</sup> Quarter 1257.**

An interested party noted that it is not possible to meet the requirements of Section 5B for variable life insurance, and asked that it be exempted in Section 1B. The working group agreed to the suggestion. **1998 Proc. 1<sup>st</sup> Quarter 683.**

In December 1999 a state commissioner requested that the Life Insurance and Annuities Committee again be charged to review the model. She said her state was the first to adopt the revised model and as a result encountered some implementation issues that needed to be addressed. **1999 Proc. 4<sup>th</sup> Quarter 14.**

The first issue discussed by the group appointed to review the regulation was a suggestion from one state to combine the purpose and scope sections. The scope had been a Section 3 entitled "Exceptions" in the previous version of the model. The regulators agreed the exceptions flowed more easily into the first section. **2000 Proc. 1<sup>st</sup> Quarter 148.**

A drafting note in the prior version that described prepaid funeral contracts was made part of the test of the regulation so that it would become part of a state's adopted language. The term was changed from "formal prepaid funeral contracts" to "prearranged funeral contracts" because that term was more meaningful to that segment of the industry. **2000 Proc. 1<sup>st</sup> Quarter 148.**

Paragraphs (9) and (10) were added during the redraft in 2000. **2000 Proc 1<sup>st</sup> Quarter 139.**

#### Section 2. Definitions

A. The working group reviewed a suggestion from an industry trade association to add a definition of "direct response solicitation." A regulator expressed concern that the definition was too broad because it referred to a solicitation individually through the mails. The chair suggested adding the word "solely" to narrow it. **1997 Proc. 4<sup>th</sup> Quarter 794.**

D. The new draft being considered in 1997 broke out financed purchases to address the use of any of the policy values to finance a new policy of life insurance or an annuity. The chair of the working group opined that the average person does not include in the term "replacement" using the value of an existing policy to pay the premium on a new policy. **1997 Proc. 2<sup>nd</sup> Quarter 652.**

The chair noted that the definition of financed purchase was broken out separately from the definition of replacement included in the prior version. A regulator asked about the significance of the 13-month period and the chair responded that, for those who paid through an annual payment, the financing aspect might not occur until the second payment was due. **1997 Proc. 2<sup>nd</sup> Quarter 652.**

## LIFE INSURANCE AND ANNUITIES REPLACEMENT MODEL REGULATION

### Proceeding Citations

Cited to the Proceedings of the NAIC

#### Section 2D (cont.)

An insurer trade association commented that it did not believe accumulated dividends should be included in the definition of a financed purchase. The chair responded by saying that he was aware of many cases where the cost of insurance came first from accumulated dividends, but soon the policyholder was taking policy loans on cash values, perhaps without even knowing it. He said it was important to include the use of accumulated dividends in the definition of replacement. The definition needed to be broad enough to include the use of any cash accumulation. **1997 Proc. 3<sup>rd</sup> Quarter 1256-1257.**

A regulator asked why 13 month was selected as an appropriate time for the definition of financed purchase. The chair explained that, if the individual had just made an annual payment, he might not see the effect of a loan until the next payment was due. Thirteen months covers the next payment's due date plus the grace period. **1998 Proc. 1<sup>st</sup> Quarter 686.**

The parent committee asked for comment on the draft regulation. A discussion occurred relative to the inclusion of annuities within the scope of the regulation. A member of the drafting group pointed out that annuities were included in the predecessor model. She opined that it was important to provide consumers with these protections during an annuity accumulation phase. A commissioner said she was sympathetic to arguments that it would be unduly burdensome to apply the 13-month "look back" and "look forward" to annuities. An interested party said there are few financed purchases involving annuities and suggested that annuities be excluded from the definition of financed purchase. **1998 Proc. 2<sup>nd</sup> Quarter II 747.**

The parent committee requested review on the issue of whether the insurer should track the policyholder or insured during the 13-month period. The chair noted that the phrase referring to the insured could be deleted from the draft, and each state could determine if the insurer should track the insured or the policyholder. Interested parties expressed concern that they would not know whether to track the insured or policyholder until a state acted, so would have to be prepared to go either way. An informal poll of insurers showed they used a variety of tracking methods. The working group decided to insert language to track by policyowners. **1998 Proc. 2<sup>nd</sup> Quarter II 736, 747.**

In December 1999 a state commissioner requested that the Life Insurance and Annuities Committee again be charged to review the model. She said her state was the first to adopt the revised model and as a result encountered some implementation issues that needed to be addressed. **1999 Proc. 4<sup>th</sup> Quarter 14.**

A considerable amount of time during the redraft was spent on discussion of the definition of financed purchase. One regulator suggested it should apply only to internal replacements because compliance with regard to external replacements was too difficult for insurers. Another regulator expressed disagreement with the limitation, but did agree it was appropriate to limit the *prima facie* test to internal replacements. Another regulator agreed, suggesting that limiting the definition to internal replacements would eviscerate the regulation. **2000 Proc. 1<sup>st</sup> Quarter 148.**

After soliciting comments on the revised draft, the working group discussed the definition again. One regulator said the first sentence of the definition should apply to internal and external replacements. The working group agreed to revised language that did not change the intent of the subsection adopted in 1998, but addressed the concerns of those who believed the language was broader than the working group had intended. **2000 Proc. 1<sup>st</sup> Quarter 137.**

F. The working group agreed to add a definition of policy summary based on a suggestion from an industry trade association. **1998 Proc. 1<sup>st</sup> Quarter 688.**

G. The producer definition was suggested by an industry trade association. The group also suggested adding "who represents the existing or replacement insurer" at the end. The working group decided not to add that phrase because it would eliminate a producer who had left the company. **1997 Proc. 4<sup>th</sup> Quarter 794.**

J. The definition of replacement that had been originally adopted was broadened when the 1978 amendments were adopted. The decision to include more transactions was based on the recognition of the need to require full disclosure whenever values in an existing policy were significantly affected by reason of the purchase of new insurance. **1978 Proc. I 503.**

## LIFE INSURANCE AND ANNUITIES REPLACEMENT MODEL REGULATION

### Proceeding Citations

Cited to the Proceedings of the NAIC

#### Section 2J (cont.)

The definition also added a tougher standard for compelling agents to comply with its provisions. The earlier model used a standard of application to situations when an agent *knew* replacement was to take place; the amendments provided for the regulation's application if the agent *knew* or *should have known*. This enabled the commissioner to objectively apply a standard of practice that a licensed agent must follow. Consideration was given to changing the language to make the standard one where the agent *knew* or *had reason to believe* a replacement would result. That text was rejected as being too subjective, one which might create the problem of proof of the agent's state of mind. **1978 Proc. I 503.**

The definition of replacement was modified somewhat when the model was amended in 1997. Part of the earlier definition defined a replacement as subjecting the policy to a single or systemized borrowing. The model, as adopted in 1998, included a definition of a financed purchase, so replaced that description with a simple reference to a financed purchase. **1998 Proc. 2<sup>nd</sup> Quarter II 726.**

K. The regulators agreed that agents did not need to send in sales material prepared by the company. An industry representative expressed concern that the definition of sales material was very broad and could sweep in more than intended. The chair suggested tweaking the definition to make clear that it is material created by the agent; not to include, for example, estate planning materials created by an attorney for the client. The interested party said she also assumed that only information for the policy actually selected would have to be submitted. **1998 Proc. 1<sup>st</sup> Quarter 689.**

During the limited redraft in 2000, one regulator suggested changing the definition of sales material from describing material "related to the policy or contract purchased" to instead say "and which describes the benefits, features and costs of the specific policy or contract that is purchased." Other regulators were concerned that the change narrowed the definition. One regulator said he did not want to be in the position of arguing with a company as to whether a document includes benefits, features and costs. **2000 Proc. 1<sup>st</sup> Quarter 148.**

A regulator asked if literature describing a policy that applied also to other policies would be included. One responded in the affirmative and another in the negative. If two experienced regulators disagree on interpretation, there is a problem with drafting. The regulator who drafted the alternative suggestion said it was intended to clarify the language. One working group member said the original intent was that it be related to the policy purchased and expressed concern about narrowing the definition more by limiting it to benefits, features and costs. **2000 Proc. 1<sup>st</sup> Quarter 137.**

An industry representative expressed concern about privacy because the model as drafted would require the producer to forward a needs analysis to the insurer. The regulator responded that this would not be required because it did not relate to the policy or contract. The working group noted that the language in the model was a compromise when it was drafted. The working group decided to retain the language as adopted in 1998. **2000 Proc. 1<sup>st</sup> Quarter 137-138.**

#### Section 3. Duties of Producers

A. An early draft of the revisions being developed in 1997 required a replacement notice for all sales. An industry trade group recommended that the replacement notice be required only where there is existing insurance. The chair noted that the applicant should be the one to say there is no other insurance. **1997 Proc 3<sup>rd</sup> Quarter 1257.**

The model originally drafted in 1969 required the agent to complete an extensive comparison statement showing the current and proposed policies side by side. **1970 Proc. I 348-350.** A study completed for one insurance department showed the data was often incorrect or incomplete. At one point the drafters considered the suggestion of interested parties to shift the disclosure requirements to the replacing insurer. **1978 Proc. I 504-505.** The version adopted contained a requirement that the agent present the comparative information form no later than the time of taking an application. The form for preparing the information (Appendix D of the 1978 version) was even more complete and detailed than the one adopted with the original version. **1979 Proc. I 567-569.**

**LIFE INSURANCE AND ANNUITIES REPLACEMENT  
MODEL REGULATION**

**Proceeding Citations**

Cited to the Proceedings of the NAIC

**Section 3A (cont.)**

When the model was being considered for revision in 1983, foremost on the list of proposals was elimination of the comparison information form. One department suggested that the form was so difficult that agents would risk violating the rule to avoid completing the form. In most cases, information provided was not effectively used by the insured. **1983 Proc. II 609**. The requirement for a comparison statement was deleted from the model in 1983. **1984 Proc. I 375**.

A regulator asked why the 1997 redraft did not include a comparison form. The chair responded that the form had been deleted from the NAIC model in the mid-1980s, but noted that some states still have the form. He opined that the form did not really help consumers because it was too confusing. **1997 Proc. 2<sup>nd</sup> Quarter 653**.

B. The working group received a suggestion that the applicant should be relied upon to identify the sale as a replacement. The chair responded that this was folly; only those trained in the insurance industry would be able to judge whether a sale was a replacement. **1997 Proc. 3<sup>rd</sup> Quarter 1257**.

A suggestion was made to the working group to eliminate the requirement to read the notice to the applicant. A regulator said it would not be helpful if the agent read the notice very quickly and suggested there should be an opportunity to waive the reading. The working group agreed to include waiver language. **1997 Proc. 4<sup>th</sup> Quarter 794-795**.

When preparing revisions in 2000, the working group considered adding an appendix that was specific to annuities. The working group needed to consider two issues: whether to include the appendix; and if so, whether to mandate its use. **2000 Proc. 1<sup>st</sup> Quarter 148**.

The working group concluded that a better alternative would be to allow insurers to delete references that were not applicable to the product being sold without getting approval from the department. This solution was simpler and allowed insurers selling life products to also delete references to annuities. **2000 Proc. 1<sup>st</sup> Quarter 137**.

C. The redraft begun in 1997 started out with a requirement to list all policies owned by the applicant. An industry association argued that there was no benefit to listing all policies if they were not being used as financing for the replacement. The working group decided to accept the suggestion. **1997 Proc. 4<sup>th</sup> Quarter 795**.

One regulator pointed out that Subsection C was not clear about whose duty it was to prepare the list. Another regulator responded that the previous rewrite of the model had purposely left it vague because it did not seem to matter who prepared the list. **2000 Proc. 1<sup>st</sup> Quarter. 148-149**

D. A regulator suggested it was appropriate to assume electronic presentations would increase in the future and spoke in favor of requiring delivery of material that had been presented electronically. The chair suggested amending the definition of sales material to include electronically presented material and to amend Section 3D to require electronically presented sales material to be provided in printed form no later than at the time of policy delivery. One company representative said her company's electronic presentation moved, and asked if it was necessary to give the applicant a diskette. A regulator responded that if the information that moves was just cute graphics, it did not need to be placed in printed form. **1998 Proc. 1<sup>st</sup> Quarter 683**.

E. One of the major areas for discussion when the model was being rewritten in 1997 was this subsection. Early versions of the draft contained a requirement that any written or printed sales material used in the presentation be submitted to the insurer. A compromise proposal was suggested: agents should identify on the application the materials used to eliminate the problem of storing all the documents. The group decided to require the producer to identify any company approved material and submit copies of individualized sales material used. **1997 Proc. 4<sup>th</sup> Quarter 795**.

## LIFE INSURANCE AND ANNUITIES REPLACEMENT MODEL REGULATION

### Proceeding Citations

Cited to the Proceedings of the NAIC

#### Section 3 (cont.)

A regulator said she was still troubled with how a company would track all the papers. She saw this as a particularly burdensome requirement. Another regulator responded that almost every complaint received in his state on life insurance revolved around a customized sales presentation. The chair agreed that it was the most critical information to have in determining the validity of a complaint. The working group agreed to retain the provision and review the definition of sales material. **1998 Proc. 1<sup>st</sup> Quarter 689.**

The chair of the parent committee asked if the purpose of collecting sales material was to catch agents who use inappropriate sales material. The chair of the drafting group said that was part of the reason; another was to give companies and regulators the ability to respond effectively to complaints raised subsequent to the sale. Several industry representatives expressed concern about physically managing such a large volume of paper. It was stated that the definition of sales material was extremely broad. The working group chair responded that the definition had been narrowed significantly, pursuant to the insurance industry's previous comments. **1998 Proc. 2<sup>nd</sup> Quarter II 736, 747-748.**

The working group chair proposed a new Section 5C in response to concerns raised about the amount of paper an insurer would be required to store. His proposal would eliminate the responsibility of an insurer to store material if the company prohibited the use of anything other than company-approved sales material. Otherwise the company would need to comply with the provisions of Section 3E. **1998 Proc. 2<sup>nd</sup> Quarter II 736, 748.**

#### Section 4. Duties of Insurers that Use Producers

In 1973 the NAIC voted to include in its revisions to the Examiners Handbook examination procedures for life insurance replacement. The procedures included review of the method used by the company to inform its representatives of the regulation's requirements, controls set up by the company to implement agent compliance, and review of application files for evidence of compliance. **1973 Proc. II 299.**

A. As discussion on model revisions began in 1997, some regulators expressed the opinion that agent compensation was a key factor in addressing the problems with replacements. Many companies did not give a full commission on internal replacements, so agents might be tempted to circumvent that procedure by not reporting the sale as a replacement. **1997 Proc. 1<sup>st</sup> Quarter 678.**

A regulator commented that the burden should be on the insurer to supervise its agents. He wondered if the draft should say more about the agent's obligation to determine the suitability of the replacement. He suggested adding language to specifically place the burden on the insurer to make sure suitability was considered. He noted that in his state regulators often found that consumers did not understand the suitability of a replacement and sometimes the agent did not understand what was a suitable replacement. **1997 Proc. 2<sup>nd</sup> Quarter 652-653.**

The regulators agreed to include language that required the company to have a method for determining suitability and appropriateness of the replacement rather than the specific procedures required in an earlier draft. **1997 Proc. 3<sup>rd</sup> Quarter 1258.**

An industry trade group asked that Subsection A(5) and Subsection B be eliminated from the draft. These sections ask the company to maintain procedures to effectively detect transactions that are replacements. A regulator said it had not occurred to him that this information would be hard to gather. He said he thought it was essential to the company to have information about the policies that were replacements. An association spokesperson said companies did not want to keep or accumulate this information because it could be misused in anticipation of a class action lawsuit. The working group declined to eliminate the requirement. **1997 Proc. 4<sup>th</sup> Quarter 795.**

The working group was asked to consider the effective date issue. The parent committee chair said she was hesitant to place any new systems burdens on companies, given the Year 2000 problems. She asked for working group deliberation on a delayed effective date for "look back" and "look forward" provisions. **1998 Proc. 2<sup>nd</sup> Quarter II 737, 748.**

**LIFE INSURANCE AND ANNUITIES REPLACEMENT  
MODEL REGULATION**

**Proceeding Citations**

Cited to the Proceedings of the NAIC

**Section 4A (cont.)**

The chair said his state might not enforce the record-keeping requirements of the model until the year 2001, but would impose the rest of the duties imposed by the regulation as soon as it was adopted. He suggested a recommendation that, if a state was going to delay the effective date, that should only be with respect to the record-keeping requirements of Sections 5A and B. **1998 Proc. 2<sup>nd</sup> Quarter II 737.**

In December 1999 a state commissioner requested that the Life Insurance and Annuities Committee again be charged to review the model. She said her state was the first to adopt the revised model and as a result encountered some implementation issues that need to be addressed. **1999 Proc. 4<sup>th</sup> Quarter 14.**

A regulator said she had added language to Paragraph (5) because the industry wanted guidance on what kind of action would be considered compliance. The working group agreed to the change. **2000 Proc. 1<sup>st</sup> Quarter 149.**

B. The chair suggested adding a drafting note where the first record-keeping requirements appear. The drafting note would explain the media that are appropriate to meet the record-keeping requirement. He noted that the language had been borrowed from the Market Conduct Record Retention Model Act. **1998 Proc. 1<sup>st</sup> Quarter 684.**

An early draft of the 1997 rewrite of the model contained a requirement to file information about replacement activity with the insurance department. The chair opined that such a requirement would create a stack of paperwork that he was not prepared to handle. He suggested it would be appropriate for the draft regulation to require companies to maintain a system to monitor agents' compliance with the regulation. Another regulator responded that she was comfortable with that approach, and thought market conduct examiners would look at what kind of system was in place and whether it was effective. **1997 Proc. 3<sup>rd</sup> Quarter 1258.**

An industry trade association submitted an alternative proposal for Subsection B. It addressed the industry's concern that compiling records of this type of information could easily be misused in litigation matters. **1998 Proc. 1<sup>st</sup> Quarter 691.**

C. It was suggested that Subsection C be revised to delete the requirement for a complete list of policies and to replace it with a signed statement as to whether the applicant had existing policies. **1997 Proc. 4<sup>th</sup> Quarter 795.**

E. When drafting the 2000 changes, one regulator suggested changing the provision that required records to be kept in the home office of the insurer. Instead it would obligate the insurer to produce the records. One regulator expressed concern that the insurer might rely on the producer to keep the records. Another drafter responded that a decision on the part of the insurer to allow its agents to retain the records would be misguided because the insurer was still required to produce the records. The person suggesting the change said the purpose was not to allow the agents to keep the records, but to allow the company to store the records electronically or in a storage facility. **2000 Proc. 1<sup>st</sup> Quarter 149.**

A regulator suggested combining Subsections E and F from the 1998 model because there was some overlap. In response to a question about the five-year retention for the records, the chair noted that is typically the period of time between market conduct examinations. **2000 Proc. 1<sup>st</sup> Quarter 149.**

G. The early drafts of this section required the producer to fulfill any outstanding requirements. Since it did not matter whether the insurer or the producer fulfilled the requirements, the working group agreed to make a change. **1997 Proc. 4<sup>th</sup> Quarter 795.**

The drafting group considered a requirement for companies to pay normal commissions on appropriate replacements. The chair opined that the company practice of reducing commissions on replacement sales was a huge disincentive for reporting replacements. An insurer representative asked if the chair was differentiating between internal and external replacements. He said it made sense to have a reduced commission for internal replacements because no new dollars were coming in to the company and costs on the original policy might not yet have been recovered. If the replacement came from outside, it was new business to the company and a full commission would be paid. The chair responded that regulators believed that

## LIFE INSURANCE AND ANNUITIES REPLACEMENT MODEL REGULATION

### Proceeding Citations

Cited to the Proceedings of the NAIC

#### Section 4G (cont.)

generation of large first-year commissions was a motivation for many replacements. The working group could end up recommending levelized commissions. The industry representative countered that requiring first-year commissions would encourage replacement. **1997 Proc. 3<sup>rd</sup> Quarter 1258.**

An interested party asked regulators to be very careful before mandating compensation structure. He said the last time the compensation structure had been discussed was in 1981, and at that time the regulators had agreed that the compensation structure was the company's business. A regulator responded that his recollection was that a compensation structure requirement was not double, but he favored level commissions then and still does. **1997 Proc. 3<sup>rd</sup> Quarter 1258.**

H. In the 1998 redraft, the language in this subsection was a drafting note. The 2000 group redrafting the model agreed it was a good idea to include the language in the text of the regulation. **2000 Proc. 1<sup>st</sup> Quarter 149.**

#### Section 5. Duties of Replacing Insurers that Use Producers

A. In the 1978 model each company was required to give the other a copy of the policy summary or comparative information form it furnished to the buyer. This allowed all parties involved with the transaction to have the same knowledge of the basic information disclosed. It also helped pave the way for the industry to better self-regulate replacement sales. **1979 Proc. I 573.**

An early draft of the Subsection A redraft in 1997 contained a requirement that the insurer provide a copy of all sales material to the existing insurer. A trade association suggested changing this to require the company to offer a policy illustration or policy summary. **1997 Proc. 4<sup>th</sup> Quarter 795.**

An interested party asked the working group to consider a longer time period for the existing insurer to furnish a copy of an available illustration. The chair responded that with a 30-day free look period, he did not want to consider lengthening that period of time. **1998 Proc. 1<sup>st</sup> Quarter 684.**

A significant regulatory tool added to the model in 1978 was the requirement that the replacing insurer must maintain a replacement register, cross indexed by replacing agent and replaced insurer. The maintenance of this register would give companies and regulators the means to review the activities of agents who replace a significant amount of business. Specifically, it should assist in detecting and preventing "churning" of existing insurance by agents who change companies. **1979 Proc. I 573.**

The first draft of the regulation produced in 1997 contained a 60-day free look period. A regulator asked whether it was fair to expect the replaced policy to be reinstated. The chair responded that this was no problem in the case of an internal replacement, but would pose a problem if a different company was involved. This burden would be particularly difficult if the policyholder died during the 60-day period. **1997 Proc. 2<sup>nd</sup> Quarter 653.**

An actuary noted that the 60-day free look period would have reserve implications so there would be complex questions to answer with regard to the Standard Valuation Law and the Standard Nonforfeiture Law. **1997 Proc. 2<sup>nd</sup> Quarter 653.**

The 60-day free look in the draft resulted in many comments, both pro and con. One interested party opined that this gave the consumer valuable extra time, and might increase conservation efforts by the company being replaced. Another interested party expressed concern about the applicability to registered products. She opined that a consumer does not really have a "free" look if the consumer bears the risk that the market will go down during the 60-day free look. The chair suggested changing to a 30-day free look so that as much of the rule as possible could apply to variable products. **1997 Proc. 3<sup>rd</sup> Quarter 1257.**

**LIFE INSURANCE AND ANNUITIES REPLACEMENT  
MODEL REGULATION**

**Proceeding Citations**

Cited to the Proceedings of the NAIC

**Section 5 (cont.)**

At one point the draft contained a provision requiring the company to hold the commission until the end of the free-look period. An interested party said this presented an administrative nightmare and would require major systems revisions because the commission check was prepared when the policy was issued. Another interested party said only a small percentage of policies were returned and it would be easier to do the paperwork on that than to hold the commission for the other 95% or more of the policies. **1997 Proc. 3<sup>rd</sup> Quarter 1259.**

In the next draft the free-look period was reduced from 60 to 30 days. That was done because of a potential conflict with Securities and Exchange Commission (SEC) requirements. Some regulators suggested alternatives to address the SEC issue and spoke in favor of returning to the 60-day free look. **1997 Proc. 3<sup>rd</sup> Quarter 1241.**

At the next working group meeting, the issue of a 30- versus 60-day free look was discussed again. An agent's association representative said the longer period would allow an individual to ask for assistance from an expert. Several state regulators spoke in favor of the longer period, which was included in a new state regulation just adopted. An interested party pointed out that the state regulation provided for 60 days after policy *issuance*, whereas the draft measured from policy *delivery*. The chair opined that 60 days from the date of issuance was worthless because the agent might not deliver the policy during that 60-day period. **1997 Proc. 4<sup>th</sup> Quarter 805.**

As a compromise a regulator suggested leaving the free-look period blank and including a drafting note recommending 30 to 60 days. An actuary said there are actuarial implications to a longer free look. A regulator said he has never received a complaint that an individual did not have a long enough free look. The working group decided to fix the free-look period at 30 days. **1997 Proc. 4<sup>th</sup> Quarter 796.**

B. The chair asked if the replacing insurer should be required to waive its suicide and incontestability periods with respect to the amount of the policy being replaced. He said many companies already followed that policy for internal replacements and suggested it should be the rule for external replacements also. A trade association commented this was not appropriate for external replacements because it forced the company to rely on another company's underwriting. The chair agreed this put a company at risk, but this meant the company would look at the replacement more closely. **1997 Proc. 3<sup>rd</sup> Quarter 1259.**

The regulators were not persuaded by the industry argument that the replacing insurer would be required to accept the underwriting standards of the company being replaced. One regulator suggested that this would spur companies to do better underwriting. **1997 Proc. 3<sup>rd</sup> Quarter 1241.**

Representatives from the insurance industry again asked the regulators to delete Subsection B regarding the suicide and incontestability clauses. One industry representative said a savvy consumer could make a material misrepresentation and get away with it. A regulator responded that he did not know why anyone would do so; he wouldn't get anything more that he already had in the previous policy. The regulators agreed to postpone a decision and listen to arguments as to how consumers could gain from gaming the system. **1997 Proc. 4<sup>th</sup> Quarter 796.**

The chair called on an actuary to explain the industry's reluctance to include a waiver of the suicide and incontestability clauses. The actuary gave several examples where a company might be harmed. He said the company presumes in its rate structures that it will have protection during the first two years, and this provision would require the company to raise its rates for all. The chair questioned the presumption that this waiver would allow people to game the system. **1998 Proc. 1<sup>st</sup> Quarter 681.**

A regulator questioned why someone who already had coverage would hide his condition to get different coverage. He opined that a provision such as being contemplated by the working group would have protected thousands of people who replaced their policies during the 1980s and early 1990s and later had the company underwrite the policy and rescind it. **1998 Proc. 1<sup>st</sup> Quarter 682.**



## LIFE INSURANCE AND ANNUITIES REPLACEMENT MODEL REGULATION

### Proceeding Citations

Cited to the Proceedings of the NAIC

#### Section 5B (cont.)

An industry representative said this was a public policy question and he did not think regulators should encourage or facilitate misrepresentation. A regulator responded that the charge to the working group was precipitated by a level of unnecessary replacements. This provision may make companies take a long hard look at an application and may actually reduce unnecessary replacements. An interested party responded that this provision could actually encourage replacement. The industry representative agreed she would be more comfortable with a rule limited to internal replacements. **1998 Proc. 1<sup>st</sup> Quarter 682.**

Another company representative expressed concern about how to interpret this provision if life insurance replaces an annuity or if the reverse is true. He noted that most annuity contracts do not contain a suicide or incontestability clause. The chair responded that if the annuity has a suicide or incontestability clause, to the extent it has been satisfied, credit will be given. If there was no clause, there would be no credit. **1998 Proc. 1<sup>st</sup> Quarter 682.**

The working group considered several alternatives: companies could be required to give credit for the suicide and incontestability provisions met by the replaced insurer; the draft could be changed to apply to internal placement only; or the provision could be removed altogether. The group voted to make the provision applicable to internal replacements only. **1998 Proc. 1<sup>st</sup> Quarter 682.**

C. The working group chair proposed a new Section 5C in response to concerns raised about the amount of paper an insurer would be required to store. His proposal would eliminate the responsibility of an insurer to store material if the company prohibited the use of anything other than company-approved sales material. Otherwise the company would need to comply with the provisions of Section 3E. **1998 Proc. 2<sup>nd</sup> Quarter II 736, 748.**

The chair's suggestion was adopted with some modifications. The chair suggested that the policyholder contact the compliance department at a toll-free number. He clarified that the letter did not need to state that the call would go to the compliance department. **1998 Proc. 2<sup>nd</sup> Quarter II 736.**

In December 1999 a state commissioner requested that the Life Insurance and Annuities Committee again be charged to review the model. She said her state was the first to adopt the revised model and as a result encountered some implementation issues that need to be addressed. **1999 Proc. 4<sup>th</sup> Quarter 14.**

The state taking the lead on adoption of the model deleted the requirement in Subsection C(1)(b) that the producer make a list of all the sales material used. She said this did not add much consumer protection and was burdensome for the company. Another regulator said it was his experience that review of sales material was very important in market conduct examinations. Regulators would not be able to determine which consumers saw offending materials without a list and he argued for leaving the provision in the model. **2000 Proc. 1<sup>st</sup> Quarter 149.**

The regulator who spoke in favor of including the list said he had decided to support removal of the provision. He said there was not a good reason to have these lists only for replacements because it was a concern for all sales. He planned to suggest inclusion of a requirement applicable to all sales. **2000 Proc. 1<sup>st</sup> Quarter 137.**

#### Section 6. Duties of the Existing Insurer

The working group considered adding a requirement that the existing insurer should be required to reinstate policies within the free-look period. The chair opined that the existing carrier may be the wrong company to place at risk, and suggested limiting it only to instances where the existing insurer had made no conservation efforts. **1997 Proc. 3<sup>rd</sup> Quarter 1260.**

The regulator decided to delete this provision from the draft. One opined that this was an attempt to insulate the consumer from the results of his own decision. An individual who did not want to go without insurance would not cancel the first policy until he was sure he wanted the second one. Another suggested it was backward to put the burden on the company being replaced. **1997 Proc. 4<sup>th</sup> Quarter 806.**

**LIFE INSURANCE AND ANNUITIES REPLACEMENT  
MODEL REGULATION**

**Proceeding Citations**

Cited to the Proceedings of the NAIC

**Section 6 (cont.)**

The chair commented on a recent study that showed companies make very little conservation effort. He suggested that regulators will not get a handle on the replacement problem until they encourage conversation, and that the model should include a requirement for some minimal conservation effort. **1997 Proc. 4<sup>th</sup> Quarter 805.**

B. The working group discussed whether the existing insurer should be required to supply an in force illustration when it received notice of a replacement or financed sale. An industry representative expressed concern about a requirement to attempt conservation. An interested party expressed concern that policyholders would expect an in force illustration, but these could only be produced for policies issued after the effective date of the Life Insurance Illustrations Regulation [see model 582]. **1997 Proc. 3<sup>rd</sup> Quarter 1259-1260.**

A regulator said only a small number of people will look at an illustration, let alone compare two illustrations. He opined that those who requested an illustration were more likely to look at it. Another regulator said an illustration should be provided and the insurer should follow up with a phone call to see if there were any questions. The response was that this was a private contract and, if the consumer was taking the initiative to replace the policy, perhaps regulators should not interfere. **1997 Proc. 4<sup>th</sup> Quarter 805.**

The chair suggested including in the model a provision requiring the existing insurer to send a letter offering an in force illustration and a visit by an agent. A regulator responded that this approach was superior to a requirement to send an in force illustration to every one replacing because it was not cost effective to send the material without a request. An insurer representative said her association was against mandatory conservation. She suggested that the notice include information that the consumer has the right to request an illustration. A regulator opined that the agent might contradict that language and suggested it was better to get a letter after the agent went home. **1997 Proc. 4<sup>th</sup> Quarter 805-806.**

C. The chair described a sales tool where the agent obtained a check for the cash value of the policy issued by another company and suggested to the prospect that this money could be used to buy new coverage. He asked if there was a way to prove the identify of the person making a request to withdraw policy values. An interested party responded that many companies have a procedure to send a separate notice that a policy loan has been made if there has been a recent change of address. Another added that companies also send notice if the check is going to an agent rather than the policy owner. A regulator said many people did not understand they had taken out a loan and suggested sending a letter explaining the effect of a policy loan. **1997 Proc. 3<sup>rd</sup> Quarter 1258-1259.**

A regulator suggested adding another sentence at the end of Section 6C to deal with the case where consecutive automatic premium loans were being taken from the account. Her suggestion would eliminate the obligation of the insurer to send a notice every month. An interested party asked if this would also be true of systematic withdrawals from an annuity. Another interested party suggested that a notice should not be required when an abbreviated payment plan was put into effect. The chair responded that this was exactly the situation where the individual should receive notice. **1998 Proc. 1<sup>st</sup> Quarter 685.**

The parent committee adopted an amendment to add a sentence to Section 6C to address this concern. **1998 Proc. 1<sup>st</sup> Quarter 677.**

**Section 7. Duties of Insurers with Respect to Direct Response Sales**

This section was added to the 1978 model to make the regulation responsive to this form of marketing. If the direct response solicitation material did not encourage buyers to replace existing insurance, the insurer needed only send an appropriate notice regarding replacement when it sent the policy. This approach was warranted since there was no pressure being put on the buyer to replace existing insurance, as might be the case when an agent was involved in the sale of the policy. However, if the direct response solicitation material illustrated the benefits of or encouraged the reader to replace existing insurance, the insurer would be required to follow the disclosure provisions required when an agent was involved. **1978 Proc. I 506.**

## LIFE INSURANCE AND ANNUITIES REPLACEMENT MODEL REGULATION

### Proceeding Citations

Cited to the Proceedings of the NAIC

#### Section 7 (cont.)

The section was completely redrafted in 1997. Near the end of the process, comments were submitted to the working group recommending deletion of the entire section and substitution of different language. The chair said he had worked very hard to create a level playing field and it appeared to him the suggestions did damage to that concept. **1997 Proc. 4<sup>th</sup> Quarter 796.**

Another redraft was submitted by an interested party and the chair praised this version, saying it was clearer and eliminated duplicative notices. The drafter also recommended the addition of an Appendix C. **1998 Proc. 2<sup>nd</sup> Quarter II 737.**

#### Section 8. Violations and Penalties

A. The examples in this subsection were a part of the 1997 drafting effort. An industry trade association suggested deleting the examples. One interested party said agents did not need the information and the language was superfluous. A regulator asked if any of the examples were things insurers would not discuss with their agents. The industry responded that these were all examples they would discuss. The working group decided to leave the examples as part of the regulation. **1997 Proc. 4<sup>th</sup> Quarter 797.**

B. This provision created the need to establish a pattern. Some who commented on the draft suggested this was undesirable because it jeopardized taking action on a case-by-case basis. **1983 Proc. II 610.**

D. Early drafts of this section included a 10% interest rate. Several comments questioned this amount. One commissioner suggested changing the language to incorporate the statutory rate. The group voted to change the reference to the statutory rate and to make provision for states that do not have a statutory rate. **1998 Proc. 1<sup>st</sup> Quarter 687.**

One state representative commented that she had to remove the last part of Subsection D because her commissioner did not have the authority to adopt its provisions. A drafting note was added to draw this to regulators' attention. **2000 Proc. 1<sup>st</sup> Quarter 149.**

#### Section 9. Severability

#### Section 10. Effective Date

The working group reviewed the issue of whether to propose a delayed effective date for the regulation. The chair said his state would impose the duties of the rest of the regulation and only delay the record-keeping requirements to respond to Year 2000 issues. He said he felt strongly that the consumer protection portions of the model needed to be in place long before 2001. The working group decided not to include specific language in the model, but to recommend delay of only Sections 4A and B if the parent committee asked for a recommendation. **1998 Proc. 2<sup>nd</sup> Quarter II 737.**

The parent committee chair said she did not have a strong feeling about including language in the model, but asked that the minutes reflect the regulators' preference that Section 4 not be effective until at least January 1, 2001. If a company has Year 2000 problems, consumers will be harmed, so regulators should not put additional burdens on companies unrelated to Year 2000 issues. **1998 Proc. 2<sup>nd</sup> Quarter II 737.**

#### Appendix A. Important Notice Regarding Replacements

The first notice adopted in 1969 contained an extensive list of pros and cons for replacing life insurance. **1970 Proc. I 350.**

In the first major revision of the model in 1978, the requirements for notice changed to require the use of one of three alternative forms. The forms were designed for different situations and gave specific advantages and disadvantages for each situation. **1979 Proc. I 564-567.**

**LIFE INSURANCE AND ANNUITIES REPLACEMENT  
MODEL REGULATION**

**Proceeding Citations**

Cited to the Proceedings of the NAIC

**Appendix A (cont.)**

The replacement notice adopted in 1984 was designed only to suggest the buyer seek information from his existing insurer. It replaced the three more complex notices. **1984 Proc. II 505**. The proceedings containing the adopted draft failed to include a copy of the notice form, but it was the same as that presented with the draft printed a year earlier. **1983 Proc. II 608**.

When drafting of the revised regulation was nearly complete, a regulator suggested technical changes. One was to change “agent” to “producer” throughout the draft. She also suggested changing the term in the Appendix, but a regulator said consumers would know this person as an agent so that was the term to use in consumer documents. The working group agreed. **1998 Proc. 1<sup>st</sup> Quarter 685**.

**Appendix B**

**Appendix C**

When redrafting Section 7, an interested party encouraged the addition of an Appendix C. He said much of the language in Appendix A refers to producers and would be confusing in a direct response setting. The drafter suggested deleting the questions, but the working group declined to follow that suggestion. **1998 Proc. 2<sup>nd</sup> Quarter**.

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*Chronological Summary of Actions*

*December 1969: Original model adopted.*

*December 1971: Technical amendment to section no longer contained in model*

*December 1978: Extensive revision of all parts of model.*

*December 1983: Voted to eliminate comparative information form.*

*June 1984: Adopted revised model which included annuities.*

*September 1998: Adopted new model to replace earlier versions. The most significant change is coverage of internal replacements.*

*June 2000: Made a number of changes to the model to address concerns.*