

SUMMARY OF NAIC MODEL LIFE INSURANCE AND ANNUITIES REPLACEMENT REGULATION

I. APPLICATION: The replacement regulation applies to both life insurance and annuities. It imposes producer obligations with respect to internal and external replacements; insurer obligations with respect to internal and external replacements solicited through producers and through the mail, telephone, Internet or other mass communication media, and conservation by existing insurers. Replacement is defined to include any purchase of new life insurance or annuity where the producer knows or should know, or the proposing insurer if there is no producer, that existing life insurance will be in any way lapsed, surrendered or partially surrendered, assigned to the replacing insurer, or otherwise terminated; converted so as to reduce its value by use of non-forfeiture benefits or other policy or contract value; amended to reduce benefits or the term of coverage of benefits; reissued with reduction in cash value; or used in a financed purchase. A 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 a new policy.

The replacement regulation does not apply to credit life insurance; group life insurance or group annuities where there is no direct solicitation of individuals by an insurance producer or when used to fund prepaid funeral contracts; proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company; or the exercise of a contractual change or a conversion privilege; existing non-convertible term life insurance that will expire in five years or less and cannot be renewed; and policies or contracts used to fund specified employer sponsored plans.

Certain requirements of the replacement regulation, such as the requirement for signed statements with all applications when the applicant has existing life insurance policies or annuity contracts, apply even when no replacement is involved.

II. PRODUCER'S OBLIGATIONS: The replacement regulation imposes certain obligations on agents concerning internal and external replacements. Related requirements also apply to sales material used in all replacement transactions. Certain obligations also apply to all applications, including applications where no replacement is involved

A. ALL APPLICATIONS:

(1) Each agent or broker must submit to the insurer, with or as part of the application, the applicant's signed statement as to whether the applicant has existing policies or contracts. If the applicant does not have an existing policy or contract, the producer's duties with respect to replacement are complete.

(2) If the applicant does have an existing policy or contract, the agent or broker who initiated the application must present and read to the applicant, no later than at the time of taking the application, a completed and signed copy of the "Notice Regarding Replacement". This disclosure and the following procedures apply even if there is no intention to replace an existing policy or contract:

a. The notice must be signed by both the applicant and 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 and that a copy of the notice was left with the applicant.

b. The notice must be completed by listing all policies or annuities proposed to be replaced, properly identified by name of insurer, the insured or annuitant, and policy or contract number, if available, or alternative identification such as an application or receipt number. Also, the list 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 a new policy.

B. INTERNAL AND EXTERNAL REPLACEMENTS:

(1) An agent or broker must give to the applicant before taking the application a completed and signed copy of the "Notice Regarding Replacement".

(2) An agent or broker must obtain with or as part of each application a list of all existing insurance and annuities to be replaced identified by name of insurer, insured and contract number or alternative identification such as an application or receipt number.

(3) An agent or broker must leave with the applicant the original or a copy of all written or printed communications presented to the applicant and submit with each replacement application a signed statement that the producer used only insurer-approved sales material and that originals or copies of all sales material used were left with the applicant. A copy of any electronically presented material shall be provided to the policyholder in printed form no later than at the time of policy or contract delivery.

(4) An agent or broker must give the replacing insurer a completed and signed copy of the "Notice Regarding Replacement" along with the application.

III. HOME OFFICE OBLIGATIONS (REPLACING INSURER): The replacement regulation requires that all insurers inform their field representatives and compliance personnel of the replacement regulation and guidance as to the appropriateness of replacements. The regulation imposes requirements that apply to external and internal replacements, and imposes related requirements involving sales material used in replacement transactions and specified monitoring and recordkeeping requirements. Certain obligations also apply to all applications, including applications where no replacement is involved.

A. ALL APPLICATIONS:

(1) All insurers must require with each application a statement signed by both the applicant and the producer as to whether the applicant has existing policies or contracts.

(2) All insurers must require with each application where the applicant has existing policies or contracts a completed and signed copy of the "Notice Regarding Replacement", even if a replacement is not involved.

B. INTERNAL AND EXTERNAL REPLACEMENTS:

(1) The replacing insurer must maintain copies of the "Notice Regarding Replacement" and a replacement register, cross-indexed by replacing agent and existing insurer, for at least five (5) years.

(2) The replacing insurer must provide either in the policy or in the "Notice Regarding Replacement", that the applicant has a right to an unconditional refund of all premiums paid, or in the case of a variable or market value adjustment policy or contract, a payment of the cash surrender value provided under the contract plus the fees and other charges deducted from the gross premiums or considerations or imposed under such policy or contract, for thirty (30) days after delivery of the policy or contract.

(3) The replacing insurer must, within ten (10) days of policy or contract issue, notify the applicant of the following:

a. Information that the producer has represented those copies of all sales material has been left with the applicant;

b. The toll-free number by which the applicant can contact company personnel involved in the compliance function if copies of all sales material were not left with the applicant;

c. Information regarding the importance of retaining copies of the sales material for future reference.

This notification may be provided by letter or telephone. Copies of the letter or verification of the telephone communication, as the case may be, must be maintained for five (5) years after the termination of the policy or contract.

(4) For replacements involving the same company or affiliates, the replacing insurer shall allow credit for the period of time that has elapsed under the replaced policies or contract's incontestability and suicide period up to the face amount of the existing policy or contract.

C. EXTERNAL REPLACEMENTS:

(1) The replacing insurer must require with each application a completed copy of the "Notice Regarding Replacement" and a list of all the applicant's existing insurance policies or annuity contracts to be replaced. The list must identify existing insurance or annuity by name of insurer, insured and contract number or alternative identification, such as application or receipt number. Also, the list 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 a new policy.

(2) The replacing insurer must notify any existing insurer that may be affected by a proposed replacement within five business days of receipt of a completed application indicating replacement or when replacement is identified if not indicated on the application; within five (5) business days of a request from an existing insurer, the replacing insurer must also mail a copy of the available illustration or policy summary for the proposed policy containing the information included in the regulation's definition of "Policy summary" or, for an annuity, the available disclosure document for the proposed contract.

IV. HOME OFFICE OBLIGATION (EXISTING INSURER): The replacement regulation requires all insurers to inform their field representatives and compliance personnel of the requirements of the replacement regulations and provide guidance as to the appropriateness of replacements. The regulation also imposes other specific obligations on an existing insurer concerning external replacement. Certain obligations also apply to all applications, including applications where no replacement is involved.

A. ALL APPLICATIONS:

(1) All insurers must require with each application a statement signed by both the applicant and the producer as to whether the applicant has existing policies or contracts.

(2) All insurers must require with each application where the applicant has existing policies or contracts a completed and signed copy of the "Notice Regarding Replacement" even if a replacement is not involved.

B. EXTERNAL REPLACEMENTS:

- (1) Each existing insurer must send a letter to the policy or contract owner notifying the owner of the right to receive information regarding the existing policy or contract values, including, if available, an in-force illustration or policy summary, as defined in the regulation if an in-force illustration cannot be produced. The letter must be mailed within five (5) days of receiving the notice that an existing policy or contract is being replaced. The policy summary or in-force illustration shall be provided within five (5) business days of receipt of the request from the policy or contract owner.
- (2) Upon receipt of a request to borrow, surrender or withdraw policy values, the existing insurer must send the owner a notice advising that the release of policy values may affect 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 automatic premium loans, the insurer is only required to send the notice at the time of the first loan.
- (3) The existing insurer must maintain copies of all replacement notifications received, indexed by replacing insurer, for at least five (5) years.

C. INTERNAL REPLACEMENTS:

- (1) By their nature, the requirements applicable to existing insurers in the replacement regulation would not apply to internal replacements. Refer to Section III (B) for requirements imposed on replacing insurers.