#### 1200 Life Insurance and Annuities

## 1204 Replacement of Life Insurance

Published May 15, 1981; effective July 1, 1981

Amended April 15, 1984

### 1.0 Purpose

1.1 The purpose of this regulation is:

- 1.1.1 To regulate the activities of insurers, agents and brokers with respect to the replacement of existing life insurance and annuities.
- 1.1.2 To protect the interests of life insurance and annuity purchasers by establishing minimum standards to be observed in replacement transactions by:
  - 1.1.2.1 Assuring that purchasers who wish to receive information with which a decision can be made in his or her own best interest receive that information in a timely manner;
  - 1.1.2.2 Reducing the opportunity for misrepresentation and incomplete disclosures; and
  - 1.1.2.3 Establishing penalties for failure to comply with requirements of this regulation.

### 2.0 Definition of Replacement

"Replacement" means any transaction in which new life insurance or a new annuity is to be purchased, and it is known or should be known to the proposing agent or broker, or to the proposing insurer if there is no agent, that by reason of such transaction, existing life insurance or annuity has been or is to be:

- Lapsed, forfeited, surrendered, or otherwise terminated;
- 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;
- 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;
- Reissued with any reduction in cash value; or
- Pledged as collateral or subject to borrowing, whether in a single loan or under a schedule of borrowing
  over a period of time for amounts in the aggregate exceeding twenty-five percent of the loan value as
  set forth in the policy.

### 3.0 Other Definitions

"Conservation" means any attempt by the existing insurer or its agents or brokers to dissuade a policyowner from the replacement of existing life insurance or annuity. Conservation does not include such routine administrative procedures such as late payment notices or reinstatement offers.

"Direct-Response Sales" means any sale of life insurance or annuity where the insurer does not utilize an agent in the sale or delivery of the policy.

**"Existing Insurer"** means the insurance company whose policy is or will be changed or terminated in such a manner as described within the definition of "replacement."

**"Existing Life Insurance"** means any life insurance or annuity in force, including life insurance or annuity under a binding or conditional receipt or a life insurance or annuity policy that is within an unconditional refund period.

"Ledger Statement" means an informal statement of the policy cost, benefits and value as maintained by the insurer for their convenience. The format is not specified as it varies from insurer to insurer, but the statement will contain, as a minimum, the generic name of the policy, the insured's name, address, the policy number, the insurer's name and address, the face value of the policy, the current annual premium for the base policy and any riders, the current cash value, a listing of any outstanding policy loans, a list of any accumulated dividends.

**"Policy Summary"** means the concise statement of policy information as described in Regulation 1203 section 4.1.7 (Formerly Regulation 29).

"Registered Contract" means variable annuities, investment annuities or variable life insurance under which the death benefits and cash values vary in accordance with unit values of investments held in a separate

account, or any other contracts issued by life insurance companies which are registered with the Federal Securities and Exchange Commission.

"Replacing Insurer" means the insurance company that issues or proposes to issue a new policy or contract which is a replacement of existing life insurance or annuity.

### 4.0 Exemptions

- 4.1 Unless otherwise specifically included, this Regulation shall not apply to transactions involving:
  - 4.1.1 Credit Life Insurance;
  - 4.1.2 Group Life Insurance or Group Annuities;
  - 4.1.3 An application to the existing insurer that issued the existing life insurance and a contractual change or conversion privilege is being exercised;
  - 4.1.4 Transactions where the replacing insurer and the existing insurer are the same, or are subsidiaries or affiliates under common ownership or control. In such cases the agent or broker shall comply with the requirements of section 5.1.
  - 4.1.5 Registered Contracts shall be exempt from the requirements of sections 7.2 and 7.2.1 requiring provision of policy summary or ledger statement information; however, premium or contract contribution amounts and identification of the appropriate prospectus or offering circular shall be required in lieu thereof;
  - 4.1.6 Life insurance or annuity products issued in connection with a pension, profit-sharing or other benefit plan qualifying for tax deductibility of premiums, provided however, that as to any plan described in this subsection, full and complete disclosure shall be given to the administrator of any plan to be replaced;

### 5.0 Duties of Agents and Brokers

- 5.1 Each agent or broker who initiates the application shall, on the request of the prospective purchaser, furnish the Buyers Guide as described by Regulation 29 and shall submit to the insurer to which an application for life insurance or annuity is presented, with or as a part of each application:
  - 5.1.1 statement signed by the applicant as to whether the replacement of existing life insurance or annuities are involved in the transaction; and
  - 5.1.2 a signed statement as to whether the agent or broker knows replacement is or may be involved in the transaction.
- 5.2 Where replacement is involved, the agent or broker shall:
  - 5.2.1 Present to the applicant, not later than at the time of taking the application, a "Notice Regarding Replacement" (Delaware Insurance Form R, attached as Exhibit A), or other substantially similar form approved by the Commissioner. The notice shall be signed by both the applicant and the agent or broker and a copy left with the applicant.
  - 5.2.2 Obtain with or as a part of each application a list of all existing life insurance and/or annuity to be replaced, properly identified by name of insurer, the insured and contract number. If a contract number has not been assigned by the existing insurer, provide other identifying information such as an application or receipt number.
  - 5.2.3 Leave with the applicant not later than the time of the taking of the application the original or a copy of written or printed communications used for presentation to the applicant.
  - 5.2.4 Submit to the replacing insurer with the application a copy of the replacement notice provided pursuant to section 5.2.1.
- 5.3 Each agent or broker who uses written or printed communication in a conservation shall leave with the applicant the original or a copy of such materials used.
- Written or printed communication as used in this section means individualized, written or printed sales aids of all kinds. Sales aids of a general nature and handwritten notes prepared by an agent or broker at the point of sale shall not be considered written communications within the meaning of this section.

#### 6.0 Duties of All Insurers

- 6.1 Each agent shall:
  - 6.1.1 Inform its field representatives or other personnel responsible for compliance with this regulation of the requirements of this regulation.

6.1.2 Require with or as a part of each completed application for life insurance or annuity a statement signed by the applicant as to whether such proposed insurance or annuity will replace existing life insurance or annuity.

### 7.0 Duties of Insurers That Use Agents or Brokers

- 7.1 Each insurer that uses an agent of broker in a life insurance or annuity sale shall:
  - 7.1.1 Require with or as a part of each completed application for life insurance or annuity, a statement signed by the agent or broker as to whether he or she knows replacement is or may be involved in the transaction.
  - 7.1.2 Where a replacement is involved:
    - 7.1.2.1 Require from the agent or broker with the application for life insurance or annuity:
      - 7.1.2.1.1 A list of all the applicant's existing life insurance or annuities to be replaced, and
      - 7.1.2.1.2 A copy of the Replacement Notice provided the applicant pursuant to section 5.2.1. Such existing life insurance or annuity shall be identified by name of insurer, insured and contract number. If a number has not been assigned by the existing insurer, alternative identification, such as an application or receipt number, shall be listed.
    - 7.1.2.2 Send to each existing insurer a written communication advising of the replacement or proposed replacement of the policy. The communication should include the information obtained pursuant to section 7.1.2.1 above and a Summary or Ledger Statement describing the proposed new policy. This written communication shall be made within 7 working days of the date the application is received in the replacing insurer's home office, or the date the proposed life insurance policy or annuity contract is issued, whichever is sooner.
      - Amendment to section 7.1.2.2 by Bulletin No. 84-5: The amendment to Section 7(B)(2), dated June 1, 1984 is described in Bulletin No. 84-5. Prior to the June 1, 1984 amendment section 7.1.2.2 read:
- 7.2 Send to each existing insurer a written communication advising of the replacement or proposed replacement, the identification information obtained pursuant to section 7.1.2.1 and a Policy Summary or Ledger Statement containing policy data on the proposed life insurance as described by Regulation 1203 section 4.1.7 (Formerly Regulation 29). Life insurance cost index and equivalent level annual dividend figures need not be included in the policy summary or ledger statement. This written communication shall be made within 7 working days of the date the application is received in the replacing insurer's home office, or the date the proposed policy or contract is issued, whichever is sooner."
  - 7.2.1 Each existing insurer, agent or broker that undertakes a conversion shall, within 20 days of the receipt of the written communication (Notice Concerning Replacement) on which the applicant indicates a request for policy information, furnish the policyholder with a Policy Summary or Ledger Statement for the existing life insurance or annuity. Such Policy Summary or Ledger Statement shall be completed in accordance with Regulation 1203 (Formerly Regulation 29) except that information relating to premiums, cash values, death benefits and dividends, if any, shall be computed from the current policy year of the existing life insurance or annuity.
    - 7.2.1.1 The Policy Summary shall include the amount of any outstanding indebtedness, the sum of any dividend accumulations or additions, and may include any other information that is not in violation of any regulation or statute.
    - 7.2.1.2 Life insurance cost index and equivalent level annual dividend figures need not be included in the Policy Summary.
  - 7.2.2 The existing insurer may, but is not required to, furnish the information described in (3) above where the Notice Concerning Replacement (Delaware Form R, attached as Exhibit A) reflects the applicant declined to request policy information.
  - 7.2.3 The replacing insurer may request the existing insurer to furnish it with a copy of the Summary or Ledger Statement used by the existing insurer in a conservation attempt.
- 7.3 The replacing insurer shall maintain evidence of the "Notice Regarding Replacement," the Policy Summary, and any Ledger Statements used, and a replacement register, cross indexed, by replacing agent and existing insurer to be replaced. The existing insurer shall maintain evidence of Policy Summaries or Ledger Statements used in any conservation. Evidence that all requirements were met shall be maintained for at least three years or until the conclusion of the next succeeding regular examination by the Insurance Department of its state of domicile, whichever is earlier.

7.4 The replacing insurer shall provide in its policy or in a separate written notice which is delivered with the policy that the applicant has a right to an unconditional refund of all premiums paid, which right may be exercised within a period of twenty days commencing from the date of delivery of the policy.

### 8.0 Duties of Insurer with Respect to Direct Response Sales

- 8.1 If in the solicitation of a direct response sale, the insurer did not propose the replacement, and a replacement is involved, the insurer shall send to the applicant with the policy a Replacement Notice as described in Exhibit A or other substantially similar form approved by the Commissioner. Form R (Exhibit A) modified by deleting the agent's name and signature block may be used by direct response insurers without obtaining prior approval so long as the text of the notice is not modified.
- 8.2 If the insurer proposed the replacement it shall:
  - 8.2.1 Provide to applicants or prospective applicants with or as a part of the application a Replacement Notice as described in Exhibit A.
  - 8.2.2 Request from the applicant with or as a part of the application, a list of all existing life insurance or annuities to be replaced and properly identified by name of insurer and insured.
  - 8.2.3 Comply with the requirements of section 7.1.2.2, if the applicant furnishes the names of the existing insurers, and the requirements of section 7.4, except that it need not maintain a replacement register.

#### 9.0 Penalties

- 9.1 A violation of this regulation shall occur if an agent, broker or insurer recommends the replacement or conservation of an existing policy by use of a substantially inaccurate presentation or comparison of an existing contract's premiums and benefits or dividends and values, if any. Any insurer, agent, representative, officer or employee of such insurer failing to comply with the requirements of this regulation shall be subject to such penalties as may be appropriate under the Insurance Laws.
- 9.2 Patterns of action by the policyowners who purchase replacing policies from the same agent or broker after indicating on the application that no replacement was involved, shall be deemed prima facie evidence of the agent or broker's knowledge that replacement was intended in connection with the sale of those policies, and such patterns of action shall be deemed prima facie evidence of the agent or broker's intent to violate this regulation.
- 9.3 This regulation does not prohibit the use of additional material other than that which is required that is not in violation of the regulation or any other statute or regulation.

## 10.0 Severability

If any section or portion of a section of this regulation, or the applicability thereof to any person or circumstance, is held invalid by a court, the remainder of this regulation, or the applicability of such provision to other persons, shall not be affected thereby.

### 11.0 Effective Date

This regulation shall become effective on April 15, 1984.

### Exhibit A. Delaware Insurance Regulation 1204 (Formerly Regulation 30)

### NOTICE TO APPLICANT REGARDING REPLACEMENT OF LIFE INSURANCE

It is in your best interest to get all the facts before making a decision. Make sure you fully understand the proposed new policy and your existing insurance. New policies may contain provisions which limit benefits during the initial period of the contract, in particular, the suicide and incontestable clauses.

To assist you in evaluating the proposed and the existing insurance, Delaware Insurance Regulation 1204 (Formerly Regulation 30) requires that the insurer advising or recommending replacement:

Provide the consumer, not later than the date the policy or contract is delivered, with a concise summary of the policy or contract to be issued.

#### 5

# TITLE 18 INSURANCE DELAWARE ADMINISTRATIVE CODE

Allow a twenty-day period following the delivery of the policy during which time the consumer may surrender the new policy for a full refund.

Advise the present insurance company(s) of the pending replacement.

This same regulation requires your present insurer to provide, on your request, a similar summary describing your present insurance. This information will be provided if you request it using the form below.

Amendments dated June 1, 1984 by Bulletin No. 84-5 to the third and fourth paragraphs of Exhibit A: Prior to the amendment as described in Bulletin No. 84-5, the third paragraph read: "Provide the consumer with a concise summary of the policy it proposes to issue".

Prior to the amendment as described in Bulletin No. 84-5 the fourth paragraph read:

"Allow a twenty-day period for the issue of the proposed policy during which time the consumer may surrender the new policy for a full refund."

(Form appears on the next following page)

## INFORMATION ON PRESENT POLICIES

	INFORMA	ATION ON I	PRESENT POLICIE	5	
Company Name	Policy Number	Nan	ne of Insured	Summary Requested (mark yes or no)	
(continue on reverse	as required)				
	TO TERMINATE YOUR EXED IT AND FOUND IT TO BE			NEW POLICY HAS BEEN	N ISSUED AND
I have read this notice	and received a copy of it.				
Applicant's signature			Date		
Agent's signature*			Date*		
Agent's name and add	dress (printed)*		Company N	lame*	
Delaware Form R (RE	G 30) 3/15/84				

\*Direct Response Insurers may Omit Items marked by Asterisk