

211 CMR 34.00: THE REPLACEMENT OF LIFE INSURANCE AND ANNUITIES

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34.01: Purpose

The purpose of 211 CMR 34.00 is:

- (1) To regulate the activities of insurers, agents and brokers 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 transactions by:
 - (a) Assuring that purchasers receive information with which a decision can be made in his or her own best interest;
 - (b) Reducing the opportunity for misrepresentation and incomplete disclosures; and
 - (c) Establishing penalties for failure to comply with requirements of 211 CMR 34.00.

34.02: Definitions

The following words as used in 211 CMR 34.01 through 34.08, inclusive, shall, unless the context clearly requires otherwise, have the following meanings:

Conservation, any attempt by the existing insurer or its agent or broker to dissuade a policy owner from the replacement of existing life insurance or annuity. Conservation does not include routine administrative procedures such as late payment reminders, late payment offers or reinstatement offers.

Direct-response sales, 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, the insurance company whose policy is or will be changed or terminated as provided in the definition of "replacement".

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

Registered contract, variable annuities, investment annuities, 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.

Replacement, 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:

- (a) lapsed, forfeited, surrendered or otherwise terminated;
- (b) 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;
- (c) 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;

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- (d) reissued with any reduction in cash value; or
- (e) pledged as collateral or subjected to borrowing, whether in a single loan or under a schedule of borrowing over a period of time for amounts in the aggregate exceeding 25% of the loan value set forth in the policy.

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

34.03: Exemptions

- (1) Unless otherwise specifically included, 211 CMR 34.01, 34.03 through 34.08 inclusive, shall not apply to transactions involving:
 - (a) credit life insurance;
 - (b) group life insurance or group annuities;
 - (c) proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company;
 - (d) internal replacements where the replacing insurer and the existing insurer are the same, or are subsidiaries or affiliates under common ownership or control; provided, however, that agents or brokers proposing replacement shall comply with the requirements of agents who initiate the application;
 - (e) insurance paid for wholly or partly by the insured's employer or by an association of which the insured is a member, or insurance in a qualified pension, profit sharing or other benefit plan;
 - (f) life insurance policies issued in connection with a pension, profit sharing or other benefit plan qualifying for tax deductibility of premiums.
- (2) Registered contracts shall be exempt from the provisions requiring policy summary information; provided however, that premium or contract contribution amounts and identification of the appropriate prospectus or offering circular shall be required in lieu thereof.

34.04: Duties of Agents and Brokers

- (1) Each agent or broker who initiates the application shall submit to the insurer to which an application for life insurance or annuity is presented, with or as part of each application:
 - (a) a statement signed by the applicant as to whether replacement of existing life insurance or annuity is involved in the transaction; and
 - (b) a signed statement as to whether the agent or broker knows replacement is or may be involved in the transaction.
- (2) Where a replacement is involved, the agent or broker shall:
 - (a) present to the applicant, not later than at the time of taking the application, a notice regarding replacement in the following form or other substantially similar form approved by the insurance commissioner. The notice shall be signed by both the applicant and the agent or broker and left with the applicant.

IMPORTANT NOTICE REQUIRED BY THE COMMISSIONER OF INSURANCE

READ CAREFULLY BEFORE PROCEEDING

This notice is required by the Commissioner of Insurance because you have indicated that you are buying a new life insurance policy or annuity and discontinuing or changing an existing one. Such a decision could be a good one, or a mistake. You will not know for sure until you make a careful comparison of your existing policy and the proposed replacement policy. Premiums alone are not determinative of low cost. Take the time to obtain and understand the facts.

We are required by law to notify your existing company that you may be replacing their policy.

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

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Cash Value Insurance: To make a comparison of cash value policies (policies with loan or surrender values in addition to death protection), consideration must be given to each policy's cash values, premiums, coverage amounts and dividends, if any, over the life of the policy.

To simplify this task, you may wish to request from your existing insurance company and the company issuing the replacement policy yield index figures for five, ten and 20 years. The yield index is a percentage that represents an estimate of the interest rate the insurer projects you will earn on the savings portion of the cash value policy. The policy with the higher yield index will generally be the better buy.

The Yield Index Committee of the National Association of Insurance Commissioners in 1986 devised a method for calculating a yield index. In order to request this yield index information, merely check the box below and your request will be forwarded to both insurance companies.

You can also compare the cash values and/or surrender values listed in the replacing company's policy summary for the first five policy years with those in your current policy for the next five years. Low cash values or surrender values in early policy years are often the result of high expenses associated with issuing a new policy. If the replacement policy has low values in its early years, it will usually take longer for it to provide you with benefits that equal or exceed the benefits of your existing policy. In some cases, the replacement policy may never provide benefits equal to those in your present policy.

Term Insurance: If you are replacing your present insurance policy with term insurance (policies that provide death protection only), it makes sense to shop for a low cost policy. Costs for term insurance vary widely and substantial savings may be realized by comparison shopping. Premiums alone are not always determinative of low cost since some policies pay dividends and others do not. You may wish to request interest-adjusted cost indices for five, ten and 20 years from several insurance companies including your existing insurer to help you compare term insurance premiums. The policy with the lower index numbers is usually the better buy.

Please list below the identification of the policies which are involved in the replacement. Your existing insurer will be notified that you may be replacing their policy.

() Check box to request yield indices for cash value policies.

Applicant's Signature

Date

Agent's Signature

Company/Contract No.

Company/Contract No.

Company/Contract No.

(b) obtain with or as part of each application a list of all existing life insurance and annuity to be replaced identified by name of insurer, the insured and contract number. If a contract number has not been assigned by the existing insurer, alternative identification, such as an application or receipt number, shall be listed.

(c) leave with the applicant the original or a copy of written or printed communications used for presentation to the applicant.

(d) submit to the replacing insurer with the application a copy of the replacement notice; and

(3) Each agent or broker who uses written or printed communications in a conservation shall leave with the applicant the original or a copy of such materials used.

34.05: Duties of Insurers

(1) Each insurer shall:

(a) inform its representatives or other personnel responsible for compliance with 211 CMR 34.00 of the requirements of 211 CMR 34.00; and

(b) 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.

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(c) provide the yield index figures requested by the applicant pursuant to the Notice required in 211 CMR 34.04(2)(a) when electing to provide such yield index figures to applicants.

34.06: Duties of Insurers that Use Agents or Brokers

- (1) Each insurer that uses an agent or broker in a life insurance or annuity sale shall:
- (a) require with or as 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; and
 - (b) where a replacement is involved:
 - 1. require from the agent or broker with the application for life insurance or annuity
 - a. a list of all of the applicant's existing life insurance or annuity to be replaced. 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.
 - b. a copy of the replacement notice provided the applicant pursuant to 211 CMR 34.04(2)(a).
 - 2. send to each existing insurer a written communication advising of the replacement or proposed replacement and the identification information obtained, pursuant to 211 CMR 34.06(1)(b)1. and a policy summary, as defined in the Life Insurance Solicitation Regulation, 211 CMR 31.04. Cost indices and equivalent level annual dividends figures need not be included in the policy summary. This written communication shall be made within seven working days of the date the application is received in the replacing insurer's home or regional office, or the date the proposed policy or contract is issued, whichever is sooner.
 - 3. require that each existing insurer, or such insurer's agent or broker that undertakes a conservation shall, within 20 days from the date the written communication and the materials required in 211 CMR 34.06(1)(b)1. and 2. is received by the existing insurer, furnish the policy owner with a policy summary for the existing life insurance. Such policy summary shall be completed in accordance with the Life Insurance Solicitation Regulation, 211 CMR 31.04, and shall provide information relating to premiums, cash values, death benefits and dividends, if any, for at least the next five policy years. 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. Cost indices and equivalent level annual dividend figures need not be included. The replacing insurer may request the existing insurer to furnish it with a copy of the summaries, which shall be furnished within five working days of the receipt of the request.
 - (c) in the case of a replacing insurer, maintain evidence of the notice regarding replacement, the policy summary and any ledger statements used. The existing insurer shall maintain evidence of policy summaries and any 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.
 - (d) in the case of a 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 20 days commencing from the date of delivery of the policy.

34.07: Duties of Insurers with Respect to Direct Response Sales

- (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 the notice regarding replacement or other substantially similar form approved by the commissioner. In such instances the insurer may delete the last sentence and the references to signatures from such notice without having to obtain approval of the form from the commissioner.

34.07: continued

- (2) If the insurer proposed the replacement it shall:
- (a) provide to applicants or prospective applicants with or as part of the application a notice regarding replacement or other substantially similar form approved by the commissioner;
 - (b) request from the applicant with or as part of the application, a list of all existing life insurance or annuity to be replaced and properly identified by name of insurer and insured; and
 - (c) send to each existing insurer a written communication advising of the replacement or proposed replacement and the identification information obtained, pursuant to 211 CMR 34.06(1)(b)1. of an insurer's responsibility where a replacement is involved, and a policy summary as defined in the Life Insurance Solicitation Regulation, 211 CMR 31.04.
- (3) Cost indices and equivalent level annual dividend figures need not be included in the policy summary. The written communication required by 211 CMR 34.07(2)(c) shall be made within seven working days of the date the application is received in the replacing insurer's home or regional office, or the date the proposed policy or contract is issued, whichever is sooner, if the applicant furnishes the names of the existing insurers. The replacing insurer shall maintain evidence of the notice regarding replacement, the policy summary and any ledger statements used. The existing insurer shall maintain evidence of policy summaries and any 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.

34.08: Penalties

- (1) A violation of 211 CMR 34.01 through 34.08 inclusive, shall occur if an agent, broker or insurer recommends the replacement or conservation of an existing policy by use of a substantially inaccurate or incomplete presentation or comparison of an existing contract's premiums and benefits or dividends and values, if any. Any comparison of a participating policy that does not include projected dividends based upon the most recent dividend scale applicable to the participating policy shall be presumed to be an incomplete comparison in violation of 211 CMR 34.08. The above presumption shall not apply to any agent or company that has made written request for such dividend information from the company that issued the participating policy if such information is not received within seven working days of such request.
- (2) A pattern of action by a policy owner who purchases replacing policies from the same agent or broker, after indicating on applications that replacement is not involved, shall be deemed *prima facie* evidence of the agent's or broker's knowledge that replacement was intended in connection with sale of those policies, and such patterns of action shall be deemed *prima facie* evidence of the agent's or broker's intent to violate the provisions of 211 CMR 34.01 through 34.08, inclusive.
- (3) A replacement of life insurance or annuity which is not transacted pursuant to the requirements of 211 CMR 34.01 through 34.08 inclusive, is hereby defined as an unfair method of competition and unfair or deceptive acts or practices in the business of insurance.

34.09: Effective Date

211 CMR 34.00 shall become effective on July 1, 1987.

REGULATORY AUTHORITY

211 CMR 34.00: M.G.L. c. 175, § 204.

NON-TEXT PAGE