



State of New Jersey.

DEPARTMENT OF INSURANCE,

201 E. State St.
TRENTON, N.J. 08625
Trenton 08625

November 4, 1971

TO: All Life Insurance Agent Associations in New Jersey; and
All Life Insurers, including Fraternal Benefit Societies, Licensed
by the New Jersey Department of Insurance

SUBJECT: Replacement of Life Insurance Policies,

Attached is a proposed Regulation on replacement of life insurance policies.

A public hearing will be held regarding this proposed regulation by the Department of Insurance on November 24, 1971, at 2 P. M., at the Department of Insurance, 201 East State Street, Trenton, New Jersey 08625. Interested persons may present relevant statements or comments at the hearing or may submit the same in writing on or before November 24, 1971, to:

W. Morgan Shumake
Deputy Commissioner
Department of Insurance
201 East State Street
Trenton, New Jersey 08625

ROBERT L. CLIFFORD
COMMISSIONER
DEPARTMENT OF INSURANCE

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1971

STATE OF NEW JERSEY

DEPARTMENT OF INSURANCE

201 East State Street, Trenton, N. J. 08625

REPLACEMENT OF LIFE INSURANCE POLICIES

Pursuant to the authority contained in N.J.S.A. 17:1C-6(e), the following is adopted as an official Regulation of the Department of Insurance.

Section 1 - Purpose

Recognizing that it is generally not to the advantage of a policy owner to replace existing life insurance, the interest of New Jersey citizens must be safeguarded by: (a) making available to all contemplating replacement of existing life insurance full and complete disclosure of material facts upon which they may make decisions in their own best interests; (b) reducing the opportunity for misrepresentation and incomplete comparison; and (c) precluding unfair methods of competition and unfair business practices in the sale of life insurance. The disclosure requirements of this Regulation are primarily for the protection of the individual policy owner. However, replacements are also harmful to the insuring public at large, for: (1) any unamortized initial expenses on life insurance being replaced must ultimately be paid for by policy owners of the insurer which issued the original policy; (2) when the replacement reduces cash or loan values of existing life insurance, then the original insurer and its policy owners are constructively deprived of a corresponding opportunity to invest such amounts in high grade new investments at prevailing terms; and (3) the resultant deterioration of morale of the great majority of insurance agents who do not propose replacements has a bad effect on public confidence.

Section 2 - Definitions

For the purpose of this Regulation, the following definitions shall apply:

- A. "Agent" shall mean any agent, broker, solicitor, or other person licensed by the Insurance Department of this State, or any person representing an insurer for the sale of any type of life insurance as defined herein.
- B. "Insurer" shall mean any life insurance company, fraternal benefit society, association or other institution which issues life insurance as defined herein, and is subject to the supervision of the Insurance Department.
- C. "Life Insurance" or "Life Insurance Policy" or "Policy" shall mean any form of life insurance policy, annuity contract, or contract on a variable basis, unless specifically exempted in Section 3.

EXHIBIT B

NOTICE TO APPLICANTS REGARDING REPLACEMENT OF LIFE INSURANCE

THIS NOTICE IS FOR YOUR BENEFIT AND IS REQUIRED BY REGULATION.

1. If you are urged to purchase life insurance and to surrender, lapse or in any other way change the status of existing life insurance, the agent is required to give you this Notice and a written, signed Disclosure Statement. This Statement must set forth the pertinent facts of the proposal and the advantages and disadvantages to you of making the change.
2. It is to your advantage to receive the advice of the present life insurance company (Insurer) regarding the proposed replacement or change of existing policies. The Insurer to whom you are applying for the new policy is required by regulation to advise the home office of the Insurer or Insurers which sold the existing policy or policies of the proposed replacement.
3. As a general rule, it is not advantageous to drop or change existing life insurance in favor of new life insurance, whether issued by the same or a different Insurer. Some of the reasons it may be disadvantageous are:
 - (a) The amount of the annual premium under an existing policy may be lower than that called for by a new policy having the same or similar benefits. Any replacement of the same type of policy will normally be at a higher premium rate based upon the insured's then attained age.
 - (b) Since the initial costs of life insurance policies are charged against the cash value increases in the earlier policy years, the replacement of an old policy by a new one results in the policy holder sustaining the burden of these costs twice.
 - (c) The incontestable and suicide clauses begin anew in a new policy. This could result in a claim under a new policy being denied by the Insurer which would have been paid under the policy which was replaced.
 - (d) Existing policies often have more favorable provisions than new policies in such areas as settlement options and disability benefits.
 - (e) In addition to any cash value, an existing policy may have a reserve value which may be of some benefit.
 - (f) The present Insurer can often make a desired change, on terms which would be more favorable than if you replaced existing insurance with new insurance.
4. For the same reasons, it is generally not advantageous to change an existing policy to reduced paid-up or extended term insurance, or to borrow against its loan value beyond your expected ability or intention to repay in order to obtain funds for premiums on a new policy.

5. There may be a situation when a replacement is advantageous. However, for your protection, you should receive the comments of the present Insurer before arriving at a decision in this important financial matter.
6. If, in the negotiation to replace existing insurance, it is suggested by an agent or employee of the present Insurer that the existing insurance not be replaced, you are entitled to request in writing and receive directly from the person making the suggestion a written statement setting forth all the pertinent facts bearing on the advantages of the suggestion.

- D. "Replacement" shall include any transaction, unless specifically exempted in Section 3, wherein new life insurance is to be purchased and it is known or should be known to the agent, or to the insurer in the case of a direct mail or advertising solicitation, that as a part of the transaction or in consequence of it, any previously existing life insurance has been or is to be:
- (1) Lapsed or surrendered; or
 - (2) Converted into paid-up insurance, continued as extended term insurance or under another form of non-forfeiture benefit; or
 - (3) Converted otherwise so as to effect a reduction either in the amount of the existing life insurance or in the period of time the existing life insurance will continue in force; or
 - (4) Reissued with a reduction in amount or a change in form of policy, such that substantial cash values are released. "Substantial cash values" include all transactions wherein an amount in excess of 50% of the tabular cash value is to be released on one or more of the existing policies; or
 - (5) Assigned as collateral for a loan or subjected to substantial borrowing of the loan values whether in a single loan or under a schedule or series of borrowing over a period of time. "Substantial borrowing" includes all transactions wherein an amount in excess of 50% of the tabular cash value is to be borrowed on one or more existing policies.

Section 3 - Exemptions

A. This Regulation shall not apply when:

- (1) The application for the new life insurance is made under a conversion or change right or privilege provided by the same insurer which issued the existing policy; or
- (2) The new life insurance is provided under:
 - (i) a group insurance policy; or
 - (ii) a policy whose cost is borne in whole or in part by the insured's employer or by an association of which the insured is a member; or
 - (iii) policies covering employees of an employer, debtors of a creditor, or members of an association, which are distributed on a mass merchandising basis and administered by group type methods; or
 - (iv) policies 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 of all material facts shall be given to the administrator, trustee or employer of any plan to be replaced.

- (3) The existing life insurance is a non-convertible term policy with five years or less to expiry and which cannot be renewed.
- B. The requirements of this Regulation shall apply in any replacement transaction which involves annuity contracts or contracts issued on a variable basis, except for those provisions which require the completion and furnishing of a Disclosure Statement.
 - C. Procedures designed to meet the purposes of this Regulation, which are approved in advance by the Commissioner of Insurance, may be substituted for this Regulation for those cases where the insurer is not using any agents to solicit the business in question, and where all sales material is standard and printed and presented by the insurer, by direct mail or advertising.

Section 4 - Duties of Agent

- A. Each agent shall in all cases, in connection with each application for life insurance:
 - (1) Obtain with or as a part of each application and forward to the insurer not later than with the application, a statement dated and signed by the applicant as to whether the life insurance applied for will replace any existing life insurance;
 - (2) Submit to the insurer, not later than with the application, his statement, dated and signed, as to whether to the best of his knowledge replacement is involved in the transaction; and
 - (3) Obtain with or as a part of each application and forward to the insurer not later than with the application, a complete list of all the applicant's existing life insurance.
- B. In addition, in each case in which replacement is involved as indicated by either the applicant or his representative or the agent, the agent shall:
 - (1) Obtain with or as a part of each application and submit to the insurer, not later than with the application, a complete list, dated and signed by the applicant and the agent, of all existing policies which are proposed to be replaced, including the name of the insurer which issued each such policy;
 - (2) Present to and leave with the applicant for his records, not later than at the time of taking the application, a completed "Disclosure Statement" dated and signed by the agent and a "Notice to Applicants Regarding Replacement of Life Insurance", as described herein, together with copies of any sales material, whether prepared by the insurer or the agent or any other party, including any mutual fund prospectus or comparable material, utilized in effecting the sale of the new policy, all such additional material to be referred to

and identified in the "Disclosure Statement";

- (3) Obtain from the applicant his signed and dated acknowledgment of receipt of the "Disclosure Statement" and of the "Notice to Applicants Regarding Replacement of Life Insurance" and of any additional sales material described in Section 4 B (2) above; and
- (4) Submit to the insurer, not later than with the application, proof of receipt by the applicant of the completed "Disclosure Statement" and of the "Notice to Applicants Regarding Replacement of Life Insurance", together with a copy of the completed "Disclosure Statement", a copy of any individually prepared sales material and either a copy of or clear identification of all other sales material, e.g., insurer prepared illustration, mutual fund prospectus, etc., utilized in effecting the sale.

Section 5 - Duties of Insurer

A. Each insurer shall in all cases:

- (1) Require compliance by its agents and other field representatives with whom it does business, with all provisions of this Regulation; and
- (2) Require with or as a part of each application for life insurance a complete list of all the applicant's existing life insurance and the statements required under Sections 4 A (1) and 4 A (2).

B. In addition, each insurer shall, in each case in which replacement is involved:

- (1) Require with or as a part of each application a list prepared by the agent representing to the best of his knowledge all of the existing policies to be replaced;
- (2) Immediately on receipt of such an application, notify each affected insurer of the possibility of replacement, identifying the existing policy by policy number and name and current address of the insured or policy owner, and other pertinent identifying information, such as date of birth of the insured, in any case where the policy number is not immediately available;
- (3) On request of such insurer, promptly furnish a copy of the "Disclosure Statement", together with copies of any individually or insurer prepared illustrations, proposals or comparisons;
- (4) Obtain a copy of the completed "Disclosure Statement" and proof of the receipt by the applicant of the "Notice to Applicants Regarding Replacement of Life Insurance"; and also obtain copies of any individually prepared illustrations, proposals or comparisons;

- (5) Examine the "Disclosure Statement" and sales materials used, being satisfied that they meet the standards of objective disclosure of material facts as required by this Regulation; and
 - (6) Maintain copies on the premises of its home office or regional home office, of the "Disclosure Statement" and sales materials used, (or identification of such if insurer prepared or pre-printed) and any other documents necessary to comply with this Regulation, all stamped or recorded to show the date received in its home office or regional home office, for a period of 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 later.
- C. Any insurer which receives notice that its existing policy may be replaced shall maintain on the premises of its home office or regional home office, copies of any such notification, all stamped or recorded to show the date received, indexed by the name of the insurer notifying them of such replacement, for a period of at least three years, or until the conclusion of the next succeeding regular examination conducted by the Insurance Department of its state of domicile, whichever is later.
- D. Any insurer which receives a request for information required to complete a "Disclosure Statement" from a licensee of this Department together with a proper authorization from the insured shall furnish such information within a reasonable period of time.

Section 6 - Contents of "Disclosure Statement" and "Notice to Applicants
Regarding Replacement of Life Insurance"

The forms set forth in the following Exhibits A and B are the minimum required for disclosure. Where the "Disclosure Statement" is not entirely appropriate for the policy being replaced or the policy being sold, the replacing agent and the replacing insurer must assume responsibility for submitting an additional statement fulfilling the purpose of this Regulation with respect to full disclosure of all material facts affecting the policy to be replaced. The omission of certain items as to one policy because of inapplicability does not permit the omission of such items as to any other policy, if applicable to it.

Section 7 - Penalties

- A. It is anticipated that all insurers, agents, representatives, officers, or employees of such insurer or any other licensee of this Department shall comply with both the letter and spirit of this Regulation in protecting the interests of policy owners. Any deceptions or misleading information set forth in the "Disclosure Statement", the failure to ask the applicant in completing the application the pertinent questions relating to the probability of replacement, the incorrect recording of an answer, the counseling of an applicant to answer the question with respect to replacement negatively in order to prevent notice to the original insurer, or

the counseling of an applicant to write directly to the insurer in such a way as to attempt to by-pass such insurer's agency representation or obscure the identity of the replacing agent and insurer represented are specifically prohibited. Any failure to comply, or other practices which would prevent the orderly working of this Regulation in accomplishing its intended purpose in the protection of policy owners shall also be subject to such penalties as may be appropriate under the Insurance Laws of the State of New Jersey.

- B. Even though policy owners have the right to replace existing life insurance after indicating in or as a part of applications for new life insurance that such is not their intention, patterns of such action by policy owners of the same agent shall be deemed prima facie evidence of the agent's knowledge that replacement was intended in connection with such transactions, and such patterns of action shall be deemed prima facie evidence of the agent's intent to violate this Regulation.

Section 8 - Separability

If any provision of this Regulation or the application thereof to any person or circumstances shall be held invalid, the remainder of the Regulation and the application of such provision to other persons or circumstances shall not be affected thereby.

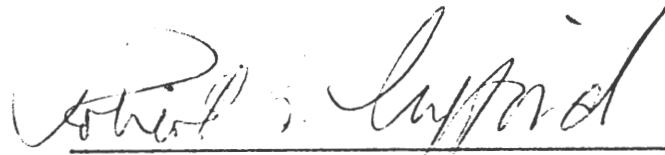
Section 9 - Repealer

This Regulation repeals and supersedes Department of Banking and Insurance Regulation No. I 1961A-1 dated September 12, 1961, effective December 1, 1961.

Section 10 - Effective Date

This Regulation shall become effective on

Dated: November 4, 1971



Robert L. Clifford
Commissioner of Insurance

If more than one existing life insurance policy is to be affected by a transaction included within the definition of a replacement contained in the Regulation, (I) the Existing Life Insurance column of a separate signed Disclosure Statement form must be completed for each such policy providing the information required by the form with respect to existing policies, and (II) a separate signed Disclosure Statement form must be completed for the proposed policy. The latter form must summarize, to the extent possible, the information concerning the existing policies set forth on the separate forms, and must include the information required in Sections 2 through 5 of the Disclosure Statement.

<u>Tabular Cash Values:</u>	<u>Existing Life Insurance</u>	<u>Proposed Life Insurance</u>
At Present	\$ _____	\$ _____
1 Year Hence	\$ _____	\$ _____
5 Years Hence	\$ _____	\$ _____
10 Years Hence	\$ _____	\$ _____
At Age ____ (Highest age shown in Cash Value Table of existing policy)	\$ _____	\$ _____
Cash Value of any existing Dividend Additions or Accumulations	\$ _____	\$ _____
Amount of Loan Now Outstanding, if any	\$ _____	- - -
Amount of Annual Loan Interest	\$ _____	_____
Date Contestable Period Expires	_____	_____
Date Suicide Clause Expires	_____	_____
<u>Dividends**</u>		
Is Policy Participating		
Annual Dividend (current scale):		
1 Year Hence	\$ _____	\$ _____
2 Years Hence	\$ _____	\$ _____
5 Years Hence	\$ _____	\$ _____
10 Years Hence	\$ _____	\$ _____
Total 10 Years	\$ _____	\$ _____

2. Advantages of Continuing the Existing Life Insurance:

(Provide Additional Space)

** Dividends are based on the 19__ dividend scale. The dividends shown are not to be construed as guarantees or estimates of dividends to be paid in the future. Dividends depend on mortality experience, investment earnings and other factors, and are determined each year in the sole discretion of the Insurer's board of directors.

The Agent is responsible for furnishing required dividend information. It is recommended that he obtain this for the policy being replaced from the Company (Insurer) issuing the original insurance. As an alternative, however, he may show dividends on closest comparable policy, amount, age and duration from current statistical manuals (interpolating where necessary), provided he has requested such information from the existing Insurer with proper authorization from the insured and has not received it within a reasonable period of time.

3. Advantages of the Proposed Replacement of the Existing Life Insurance:

4. Additional Information:

(A) The Existing Life Insurance Cannot Fulfill Your Intended Objectives for the Following Reason(s):

(B) Under the Proposal, the Existing Life Insurance Policy Will Be Treated as Follows:

5. The Primary Reason for the Proposed Replacement of the Existing Life Insurance by New Insurance is as Follows:

Date

Signature of Agent

Address

I hereby acknowledge that I received the above "Disclosure Statement" and the "Notice to Applicants Regarding Replacement of Life Insurance" before I signed the application for the proposed new insurance.

Date

Signature of Applicant