

1. To regulate the activities of insurers and producers with respect to the replacement of existing life insurance and annuities; and

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 by:

i. Assuring that a purchaser receives information with which a decision can be made in his or her own best interest;

ii. Reducing the opportunity for misrepresentation and incomplete disclosures; and

iii. Establishing penalties for failure to comply with the requirements of this subchapter.

(b) This subchapter shall apply to all replacement transactions of life insurance policies and annuities contracts issued or delivered in this State except as set forth at (c) below.

(c) Unless otherwise specifically included, this subchapter 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 N.J.A.C. 11:4-2.7;

3. Group life insurance and group annuities used to fund prearranged funeral contracts 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;

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;

5. Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company;

6. 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 of the Internal Revenue Code, a governmental or church welfare benefit plan, or a deferred compensation plan of a state or local government or a 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;

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 shall expire in five years or less and cannot be renewed;

9. Immediate annuities that are purchased with proceeds from an existing annuity contract. Immediate annuities purchased with proceeds from an existing life insurance policy are not exempted from the requirements of this subchapter; or

10. Structured settlements.

(d) Notwithstanding (c)6 above, this subchapter 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 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.

(e) Registered contracts shall be exempt from the requirements of N.J.A.C. 11:4-2.4(a)3 and 2.6(a)2 with respect to the providing of illustrations or policy summaries; however, in lieu of providing such illustrations of policy summaries, premium or contract contribution amounts and identification of the appropriate prospectus or offering circular shall be provided on such contracts.

Amended by R.2004 d.414, effective November 1, 2004 (operative January 30, 2005).

See: 36 N.J.R. 2147(a), 36 N.J.R. 4930(a).

Rewrote the section.

11:4-2.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

“Affiliate” means the term as defined in N.J.S.A. 17:27A-1a.

“Annuity” means the term as defined in N.J.S.A. 17B:17-5.

“Contract” means an annuity contract.

“Direct-response solicitation” means a solicitation through a sponsoring or endorsing entity or individually solely through mail, telephone, the Internet or other mass communication media.

“Existing insurer” means the insurance company whose policy or contract is or shall be changed or affected in a manner described within the definition of “replacement.”

“Existing policy or contract” means an individual life insurance policy or annuity contract in force, including a policy under a binding or conditional receipt or a policy or contract, that is within an unconditional refund period.

“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 the purposes of a regulatory review of an individual transaction only, if the proceeds from a withdrawal, surrender or borrowing involving the policy values of an existing policy are used to pay premiums on a new policy owned by the same policyholder and issued by the same company within four months before and 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 N.J.A.C. 11:4-2.5(a)5.

“Illustration” means a presentation or depiction that includes non-guaranteed elements of a policy of life insurance over a period of years as defined at N.J.A.C. 11:4-5.2.

“Life insurance” means the term as defined at N.J.S.A. 17B:17-3.

“Policy” means a life insurance policy.

“Policy summary” means:

1. For policies or contracts other than universal life policies, a written statement regarding a policy or contract that shall contain to the extent applicable, but need not be limited to, the following information:

- i. Current death benefit;
- ii. Annual contract premium;
- iii. Current cash surrender value;
- iv. Current dividend;
- v. Application of current dividend; and
- vi. Amount of outstanding loan;

2. For universal life policies, a written statement that shall contain at least the following information:

- i. The beginning and end date of the current report period;
- ii. The policy value at the end of the previous report period and at the end of the current report period;
- iii. The total amounts that have been credited or debited to the policy value during the current report period, identifying each by type (for example, interest, mortality, expense and riders);
- iv. The current death benefit at the end of the current report period on each life covered by the policy;
- v. The net cash surrender value of the policy as of the end of the current report period; and
- vi. The amount of outstanding loans, if any, as of the end of the current report period.

“Insurance producer” means a person required to be licensed under the laws of this State to sell, solicit or negotiate insurance pursuant to N.J.S.A. 17:22A-28.

“Registered contract” means a variable annuity contract or variable life insurance policy subject to the prospectus delivery requirements of the Federal Securities Act of 1933, 15 U.S.C. §§ 77a et seq.

“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;