2. Within 10 days of the issuance of the policy or contract:

i. Notify the applicant, either in writing or verbally by a person whose duties are separate from the marketing area of the insurer, that the producer has represented that copies of all sales material have been left with the applicant in accordance with N.J.A.C. 11:4–2.3(c);

ii. Provide the applicant with a toll free telephone number to enable the applicant to contact company personnel involved in the compliance function if such is not the case; and

iii. Notify the applicant either in writing or verbally that it is important to retain copies of the sales material for future reference.

(h) The insurer shall be able to produce a copy of the writing or other verification of compliance with (g)2 above in the policy file for at least five years after the termination or expiration of the policy or contract.

Repeal and New Rule, 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).
Section was "Duties of replacing insurers".

11:4–2.6 Duties of the existing insurer

(a) Where a replacement is involved in the transaction, the existing insurer shall:

1. Retain and be able to produce all replacement notifications received, indexed by replacing insurer, for at least five years after replacement or until the conclusion of the next regular examination conducted by the Department, whichever is later;

2. Notify the policy or contract owner in writing within five business days of receipt of a notice referred to in (a)1 above that the policy or contract owner has the right to receive information regarding the existing policy or contract values, including, if available, an in force illustration, or a policy summary if an in force illustration cannot be produced. The insurer shall send the information within five business days of receipt of the request from the policy or contract owner; and

3. Upon receipt of a request to borrow, surrender or withdraw any policy values, send a notice advising the policy owner of the effect that the release of policy values will have on the non-guaranteed elements, face amount or surrender value of the policy from which the values are released. The notice shall be sent separately from the check if the check is sent to anyone other than the policy owner. In the case of consecutive automatic premium loans, the insurer is only required to send the notice at the time of the first loan.

Repeal and New Rule, 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).
Section was "Duties of insurers with respect to direct-response sales".

11:4–2.7 Duties of insurers with respect to direct response solicitations

(a) In the case of an application that is initiated as a result of a direct response solicitation, the insurer shall require, with or as part of each completed application for a policy or contract, a statement asking whether the applicant, by applying for the proposed policy or contract, intends to replace, discontinue or change an existing policy or contract. If the applicant indicates a replacement, discontinuance or change is not intended, or if the applicant fails to respond to the statement, the insurer shall send the applicant, with the policy or contract, a notice regarding replacement as described in subchapter Appendix B, incorporated herein by reference, or other substantially similar form approved by the Commissioner.

(b) If the insurer has proposed the replacement, or if the applicant indicates a replacement is intended, and the insurer continues with the replacement, the insurer shall:

1. Provide to applicants or prospective applicants with the policy or contract a notice as described in subchapter Appendix C, incorporated herein by reference, or other substantially similar form approved by the Commissioner. In these instances the insurer may delete the references to the producer, including the producer's signature, without having to obtain approval of the form from the Commissioner. The insurer's obligation to obtain the applicant's signature shall be satisfied if it can demonstrate that it has made a diligent effort to secure a signed copy of the notice referred to in this paragraph. The requirement to make a diligent effort shall be deemed satisfied if the insurer includes in the mailing a self-addressed postage prepaid envelope with instructions for the return of the signed notice referred to in this section; and

2. Comply with the requirements of N.J.A.C. 11:4–2.4(a)2, if the applicant furnishes the names of the existing insurers, and the requirements of N.J.A.C. 11:4–2.4(a)3, (a)4 and (b).

Repeal and New Rule, 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).
Section was "Duties of the existing insurer".

11:4–2.8 Violations and penalties

(a) Any failure to comply with the requirements of this subchapter shall be considered a violation of N.J.S.A. 17B:30–6. Such violations include, but are not limited to:

1. Any deceptive or misleading information set forth in sales material;

2. Failing to ask the applicant when completing the application pertinent questions regarding the possibility of financing or replacement as required by this subchapter;

3. The intentional incorrect recording of an answer;

4. Advising an applicant to respond negatively to any question regarding replacement in order to prevent notice to the existing insurer; or

5. Advising a policy or contract owner to write directly to the company in such a way as to attempt to obscure the identity of the replacing producer or company.

(b) Policy and contract owners have the right to replace policies or contracts after indicating in, or as a part of an application for new coverage, that replacement is not their intention; however, patterns of such action by policy or contract owners of the same producer shall be deemed *prima facie* evidence of the producer's knowledge that replacement was intended in connection with the identified transactions, and these patterns of action shall be deemed *prima facie* evidence of the producer's intent to violate this subchapter.

(c) Where it is determined that the requirements of this subchapter have not been met, the replacing insurer shall provide to the policy or contract owner an in force illustration, if available, or policy summary for the replacement policy, or available disclosure document for the replacement contract, and the notice regarding replacements in Appendix A or C.

(d) Any violation of this subchapter shall subject the violator to penalties that may include the revocation or suspension of a producer's license or a company's certificate of authority, monetary fines, and the forfeiture of any commissions or compensation paid to a producer as a result of the transaction in connection with which the violations occurred. In addition, where the Commissioner has determined that the violation was material to the sale, the insurer or producer may be required to make restitution to the insured, restore policy or contract values, and pay interest at the current rate set forth in the New Jersey Court Rules, R. 4:42–11, including any amount refunded in cash.

Repeal and New Rule, 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).
Section was "Penalties".

11:4–2.9 Separability

If any provisions of this subchapter shall be held invalid, the remainder of the subchapter shall not be affected thereby.

Exhibit A

APPENDIX A
IMPORTANT NOTICE
REPLACEMENT OF LIFE INSURANCE OR ANNUITIES
This document must be signed by the applicant and producer, if there is one, and a copy given to the applicant.

You are contemplating the purchase of a life insurance policy or annuity contract. In some cases this purchase may involve discontinuing or changing an existing policy or contract. If so, a replacement is occurring. Financed purchases are also considered replacements.

A replacement occurs when a new policy or contract is purchased and, in connection with the sale, you discontinue making premium payments on an existing policy or contract, or an existing policy or contract is surrendered, forfeited, assigned to the replacing insurer, or otherwise terminated or used in a financed purchase.

A financed purchase occurs when the purchase of a new life insurance policy involves the use of funds obtained by the withdrawal or surrender of an existing policy or by borrowing some or all of the policy values, including accumulated dividends, of an existing policy, to pay all or part of any premium or payment due on the new policy. A financed purchase is a replacement.

You should carefully consider whether a replacement is in your best interests. You will pay acquisition costs and there may be surrender costs deducted from your existing policy or contract. You may be able to make changes to your existing policy or contract to meet your insurance needs at less cost. A financed purchase will reduce the value of your existing policy and may reduce the amount paid upon the death of the insured.

We want you to understand the effects of replacement before you make your purchase decision and ask that you answer the following questions and consider the questions on the back of this form.

1. Are you considering discontinuing making premium payments, surrendering, forfeiting, to the insurer, or otherwise terminating your existing policy or contract? ______YES ______NO

2. Are you considering using funds from your existing policies or contracts to pay premiums due on the new policy or contract? ______YES ______NO

Please list each existing policy or contract that you contemplate replacing (include the name of the insurer, the insured or annuitant, and the policy or contract number if available) and whether each policy or contract will be replaced or used as a source of financing:

	INSURER NAME	CONTRACT OR POLICY #	INSURED OR ANNUITANT	REPLACED (R) OR FINANCING (F)
1.				
2.				
3.				

Make sure that you know the facts. Contact your existing company or its producer for information about the old policy or contract. (You may request that an in force illustration, policy summary or available disclosure documents be sent to you by the existing insurer.) Ask for and retain all sales material used by the producer in the sales presentation. Be sure that you are making an **informed decision.**

The existing policy or contract is being replaced because ______________________________

____

I certify that the responses herein are, to the best of my knowledge, accurate:

______________________________ ______________
Applicant's Signature and Printed Name Date

______________________________ ______________
Producer's Signature and Printed Name Date

I do not want this notice read aloud to me. ______ (Applicants must initial only if they do not want the notice read aloud.)

A replacement may not be in your best interest, or your decision could be a good one. You should make a careful comparison of the costs and benefits of your existing policy or contract and the proposed policy or contract. One way to do this is to ask the company or producer that sold you your existing policy or contract to provide you with information concerning your existing policy or contract. This may include an illustration of how your existing policy or contract is working now and how it would perform in the future based on certain assumptions. Illustrations should not, however, be used as a sole basis to compare policies or contracts. You should discuss the following with your producer to determine whether replacement or financing your purchase makes sense:

PREMIUMS:
Are they affordable?
Could they change?
You're older. Are premiums higher for the proposed new policy?
How long will you have to pay premiums on the new policy? On the old policy?

POLICY VALUES:
New policies usually take longer to build cash values and to pay dividends.
Acquisition costs for the old policy may have been paid; you will incur acquisition costs for the new one.
What surrender charges do the policies have?
What expense and sales charges will you pay on the new policy?
Does the new policy provide more insurance coverage?

INSURABILITY:
If your health has changed since you bought your old policy, the new one could cost you more, or you could be turned down.
You may need a medical exam for a new policy.
Claims on most new policies for up to the first two years can be denied based on inaccurate statements.
Suicide limitations may begin anew on the new coverage.

IF YOU ARE KEEPING THE OLD POLICY AS WELL AS THE NEW POLICY:
How are premiums for both policies being paid?
How will the premiums on your existing policy be affected?
Will a loan be deducted from death benefits?
What values from the old policy are being used to pay premiums?

IF YOU ARE SURRENDERING AN ANNUITY OR INTEREST SENSITIVE LIFE PRODUCT:

Will you pay surrender charges on your old contract?
What are the interest rate guarantees for the new contract?
Have you compared the contract charges or other policy expenses?

OTHER ISSUES TO CONSIDER FOR ALL TRANSACTIONS:
What are the tax consequences of buying the new policy?
Is this a tax-free exchange? (See your tax advisor.)
Is there a benefit from favorable "grandfathered" treatment of the old policy under the Federal tax code?
Will the existing insurer be willing to modify the old policy?
How does the quality and financial stability of the new company compare with your existing company?

Repeal and New Rule, R.2004 d.414, effective November 1, 2004
(operative date January 30, 2005).
See: 36 N.J.R. 4937(a), 36 N.J.R. 4930(a).

Exhibit B

APPENDIX B
NOTICE REGARDING REPLACEMENT:
REPLACING YOUR LIFE INSURANCE POLICY OR ANNUITY

Are you thinking about buying a new life insurance policy or annuity and discontinuing or changing an existing one? If you are, your decision could be a good one—or a mistake. You will not know for sure unless you make a careful comparison of your existing benefits and the proposed policy's or contract's benefits.

Make sure you understand the facts. You should ask the company or agent that sold you your existing policy or contract to give you information about it.

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

Repeal and New Rule, 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).

11:4–2 Exhibit C

APPENDIX C
IMPORTANT NOTICE:
REPLACEMENT OF LIFE INSURANCE OR ANNUITIES

You are contemplating the purchase of a life insurance policy or annuity contract. In some cases this purchase may involve discontinuing or changing an existing policy or contract. If so, a replacement is occurring. Financed purchases are also considered replacements.

A replacement occurs when a new policy or contract is purchased and, in connection with the sale, you discontinue making premium payments on the existing policy or contract, or an existing policy or contract is surrendered, forfeited, assigned to the replacing insurer, or otherwise terminated or used in a financed purchase.

A financed purchase occurs when the purchase of a new life insurance policy involves the use of funds obtained by the withdrawal or surrender of or by borrowing some or all of the policy values, including accumulated dividends, of an existing policy, to pay all or part of any premium or payment due on the new policy. A financed purchase is a replacement.

You should carefully consider whether a replacement is in your best interest. You will pay acquisition costs and there may be surrender costs deducted from your policy or contract. You may be able to make changes to your existing policy or contract to meet your insurance needs at less cost. A financed purchase will reduce the value of your existing policy and may reduce the amount paid upon the death of the insured.

We want you to understand the effects of replacements and ask that you answer the following questions and consider the questions on the back of this form.

1. Are you considering discontinuing making premium payments, surrendering, forfeiting, assigning to the insurer, or otherwise terminating your existing policy or contract? ______YES ______NO

2. Are you considering using funds from your existing policies or contracts to pay premiums due on the new policy or contract? ______YES ______NO

Please list each existing policy or contract that you contemplate replacing (include the name of the insurer, the insured or annuitant and the policy or contract number if available) and whether each policy or contract will be replaced or used as a source of financing:

	INSURER NAME	CONTRACT OR POLICY #	INSURED OR ANNUITANT	REPLACED (R) OR FINANCING (F)
1.				
2.				
3.				

Make sure that you know the facts. Contact your existing company or its producer for information about the old policy or contract. ***You may request*** an in force illustration, policy summary or available disclosure documents be sent to you by the existing insurer. Ask for and retain all sales material used by the producer in the sales presentation. Be sure that you are making an informed decision.

I certify that the responses herein are, to the best of my knowledge, accurate:

______________________________ ______________

Applicant's Signature and Printed Name Date

A replacement may not be in your best interest, or your decision could be a good one. You should make a careful comparison of the costs and benefits of your existing policy or contract and the proposed policy or contract. One way to do this is to ask the company or producer that sold you your existing policy or contract to provide you with information concerning your existing policy or contract. This may include an illustration of how your existing policy or contract is working now and how it would perform in the future based on certain assumptions. Illustrations should not, however, be used as a sole basis to compare policies or contracts. You should discuss the following with your producer to determine whether replacement or financing your purchase makes sense:

PREMIUMS:
Are they affordable?
Could they change?
You're older. Are premiums higher for the proposed new policy?
How long will you have to pay premiums on the new policy? On the old policy?

POLICY VALUES:
New policies usually take longer to build cash values and to pay dividends.
Acquisition costs for the old policy may have been paid. You will incur costs for the new one.
What surrender charges do the policies have?
What expense and sales charges will you pay on the new policy?
Does the new policy provide more insurance coverage?

INSURABILITY:
If your health has changed since you bought your old policy, the new one could cost you more, or you could be turned down.
You may need a medical exam for a new policy.
Claims on most new policies for up to the first two years can be denied based on inaccurate statements.
Suicide limitations may begin anew on the new coverage.

IF YOU ARE KEEPING THE OLD POLICY AS WELL AS THE NEW POLICY:
How are premiums for both policies being paid?
How will the premiums on your existing policy be affected?
Will a loan be deducted from death benefits?
What values from the old policy are being used to pay premiums?

IF YOU ARE SURRENDERING AN ANNUITY OR INTEREST SENSITIVE LIFE PRODUCT:
Will you pay surrender charges on your old contract?
What are the interest rate guarantees for the new contract?
Have you compared the contract charges or other policy expenses?

OTHER ISSUES TO CONSIDER FOR ALL TRANSACTIONS:
What are the tax consequences of buying the new policy?

Is this a tax-free exchange? (See your tax advisor.)
Is there a benefit from favorable "grandfathered" treatment of the old policy under the Federal tax code?
Will the existing insurer be willing to modify the old policy?
How does the quality and financial stability of the new company compare with your existing company?

Repeal and New Rule, 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).

SUBCHAPTER 3. COUPON POLICIES AND POLICIES CONTAINING GUARANTEED ANNUAL ENDOWMENT BENEFITS

11:4–3.1 Payments

Payment of guaranteed annual endowment benefits in a policy shall not be made contingent on the payment of a premium falling due at the time such benefit would otherwise be payable or credited to the insured.

11:4–3.2 Gross premium shown

The gross premium for the guaranteed annual endowments shall be shown prominently and separately in the policy as distinct from the regular insurance gross premium.

11:4–3.3 Gross premium regarding additional insurance

The gross premium for any additional insurance effective after the first policy year, other than return of premiums, shall also be shown prominently and separately in the policy.

11:4–3.4 Coupons

Annual coupons for the guaranteed annual endowments shall not be included as a part of policies containing guaranteed annual endowments.