

**NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES
THIRD AMENDMENT TO INSURANCE REGULATION 60
(11 NYCRR 51)**

REPLACEMENT OF LIFE INSURANCE POLICIES AND ANNUITY CONTRACTS

I, Benjamin M. Lawskey, Superintendent of Financial Services, do hereby promulgate the following Third Amendment to Part 51 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Insurance Regulation 60) pursuant to the authority granted by Sections 202 and 302 of the Financial Services Law and Sections 301, 2123, 2403 and 4226 of the Insurance Law, to take effect 90 days after publication in the State Register, to read as follows:

(MATTER IN BRACKETS IS DELETED; MATTER UNDERLINED IS NEW)

Section 51.1 Purposes.

The purposes of this Part are to:

(a) [To] implement the New York Insurance Law [of New York] by regulating the acts and practices of insurers, insurance agents, insurance brokers and other licensees of the [Department of Financial Services] department with respect to the internal and external replacement of life insurance policies and annuity contracts[.]; and

(b) [To] protect the interest of the public by establishing minimum standards of conduct to be observed in the replacement or proposed replacement of life insurance policies and annuity contracts; by making available full and clear information on which an applicant for life insurance or annuities can make a decision in his or her own best interest; by reducing the opportunity for misrepresentation and incomplete comparison in replacement situations (commonly referred to as twisting); and by precluding unfair methods of competition and unfair practices.

Section 51.2 Definitions.

In this Part:

(a) [The term *replacement of a life insurance policy or an annuity contract* as used in this Part] Replacement of a life insurance policy or an annuity contract means, except as exempted in Section 51.3 of this Part, that new life insurance or new annuities are to be purchased and delivered or issued for delivery in New York and it is known to the department licensee that, as part of the transaction, existing life insurance policies or annuity contracts have been or are likely to be:

(1) lapsed, surrendered, partially surrendered, forfeited, assigned to the insurer replacing the life insurance policy or annuity contract, or otherwise terminated;

(2) changed or modified into paid-up insurance; continued as extended term insurance or under another form of nonforfeiture benefit; or otherwise reduced in value by the use of nonforfeiture benefits, dividend accumulations, dividend cash values or other cash values;

(3) changed or modified so as to effect a reduction either in the amount of the existing life insurance or annuity benefit or in the period of time the existing life insurance or annuity benefit will continue in force;

(4) reissued with a reduction in amount such that any cash values are released, including all transactions wherein an amount of dividend accumulations or paid-up additions is to be released on one or more of the existing policies;

(5) assigned as collateral for a loan or made subject to borrowing or withdrawal of any portion of the loan value, including all transactions wherein any amount of dividend accumulations or paid-up additions is to be borrowed or withdrawn on one or more existing policies; or

(6) continued with a stoppage of premium payments or reduction in the amount of premium paid.

(b) [The term *sales material* as used in this Part] *Sales material* means any sales illustration prepared in accordance with Insurance Law section 3209 [of the Insurance Law] and any other policy or contract information used in the presentation to the applicant.

(c) [The terms *policy* and *contract* as used in this Part] Policy or contract shall include a certificate issued under a group policy or group contract.

Section 51.3 Exemptions.

This Part shall not apply when:

(a) [The] the application for the new life insurance policy or new annuity contract is made to the same insurer that issued the existing life insurance policy or annuity contract [and a contractual conversion privilege is being exercised] or to any authorized life insurer in such insurer's holding company system, and the new life insurance policy or new annuity contract is being issued in accordance with the terms of a contractual conversion privilege in the existing life insurance policy or annuity contract or is being issued pursuant to a plan approved by the superintendent for the insurer to meet its obligations under Insurance Law section 3220(a)(6);

(b) [A] a policy change customarily granted by the insurer is being exercised, provided such change results in no additional surrender or expense charge or suicide or contestable restrictions, and only to the extent [such] that the change is approved by the [Superintendent of Financial Services] superintendent;

(c) [The] the new coverage is provided under:

(1) a group life insurance policy or group annuity contract, except when an insurance agent[,] or broker or insurer directly solicits the certificateholder for the new coverage and a portion of the premium or consideration is borne, directly or indirectly, by the certificateholder;

(2) an individual life insurance policy or individual annuity contract [whose] where the cost of the policy or contract is borne wholly by the applicant's employer or by an association of which the applicant is a member;
or

(3) individual life insurance policies or individual annuity contracts covering employees of an employer, debtors of a creditor, or members of an association, that are distributed on a mass merchandising basis and administered by group-type methods, except when an insurance agent[,] or broker or insurer directly solicits the applicant for the new coverage and a portion of the premium or consideration is borne, directly or indirectly, by the applicant; or

(d) [The] the existing life insurance is a nonrenewable, nonconvertible term policy with five years or less to its expiration date.

Section 51.4 Alternate procedures.

[Procedures] An insurer may substitute procedures that are designed to meet the purposes of this Part, provided that:

(a) the procedures are approved in advance and determined by the [Superintendent of Financial Services] superintendent not to be detrimental to policyholders and contractholders[, may be substituted for this Part by an insurer where]; and

(b) (1) no sales agency force is used and the application is solicited and received by the insurer by mail or under other methods that are without insurance agent or broker involvement[. Any procedures approved by the Superintendent of Financial Services prior to the effective date of this Part must be resubmitted for approval.]; or

(2) the application is initially solicited by the insurer by mail or under other methods without insurance agent or broker involvement, and there is subsequent insurance agent or broker involvement limited to customer assistance or administrative support at the request of the customer, provided that an accurate and complete “Disclosure Statement” is signed by the insurance agent or broker and presented to the policy or contract holder in accordance with the provisions of this Part.

Section 51.5 Duties of insurance agent and broker.

Each insurance agent and broker shall:

(a) obtain with or as part of each application a completed “Definition of Replacement” in a form prescribed by the [Superintendent of Financial Services] superintendent and signed by the applicant and the agent or broker and leave a copy of such form with the applicant for [his or her] the applicant’s records;

(b) submit to the insurer along with each application a signed and completed “Definition of Replacement”; and

(c) where a replacement has occurred or is likely to occur:

(1) obtain with or as part of each application a list of all existing life insurance policies or annuity contracts proposed to be replaced;

(2) notify the insurer [whose] that issued the policy or contract that is being replaced and the insurer

replacing the life insurance policy or annuity contract of the proposed replacement[.];

(3) [Submit] submit to the insurer [whose] that issued the policy or contract that is being replaced a list of all life insurance policies or annuity contracts proposed to be replaced, as well as the policy or contract number for such policies or contracts, together with the proper authorization from the applicant, and request the information necessary to complete the “Disclosure Statement” with respect to the life insurance policy or annuity contract proposed to be replaced. In the event that the insurer [whose] that issued the coverage that is being replaced fails to provide the information in the prescribed time, the agent or broker replacing the life insurance policy or annuity contract may use, and the insurer replacing the life insurance policy or annuity contract shall review and may accept, good faith approximations based on the information available;

[(3)] (4) present to the applicant, not later than at the time the applicant signs the application, the “IMPORTANT Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts” [and a completed “Disclosure Statement” signed by the agent or broker in the form prescribed by the Superintendent of Financial Services] and leave [copies] a copy of such [forms] form with the applicant for [his or her] the applicant’s records;

[(4)] (5) have the applicant acknowledge that the “IMPORTANT Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts” [and the completed “Disclosure Statement” have] has been received and read; [and]

[(5)] (6) submit with the application to the insurer replacing the life insurance policy or annuity contract: a list of all life insurance policies or annuity contracts proposed to be replaced; a copy of [any proposal, including] the sales material, including the proposal used in the sale of the [proposed] life insurance policy or annuity contract; and proof of receipt by the applicant of the “IMPORTANT Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts”[; and the completed “Disclosure Statement”, including the primary reason(s) for recommending the new life insurance policy or annuity contract and why the existing life insurance policy or annuity contract cannot meet the applicant’s objectives.]; and

(7) prior to the delivery of the life insurance policy or annuity contract, submit to the insurer replacing the life insurance policy or annuity contract an accurate and complete “Disclosure Statement” signed by the agent or broker in the appropriate form prescribed in Appendices 10A or 10B to this Part. The statement shall specify the primary reasons for recommending the new life insurance policy or annuity contract and why the existing life insurance policy or annuity contract cannot meet the applicant’s objectives.

Section 51.6 Duties of insurers.

(a) Each insurer shall:

(1) inform and train its insurance agents and the insurance brokers that place business with the insurer with respect to the requirements of this Part;

(2) require with or as part of each application, a completed “Definition of Replacement” signed by the applicant and insurance agent or broker;

(3) maintain signed and completed copies of the “Definition of Replacement” [for six calendar years or

until after the filing of the report on examination in which the transaction was subject to review by the appropriate insurance official of its state of domicile, whichever is later] in accordance with Part 243 of this Title (Regulation 152); and

(4) require with or as part of each application a statement signed by the insurance agent or broker as to whether, to the best of [his or her] the agent's or broker's knowledge, replacement of a life insurance policy or annuity contract is involved in the transaction.

(b) Where a replacement has occurred or is likely to occur, the insurer replacing the life insurance policy or annuity contract shall:

(1) require with or as part of each application a list prepared by the insurance agent or broker representing, to the best of [his or her] the agent's or broker's knowledge, all of the existing life insurance policies and annuity contracts proposed to be replaced;

(2) require with or as part of each application a copy of [any proposal, including] the sales material including any proposal, used in the sale of the [proposed] life insurance policy or annuity contract, and proof of receipt by the applicant of the "IMPORTANT Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts" [and the completed "Disclosure Statement"];

(3) prior to the delivery of the life insurance policy or annuity contract, require an accurate and complete "Disclosure Statement" signed by the insurance agent or broker in the form prescribed in Appendices 10A or 10B to this Part, including the primary reason or reasons for recommending the new life insurance policy or annuity contract and why the existing life insurance policy or annuity contract cannot meet the applicant's objectives;

[(3)] (4) examine [any proposal used, including] the sales material, including any proposal, used in the sale of the [proposed] life insurance policy or annuity contract, and the "Disclosure Statement", and ascertain that they are accurate and meet the requirements of the Insurance Law and [this Part] regulations promulgated thereunder;

(5) deliver the completed "Disclosure Statement" to the policy or contract holder no later than the time of delivery of the policy or contract. The insurer may, at its discretion, require the "Disclosure Statement" to be signed by the applicant, a copy of which shall be provided to the applicant at the time the applicant signs the "Disclosure Statement";

[(4)] (6) within [10] ten days of [receipt of the application] the delivery of the life insurance policy or annuity contract, furnish to the insurer [whose] that issued the coverage that is being replaced [a copy of any proposal, including] the completed "Disclosure Statement" and a list of the sales material, including any proposal, used in the sale of the [proposed] life insurance policy or annuity contract[, and] with an offer to provide a copy of such material within ten days of a request for the [completed "Disclosure Statement"] material;

[(5)] (7) submit [quarterly] annual electronic reports [within 30 days of the end of each quarter, beginning at the end of the first full calendar quarter after the effective date of this Part,] by February 1 of each year to the [Superintendent of Financial Services] superintendent, indicating which insurers, if any, have failed

to provide the information as required in paragraph (c)(2) of this section;

[(6)] (8) [where the required forms are received with the application and found to be in compliance with this Part,] maintain copies of: [any proposal, including] the sales material, including any proposal, used in the sale of the [proposed] life insurance policy or annuity contract; proof of receipt by the applicant of the “IMPORTANT Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts”; the signed and completed “Disclosure Statement”; and the notification of replacement to the insurer [whose] that issued the life insurance policy or annuity contract that is to be replaced, indexed by insurance agent and broker, [for six calendar years or until after the filing of the report on examination in which the transaction was subject to review by the appropriate insurance official of its state of domicile, whichever is later] in accordance with Part 243 of this Title (Regulation 152);

[(7)] where the required forms are not received with the application, or if the forms do not meet the requirements of this Part or are not accurate, within 10 days from the date of receipt of the application either have any deficiencies corrected or reject the application and so notify the applicant of such rejection and the reason therefor. In such cases, the insurer shall maintain any material used in the proposed sale, in accordance with the guidelines of paragraph (6) of this subdivision;]

[(8)] (9) treat the proposed life insurance policy or annuity contract in all respects as if it were a new issuance of the life insurance policy or annuity contract subject to no differences in underwriting or in other considerations including[, but not limited to]: premium discount, interest rate credit, insurance agent [and/or] or broker compensation or expenses, or incentives such as bonuses or other inducements to agents [and/or] or brokers. This provision, however, shall not prevent an insurer from paying lower compensation or expenses to agents [and/or] or brokers on the proposed life insurance policy or annuity contract; and

[(9)] in the event the life insurance policy or annuity contract issued differs from the life insurance policy or annuity contract applied for, ensure that the requirements of this Part are met with respect to the information relating to the life insurance policy or annuity contract as issued, including but not limited to the revised “Disclosure Statement”, any revised or additional sales material used and acknowledgement by the applicant of receipt of such revised material.]

(10) if an initial “Disclosure Statement” was provided to the applicant prior to the delivery of the life insurance policy or annuity contract and the life insurance policy or annuity contract is issued other than as applied for, then the insurer shall provide the owner a revised “Disclosure Statement” that conforms to the life insurance policy or annuity contract as issued no later than the time of delivery of the policy or contract, except that a revised “Disclosure Statement” does not need to be provided where there are changes in the amount of expected initial or additional premiums and any changes in amounts of exchanges pursuant to section 1035 of the Internal Revenue Code, rollovers or transfers if the changes do not impact the key benefits and features of the life insurance policy or annuity contract as applied for.

(c) Where a replacement has occurred or is likely to occur, the insurer [whose] that issued the life insurance policy or annuity contract that is to be replaced shall:

(1) upon notice that its existing coverage may be replaced, maintain copies of such notification, indexed by insurer notifying it of such replacement, [for six calendar years or until after the filing of the report on examination in which the transaction was subject to review by the appropriate insurance official of its state of

domicile, whichever is later] in accordance with Part 243 of this Title (Regulation 152); and

(2) within 20 days of receipt of a request from a licensee of the department, for information necessary for completion of the “Disclosure Statement” with respect to the life insurance policy or annuity contract proposed to be replaced, together with proper authorization from the applicant, furnish the required information simultaneously to the insurance agent or broker of record of the existing life insurance policy or annuity contract being replaced and the agent or broker and insurer replacing the life insurance policy or annuity contract. This information shall include the insurer's customer service telephone number, the current status of the existing life insurance policy or annuity contract, and the currently illustrated dividends/interest and other non-guaranteed costs and benefits.

(d) Any insurer that issues a replacement life insurance policy or annuity contract shall provide to the policy or contract owner the right to return the policy or contract within 60 days from the date of delivery of such policy or contract and receive an unconditional full refund of all premiums or considerations paid on it, or in the case of a variable or market value adjustment policy or contract, a payment of the cash surrender benefits provided under the policy or contract, plus the amount of all fees and other charges deducted from gross considerations or imposed under the policy or contract. Payment of such refund shall be made within [10] ten days following receipt of the policy or contract for cancellation in accordance with the right to cancellation provision of the policy or contract. During this period, an insurer [whose] that issued the policy or contract that has been replaced shall reinstate or restore, without underwriting or a new contestable or suicide period, such policy or contract as of the date of replacement, upon receipt by the insurer [whose] that issued the policy or contract that has been replaced of:

(1) written proof that the replacement policy or contract has been canceled, including the date of cancellation;

(2) any funds, previously released under such replaced policy or contract; and

(3) any premium or consideration due on the original policy or contract which shall be calculated from the paid-to-date. The insurer [whose] that issued the policy or contract that has been replaced shall reinstate or restore the original policy or contract to its former status to the extent possible and in accordance with its published reinstatement rules to the extent that such rules are not inconsistent with the provisions of this Part.

(e) Both the insurer [whose] that issued the life insurance policy or annuity contract that is being replaced and the insurer replacing the life insurance policy or annuity contract shall establish and implement procedures to ensure compliance with the requirements of this Part. These procedures shall include a requirement that all material be dated upon receipt. Such insurers shall also designate a principal officer specifically responsible for the monitoring and enforcement of these procedures. All insurers covered under this Part shall furnish the [Superintendent of Financial Services] superintendent with these procedures and the name and title of the designated principal officer by the effective date of this Part. Any changes in these procedures or the designated principal officer shall be furnished to the [Superintendent of Financial Services] superintendent within 30 days of such change.

Section 51.7 Prohibited acts.

(a) No insurer[,] or insurance agent or broker shall:

(1) make or give any deceptive or misleading information in the “Disclosure Statement” or in [any proposal, including] the sales material, including any proposal, used in the sale of the [proposed] life insurance policy or annuity contract;

(2) in completing the application, fail to ask the applicant the pertinent questions relating to the probability of replacement;

(3) incorrectly record an answer;

(4) counsel an applicant to answer the [question(s)] questions with respect to replacement negatively in order to prevent notice to the insurer to be replaced; or

(5) counsel an applicant to write directly to the insurer in such a way as to attempt to bypass such insurer's agency representation or obscure the identity of the insurance agent or broker replacing the life insurance policy or annuity contract.

(b) No insurer, insurance agent, insurance broker, [representative, officer, or employee of an insurer] or any other licensee of this department, or any representative, officer, or employee of an insurer, shall fail to comply with or engage in other practices that would prevent the orderly working of this Part in accomplishing its intended purpose in the protection of policyholders and contractholders. Any person failing to comply with this Part, or engaging in other practices that would prevent the orderly working of this Part, shall be subject to penalties under the Insurance Law [of the State of New York], which may include[, but shall not be limited to,] monetary restitution, restoration of policies or contracts, removal of directors or officers, suspension or revocation of agent's, broker's or company's licenses, and monetary fines.

(c) Although policyholders and contractholders have the right to replace existing life insurance policies or annuity contracts after having indicated in or as a part of an application for new coverage that such was not their intention, patterns of such action by policyholders or contractholders having the same insurance agent or broker shall be deemed *prima facie* evidence of the agent's or broker'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 or broker's intent to violate this Part.

Section 51.8 Exhibits.

The forms set forth in [Appendixes] Appendices 10A, 10B, 10C and 11 of this Title are hereby approved for use as specified in this Part. The forms shall be set forth in at least 12-point type and shall be highlighted as indicated herein. [Substantially equivalent] In lieu of the forms set forth in the appendices, an insurer may adopt and use forms [may be adopted with the prior approval of] that the [Superintendent of Financial Services] superintendent has determined to be substantially equivalent to the forms set forth in the appendices.

Appendices 10A, 10B, 10C, and 11 of this Title are repealed. New Appendices 10A, 10B, 10C and 11 of this Title are added.



NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Benjamin M. Lawsky
Superintendent

I, Benjamin M. Lawsky, Superintendent of Financial Services, do hereby certify that the foregoing is the Third Amendment to Part 51 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Insurance Regulation 60), entitled "Replacement Of Life Insurance Policies And Annuity Contracts", signed by me on January 5, 2015 pursuant to the authority granted by Financial Services Law Sections 202 and 302 and Insurance Law Sections 301, 2123, 2403 and 4226, to take effect 90 days after publication in the State Register.

Pursuant to the provisions of the State Administrative Procedure Act, prior notice of the proposed rule was published in the State Register on November 5, 2014. No other publication or prior notice is required by statute.

Benjamin M. Lawsky
Superintendent of Financial Services

Date: January 5, 2015