

Agents Guide – Understanding NAIC Model Replacement

Several years ago, the NAIC adopted a revised Model Replacement Regulation which differed significantly from the previous NAIC Replacement Model. Nearly 30 states have adopted this revised Model.

You should know that some states have adopted replacement regulations which are similar to the Model, but include additional requirements. Still other states adopted their own regulations with requirements that differ significantly from the model. It is your responsibility to understand the requirements of the state in which you do business. You should also be knowledgeable of Athene's Position and Guidelines on Replacements.

The following information relates to the definitions and requirements outlined in the most recent NAIC Model.

What is Considered Replacement?

Under the NAIC Model Replacement regulation, "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 non-forfeiture benefits or other policy values;
- 3) 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;
- 4) Reissued with any reduction in cash value; or
- 5) Used in a financed purchase.

"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 purposes of a regulatory review of an individual transaction only, if a withdrawal, surrender or borrowing involving the policy values of an existing policy is used to pay premiums on a new policy owned by the same policyholder and issued by the same company within four (4) months before or thirteen (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.

The following are exempt from the requirements of the NAIC Model:

- 1) Credit life insurance;
- 2) Group life insurance or group annuities where there is no direct solicitation of individuals by an insurance producer.
- 3) Group life insurance and annuities used to fund prearranged funeral contracts;
- 4) Contractually guaranteed changes or conversions of existing policies or contracts.
- 5) Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company;
- 6) Qualified plans covered by ERISA; Internal Revenue Code (IRC) Sections 401(a), 401(k), 403(b), governmental or church plans defined under IRC Section 414, a governmental or church welfare benefit plan, deferred compensation plan of state or local government or tax exempt organization under IRC section 457 - unless funded solely by contributions of the employee as described above.

- 7) Nonqualified deferred compensation arrangements established or maintained by an employer or plan sponsor.
- 8) Coverage under any life policy or annuity contract where the cost is borne wholly by the insured's employer or by an association of which the insured is a member.
- 9) Existing non-convertible, non-renewable term that will expire in five years or less.
- 10) Immediate annuities funded by existing annuity contracts.
- 11) Structured settlements

DUTIES OF PRODUCER

The following outlines the procedures you must follow to comply with the NAIC Model:

1. With Every Application

Submit to Athene, as part of the Application, a statement signed by both the applicant and the producer as to whether the applicant has existing policies or contracts. If the answer is "no," the producer's duties with respect to replacement are complete.

2. When the Applicant has Existing Coverage

If the applicant answered "yes" to the question regarding existing coverage in the application, present and read to the applicant, not later than at the time of taking the required replacement form, Important Notice: Replacement of Annuities. This must be completed and signed by the applicant and producer, **even if no replacement is planned.**

3. When a Replacement is Contemplated

- If the answer to either of the questions on the Important Notice is "yes":
- List all life insurance policies or annuities proposed to be replaced, properly identified by name of insurer, the insured or annuitant, and policy or contract number if available.
- Indicate whether each policy or contract will be replaced (R) or whether a policy will be used as a source of financing for the new policy or contract (F). If a policy or contract number has not been issued by the existing insurer, list alternative identification, such as an application or receipt number.
- Review the Important Notice carefully with the applicant.
- Offer to read the replacement form aloud to the applicant and have the applicant initial the form (bottom of the first page) to demonstrate that you did so.
- Leave a copy of the completed and signed notice with the applicant and submit a copy to Athene with the application.

4. Providing Sales Materials to Clients

The NAIC Model includes requirements pertaining to Sales Materials. "Sales material" means a sales illustration and any other written, printed or electronically presented information created, completed or provided by the company or producer and used in the presentation to the contract owner related to the contract purchased.

Since Athene prohibits the use of sales materials that are not approved by Athene, these requirements can be fulfilled by doing the following:

- Present and leave a copy of all sales materials used in the sale to the applicant owner at the time you take the application. With respect to electronically presented sales material, it shall be provided to the policy or contract owner in printed form no later than at the time of policy or contract delivery.
- Certify to the company that you used only company approved materials and that such materials were left with the applicant.
- Maintain copies of all sales materials used in your client files for presentation to a regulator and/or Athene when requested to do so.

COMPANY REQUIREMENTS

Under the NAIC Model, all insurers are required to:

- Maintain a system of supervision and control to insure compliance
- Develop a system to monitor all replacement activity, including internal and external business.
- Develop a system to detect unreported replacement activity.

Duties of the Replacing Insurer

The Model Law includes the following requirements for Athene as the replacing insurer:

- Notify to the replaced company of the pending replacement within five days of determining a submission will replace existing coverage.
- Ensure sure all disclosure forms are complete, including signatures and initials, prior to issuing a new policy.
- Follow up with the client to ensure that the agent left copies of sales materials, illustrations, disclosure (read to the client), fact finders, etc.

Duties of the Replaced Insurer

The NAIC Model regulation has a specific conservation requirement when a current Athene policy or contract is replaced. A notice must be mailed to the policyholder within five days of our determining that the policy or contract may be replaced. This notice must inform the policyholder that:

- We are aware of his or her request to replace all or part of an existing life insurance policy or annuity contract.
- He or she has the right to request and receive an in-force illustration or summary demonstrating current values of a policy or contract.
- A request to surrender, partially surrender, borrow or withdraw any funds may have an adverse effect on guaranteed values, non-guaranteed values, the face amount, or the surrender value of the policy or contract.

This notice must be sent to policyholders and contract holders even when a new Athene application is received that will replace a current Athene policy or contract. You may want to address any concerns prior to the mailing of the letter by informing them that this disclosure letter will be forthcoming as required by state law.

Should you have any questions regarding the NAIC Model Replacement Law, please contact the Compliance Department.