

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #3

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2005 JUL 29 P 1:47

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Insurance Commissioner TITLE NUMBER: 114

CITE AUTHORITY: W. Va. Code §§33-2-10 and 33-11-5a

AMENDMENT TO AN EXISTING RULE: YES NO


IF YES, SERIES NUMBER OF RULE BEING AMENDED: 8

TITLE OF RULE BEING AMENDED: Replacement of Life Insurance Policies and Annuity Contracts

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.


Authorized Signature

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period, Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 29, 2005

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: OFFICE OF THE INSURANCE COMMISSIONER
ATTN: Legal Division
1124 Smith Street
Post Office Box 50540
Charleston, West Virginia 25305-0540

LEGISLATIVE RULE TITLE: REPLACEMENT OF LIFE INSURANCE POLICIES AND ANNUITY CONTRACTS - (TITLE 114, SERIES 8)

1. Authorizing statute(s) citation:

W. Va. Code §33-2-10

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

June 22, 2005 - Comment Period.

b. What other notice, including advertising, did you give of the hearing?

None

c. Date of Public Hearing(s) or Public Comment Period ended:

Comment period ended July 22, 2005.

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 29, 2005

Insurance Commissioner
Title 114, Series 8

- f. **Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all written correspondence regarding this rule: (Please type)**

Timothy Murphy, Associate Counsel
West Virginia Insurance Commission
Legal Division
P.O. Box 50540
Charleston, WV 25305-0540
Phone: (304) 558-0401
Fax: (304) 558-1362
E-mail: Timothy.Murphy@wvinsurance.gov

- g. **IF DIFFERENT FROM ITEM 'f', please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)**

Same

3. **If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:**

- a. **Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.**

Not applicable

- b. **Date of hearing or comment period:**

Not applicable

- c. **On what date did you file in the State Register the findings and determinations required together with the reasons therefor?**

Not applicable

- d. **Attach findings and determinations and reasons:**

Not applicable

Insurance Commissioner
Title 114, Series 8

ATTACHMENT TO QUESTION 2 (d):

Two sets of comments were received in response to the proposed legislative rule entitled "Replacement of Life Insurance Policies and Annuity Contracts," one letter dated July 18, 2005 was submitted by David K. Nelson, Assistant General Counsel, on behalf of Northwestern Mutual Life Insurance Company of Milwaukee WI ("NMLC"), and a letter dated July 20, 2005, was submitted by Leah Walters, Counsel and Legislative Director, on behalf of the American Council of Life Insurers ("ACLI").

Northwest Mutual Life comments:

(1) Mr. Nelson's first comment concerns subsection 5.5 of the proposed rule and the references therein to "the basic illustration and any supplemental illustrations related to the specific policy or contract that is purchased" as documents that must be able to be produced by the replacing insurer (in addition to "copies of any sales material" and certain signed statements). Mr. Nelson notes that "basic illustration" and "supplemental illustration" are terms of art created and defined by the NAIC Life Insurance Illustrations Model Regulation; in states that have adopted this model, these items are not deemed "sales materials" and are instead *mandated* disclosure documents under the illustrations model. Mr. Nelson notes that, inasmuch as West Virginia has not adopted this illustrations model, any illustrations *voluntarily* shown to a potential customer would be deemed "sales material" and would be treated as such under the proposed rule; therefore, in order to avoid any implication that the proposed rule makes these illustrations mandatory in West Virginia, he proposes that these references be deleted.

The Commissioner agrees that the reference to illustrations is unnecessary in light of subsection 2.10 of the proposed rule that defines "sales material" as "any other written, printed or electronically presented information created, completed or provided by the company or producer and used in the presentation to the policy or contract owner related to the policy or contract purchased." Therefore, in order to avoid any implication that illustrations are to be treated differently from other "sales material" in the context of the proposed rule, the Commissioner will change subsection 5.5 to read as follows:

[114-8-]5.5. When the applicant has existing policies or contracts, each insurer shall be able to produce copies of any sales material required by subsection 4.5 of this rule and the producer's and applicant's signed statements with respect to financing and replacement for at least five (5) years after the termination or expiration of the proposed policy or contract;

(2) Mr. Nelson's second comment involves the definition of "[e]xisting policy or contract" in subsection 2.3 of the proposed rule. In the NAIC model on which the proposed rule is based, the definition reads as follows:

C. *"Existing policy or contract" means an individual life insurance policy (policy) or annuity contract (contract) in force, including a policy under a binding or conditional receipt or a policy or contract that is within an unconditional refund period.*

Both Mr. Nelson and Ms. Walters question the omission in the proposed rule of the terms in parentheses that signal to the reader that the use of the unmodified terms "policy" and "contract" throughout the remainder of the rule refer to, respectively, "an individual life insurance policy" or "annuity contract." The Commissioner agrees that the insertion of the parenthetical terms would enhance the clarity of the overall rule and thus will change subsection 2.1 to read as follows:

[114-8-J2.3. "Existing policy or contract" means an individual life insurance policy ("policy") or annuity contract ("contract") in force, including a policy under a binding or conditional receipt or a policy or contract that is within an unconditional refund period.

American Council of Life Insurers ("ACLI") comments:

(1) Ms. Walters' points out that the reference to subsection 5.1.b at the end of subsection 2.4 in the proposed rule should instead read "subdivision e, subsection 5.1 of this rule." The Commissioner agrees that 5.1.e is the correct cross-reference and will make the suggested revision; subsection 2.4 will be changed to read as follows:

[114 CSR 8-J2.4. "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. This prima facie standard is not intended to increase or decrease the monitoring obligations contained in subdivision e, subsection 5.1 of this rule.

(2) Ms. Walters comments that several references to illustrations (in addition to that in subsection 5.5 noted by Mr. Nelson) remain in the proposed rule. The Commissioner agrees that, inasmuch as West Virginia has not yet enacted the NAIC model on illustrations, several of the references to illustrations should be eliminated so that such materials would be treated as any other sales materials. Accordingly, the following provisions of the proposed rule will be changed to read as follows:

[114 CSR 8-J5.6. Ascertain that the sales material required by subsection 4.5 of this rule meets the requirements of this rule and are complete and accurate for the proposed policy or contract;

[114 CSR 8-6.1.]b. *Notify any other existing insurer that may be affected by the proposed replacement within five (5) business days of receipt of a completed application indicating replacement or when the replacement is identified if not indicated on the application, and mail a copy of the available policy summary for the proposed policy or available disclosure document for the proposed contract within five (5) business days of a request from an existing insurer;*

[114 CSR 8-]7.2. *Send a letter to the policy or contract owner of the right to receive information regarding the existing policy or contract values including a policy summary. The information shall be provided within five (5) business days of receipt of the request from the policy or contract owner.*

[114 CSR 8-]9.3. *Where it is determined that the requirements of this rule have not been met, the replacing insurer shall provide to the policyowner a policy summary for the replacement policy or available disclosure document for the replacement contract and the appropriate notice regarding replacements in Appendix A or C.*

[Appendix C, following the blank lines for listing of other policies that a prospective buy is considering replacing] *Make sure you know the facts. Contact your existing company or its agent for information about the old policy or contract. If you request one, a policy summary or available disclosure documents must be sent to you by the existing insurer. Ask for and retain all sales material used by the agent in the sales presentation. Be sure that you are making an informed decision.*

References to “illustrations” will not be changed in two other (identical) paragraphs because each simply permits a potential replacing insurer to send an illustration to a prospective buyer *if such an illustration exists.*

(1) Appendix A and C (in the paragraph following the signature lines) (emphasis added):

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 agent 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 agent to determine whether replacement or financing your purchase makes sense.



Northwestern Mutual®

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JUL 21 2005

WWIC LEGAL DIVISION

David K. Nelson
Assistant General Counsel

720 East Wisconsin Avenue
Milwaukee, WI 53202-4797
414 665 7356 office
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davidknelson@northwesternmutual.com

July 18, 2005

Mr. Timothy Murphy, Esq.
Associate Counsel
West Virginia Insurance Commission
P.O. Box 50540
Charleston WV 25305-0540

Re: Replacement of Life Insurance Policies and Annuity Contracts

Dear Mr. Murphy,

The Northwestern Mutual Life Insurance Company of Milwaukee WI wishes to register its support for the proposed adoption of the NAIC Life Insurance and Annuities Replacement Model Regulation. We are particularly pleased that no significant changes from the Model's language have been introduced in the proposal. We have only two comments on the substance of the proposal.

Section 114-8-5 Duties of All Insurers that Use Producers requires, in subsection 5.5, that the insurer be able to produce copies of "any sales material" as well as "the basic illustration and any supplemental illustration related to the specific policy." "Basic illustration" and "supplemental illustration" are terms of art created and defined by the NAIC Life Insurance Illustrations Model Regulation. In states which have adopted the NAIC Illustration Regulation, basic/supplemental illustrations are regulated and mandated disclosure documents. Thus they are not deemed to be "sales materials," which is why the NAIC Illustration Regulation mandates the ability to produce sales materials as well as basic and supplemental illustrations.

In a state such as West Virginia which has not yet adopted the Illustration Regulation, any illustration, including an NAIC basic or supplemental illustration, is voluntarily shown to the customer, and thus is "sales material" as defined in subsection 2.10. To avoid any implication that in some manner West Virginia's replacement regulation is making basic and supplemental illustrations mandatory in West Virginia replacement cases, the references to basic and supplemental illustrations should, in our opinion, be deleted from subsection 5.5. Subsection 5.5's "any sales material required by subsection 4.5 of this rule" will include any illustrations used or shown.

Mr. Timothy Murphy, Esq.
July 18, 2005
Page 2

We encourage the adoption of the NAIC Life Insurance Illustrations Model Regulation in West Virginia, at which time this replacement regulation and some other regulations will need to be revisited to make them consistent with the illustration regulation.

Our other comment relates to **Section 114-8-2 Definitions**. In the NAIC Model, the word "policy" always means life insurance while "contract" always means an annuity. The NAIC Model establishes this for the entire regulation in its definition of "Existing policy or contract" by defining it as "an individual life insurance policy (policy) or annuity contract (contract) in force" The West Virginia proposal includes the definition but omits both of the parentheticals. While there may be little significant risk that the proposal's usage will be misunderstood, we would nonetheless suggest that the NAIC Model's parenthetical references be reinserted into subsection 2.3's definition of "Existing policy or contract" so that it follows the Model exactly and makes this language usage clear.

Thank you for your consideration of these comments. We would be pleased to respond to any questions the Commission may have.

Sincerely yours,



David K. Nelson
Assistant General Counsel

cc: Leah Walters (ACLI)
Steven Radke
Kathleen Rivera

Doc. 251258

Jane Cline

From: Jane Cline
Sent: Wednesday, July 27, 2005 3:03 PM
To: 'Timothy Murphy'
Subject: FW: Proposed Legislative Rule - Series 8, Replacement of Life Insurance Policies and Annuity Contracts (114CSR8)
Attachments: 7_20 replacement.pdf

Jane L. Cline
Insurance Commissioner
West Virginia Insurance Commission
PO Box 50540
Charleston, WV 25305-0540
TEL: 304.558.3354
FAX: 304.558.0412

From: Julie Crismond [mailto:JulieCrismond@acli.com]
Sent: Thursday, July 21, 2005 2:49 PM
To: Jane Cline
Cc: tim.murphy@wvinsurance.gov
Subject: Proposed Legislative Rule - Series 8, Replacement of Life Insurance Policies and Annuity Contracts (114CSR8)

Please accept the attached comments submitted on behalf of the American Council of Life Insurers.

Save the date | 2005 Annual Conference | Oct. 9-11, Washington, DC (more)

Leah J. Walters
Counsel & Legislative Director, Mid-Atlantic Region
(202) 624-2131 t
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101 Constitution Ave., NW
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LEAH J. WALTERS
COUNSEL & LEGISLATIVE DIRECTOR, MID-ATLANTIC REGION
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July 20, 2005

The Honorable Jane Cline
Insurance Commissioner
State of West Virginia
1124 Smith Street
Charleston, West Virginia 25305-0540

Re: **Proposed Legislative Rule – Series 8, Replacement of Life Insurance Policies and Annuity Contracts (114CSR8)**

Dear Commissioner Cline:

This letter is submitted on behalf of the American Council of Life Insurers (ACLI), a national trade association of legal reserve life insurance companies whose 356 member companies account for 78 percent of the life insurance premiums in the United States. Two hundred and ninety three ACLI members are licensed to do business in West Virginia, accounting for 72 percent of all life and annuity payments. ACLI appreciates the opportunity to comment on the revisions to the above-captioned proposed rule regarding replacement of life insurance policies and annuity contracts.

ACLI commends the West Virginia Insurance Department for updating its replacement of life insurance rule and making those rules consistent with the NAIC Life Insurance and Annuities Replacement Model Regulation. By bringing the West Virginia rule in line with a majority of other states that have adopted the NAIC Model, the proposed revisions promote uniformity and efficiency for insurers operating in multiple jurisdictions without compromising important consumer protections.

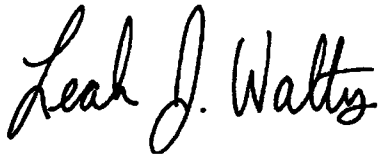
ACLI would like to make the following comments regarding the above-captioned proposed rule:

- (A) §114-8-2.3: To be consistent with the NAIC Model, you may want to consider adding the word “(policy)” after the words “individual life insurance policy” in line 1 and the word “(contract)” after the words “annuity contract” in line 2.
- (B) §114-8-2.4: At the end of subsection 2.4, there is a reference to subsection 5.1. Should the reference be to subsection 5.1(e)?
- (C) During our June meeting, you mentioned that because West Virginia has not adopted the NAIC Life Insurance Illustrations Model Regulation, all references to Illustrations would be eliminated from this proposed rule. I noted that the following subsections still include a reference to an illustration: 5.5, 5.6, 6.1(b), 7.2, and 9.3. Also, Appendix A and C also still include references to illustrations.

The Honorable Jane Cline
Page Two
July 20, 2005

Again, thank you for the opportunity to comment. Please contact me directly at (202) 624-2131 should you have any questions or need any additional information.

Sincerely,

A handwritten signature in cursive script that reads "Leah J. Waters".

Leah J. Waters

cc: Timothy Murphy
Associate Counsel
West Virginia Insurance Commission
Legal Division
P.O. Box 50540
Charleston, West Virginia 25305-0540

Mr. Randy Cox
Spilman, Thomas & Battle
300 Kanawha Blvd.
P.O. Box 273
Charleston, West Virginia 25321-0273

Insurance Commissioner
Legislative Rule
Title 114, Series 8

**REPLACEMENT OF LIFE INSURANCE POLICIES
AND ANNUITY CONTRACTS**

TITLE 114, SERIES 8

BRIEF SUMMARY OF RULE

This rule will replace existing Series 8 ("Replacement of Life Insurance") and will be renamed "Replacement of Life Insurance Policies and Annuity Contracts." The current rule, which is based on an earlier version of the current National Association of Insurance Commissioners' ("NAIC") model regulation on the subject, requires insurance producers to make certain disclosures and retain records involved in transactions involving the replacement of life insurance. For example, all sales materials used in the solicitation of a replacement transaction would have to be retained for five (5) years so that a market conduct examination by the Insurance Commissioner could verify that proper disclosures were made. The primary purpose of the amendment is to extend to the replacement of annuity contracts the same consumer protections already applicable to the replacement of life insurance policies. The amendment would also update the minimum standards to more closely conform to the most recently adopted NAIC standards.

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**REPLACEMENT OF LIFE INSURANCE POLICIES
AND ANNUITY CONTRACTS**

TITLE 114, SERIES 8

STATEMENT OF CIRCUMSTANCES

House Bill 2937, which was enacted during the 2005 regular legislative session, specifically provided that the Insurance Commissioner "shall propose and file with the Secretary of State an emergency rule ... that is based on the model regulation regarding the replacement of life insurance and annuities approved by the National Association of Insurance Commissioners ("NAIC") in nineteen ninety-eight and amended in two thousand." The bill further provided that "the rule filed as an emergency rule ... shall be refiled at the earliest opportunity as a legislative rule for review and promulgation in accordance with" W. Va. Code §33-13-48. An emergency rule mirroring this legislative rule will be filed after the statute mandating its promulgation becomes effective on July 8, 2005. However, it is necessary to file this legislative rule now in order to allow it to be approved by the 2006 Legislature and thereby avoid a lapse in effectiveness when the emergency rule expires after fifteen (15) months.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Replacement of Life Insurance Policies and Annuity Contracts (Title 114, Series 8)
 Type of Rule: X Legislative Interpretive Procedural
 Agency: Insurance Commissioner
 Address: Post Office Box 50540
1124 Smith Street, Greenbrooke Building
Charleston, West Virginia 25305-0540
 Phone Number: (304) 558-0401 Email: Timothy.Murphy@wvinsurance.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The rule will have no additional fiscal impact upon state government.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	2006 Increase/Decrease (use "-")	2007 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	None	None	None
Personal Services	None	None	None
Current Expenses	None	None	None
Repairs & Alterations	None	None	None
Assets	None	None	None
Equipment	None	None	None
Other	None	None	None
2. Estimated Total Revenues	None	None	None

Rule Title: Replacement of Life Insurance Policies and Annuity Contracts (Title 114, Series 8)

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

N/A

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Date: July 29, 2005

Signature of Agency Head or Authorized Representative



Jane I. Cline, Insurance Commissioner

114CSR8

LEGISLATIVE RULE
INSURANCE COMMISSIONER

SERIES 8
REPLACEMENT OF LIFE INSURANCE POLICIES
AND ANNUITY CONTRACTS

Section

- 114-8-1. General.
- 114-8-2. Definitions.
- 114-8-3. Exemptions.
- 114-8-4. Duties of Producers.
- 114-8-5. Duties of All Insurers that Use Producers.
- 114-8-6. Duties of Replacing Insurers that Use Producers.
- 114-8-7. Duties of the Existing Insurer.
- 114-8-8. Duties of Insurers with Respect to Direct Response Solicitations.
- 114-8-9. Violations and Penalties.
- 114-8-10. Severability.

Appendix A Important Notice: Replacement of Life Insurance or Annuities

Appendix B Notice Regarding Replacement - Replacing Your Life Insurance Policy or Annuity

Appendix C Important Notice: Replacement of Life Insurance or Annuities

FILED
2005 JUL 29 P 1:46
OFFICE WEST VIRGINIA
SECRETARY OF STATE

114CSR8

**LEGISLATIVE RULE
INSURANCE COMMISSIONER**

**SERIES 8
REPLACEMENT OF LIFE INSURANCE POLICIES
AND ANNUITY CONTRACTS**

§114-8-1. General.

1.1. Scope. -- The purposes of this rule are to regulate the activities of insurers and producers with respect to the replacement of existing life insurance and annuities and 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. It will assure that purchasers receive information with which a decision can be made in his or her own best interest, reduce the opportunity for misrepresentation and incomplete disclosure, and establish penalties for failure to comply with requirements of this rule. This rule is based on the National Association of Insurance Commissioners' "Life Insurance And Annuities Replacement Model Regulation (Model 613)," as amended in 2000.

1.2. Authority. -- W. Va. Code §33-2-10.

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Repeal of former rule. -- This rule repeals and replaces WV 114CSR8 "Replacement of Life Insurance" filed May 16, 1997 and effective May 16, 1997.

§114-8-2. Definitions.

2.1. "Direct-response solicitation" means a solicitation through a sponsoring or endorsing entity or individually solely through mails, telephone, the Internet or other mass communication media.

2.2. "Existing insurer" means the insurance company whose policy or contract is or will be changed or affected in a manner described within the definition of "replacement."

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

2.4. "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

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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. This prima facie standard is not intended to increase or decrease the monitoring obligations contained in subdivision e, subsection 5.1 of this rule.

2.5. "Policy summary" means:

a. For policies or contracts other than universal life policies, a written statement regarding a policy or contract which shall contain to the extent applicable, but need not be limited to, the following information: current death benefit; annual contract premium; current cash surrender value; current dividend; application of current dividend; and amount of outstanding loan.

b. For universal life policies, a written statement that shall contain at least the following information: the beginning and end date of the current report period; the policy value at the end of the previous report period and at the end of the current report period; the total amounts that have been credited or debited to the policy value during the current report period, identifying each by type (e.g., interest, mortality, expense and riders); the current death benefit at the end of the current report period on each life covered by the policy; the net cash surrender value of the policy as of the end of the current report period; and the amount of outstanding loans, if any, as of the end of the current report period.

2.6. "Producer" means agents, brokers and producers.

2.7. "Replacing insurer" means the insurance company that issues or proposes to issue a new policy or contract that replaces an existing policy or contract or is a financed purchase.

2.8. "Registered contract" means a variable annuity contract or variable life insurance policy subject to the prospectus delivery requirements of the Securities Act of 1933.

2.9. "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:

a. Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer or otherwise terminated;

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b. 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;

c. 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;

d. Reissued with any reduction in cash value; or

e. Used in a financed purchase.

2.10. "Sales material" means any other written, printed or electronically presented information created, completed or provided by the company or producer and used in the presentation to the policy or contract owner related to the policy or contract purchased.

§114-8-3. Exemptions.

3.1. Unless otherwise specifically included, this rule shall not apply to transactions involving:

a. Credit life insurance;

b. 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 section 8 of this rule;

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

d. 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;

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

f. 1. Policies or contracts used to fund (A) an employee pension or welfare

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Title 114, Series 8**

benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA); (B) a plan described by Sections 401(a), 401(k) or 403(b) of the Internal Revenue Code (IRC), where the plan, for purposes of ERISA, is established or maintained by an employer; (C) a governmental or church plan defined in Section 414 of the IRC, a governmental or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the IRC; or (D) a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

2. Notwithstanding paragraph 1 of this subdivision, this rule applies 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" does 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;

g. 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;

h. Existing life insurance that is a non-convertible term life insurance policy that will expire in five (5) years or less and cannot be renewed;

i. Immediate annuities that are purchased with proceeds from an existing contract. Immediate annuities purchased with proceeds from an existing policy are not exempted from the requirements of this rule; or

j. Structured settlements

3.2. Registered contracts are exempt from the requirements of subdivision b, subsection 6.1 and subsection 7.2 of this rule with respect to the provision of policy summaries; however, premium or contract contribution amounts and identification of the appropriate prospectus or offering circular shall be required instead.

§114-8-4. Duties of Producers.

4.1. A producer who initiates an application shall submit to the insurer, with or as part of the application, a statement signed by both the applicant and the producer as to whether the

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applicant has existing policies or contracts. If the answer is "no," the producer's duties with respect to replacement are complete.

4.2. If the applicant answered "yes" to the question regarding existing coverage referred to in subsection 4.1 of this section, the producer shall present and read to the applicant, not later than at the time of taking the application, a notice regarding replacements in the form as described in Appendix A or other substantially similar form approved by the commissioner. However, no approval shall be required when amendments to the notice are limited to the omission of references not applicable to the product being sold or replaced. The notice shall be signed by both the applicant and the producer attesting that the notice has been read aloud by the producer or that the applicant did not wish the notice to be read aloud (in which case the producer need not have read the notice aloud) and left with the applicant.

4.3. The notice shall 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; and shall include a statement as to whether each policy or contract will be replaced or whether a policy will be used as a source of financing for the new policy or contract. If a policy or contract number has not been issued by the existing insurer, alternative identification, such as an application or receipt number, shall be listed.

4.4. In connection with a replacement transaction, the producer shall leave with the applicant at the time an application for a new policy or contract is completed the original or a copy of all sales material. 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.

4.5. Except as provided in subsection 6.3 of this rule, in connection with a replacement transaction the producer shall submit to the insurer to which an application for a policy or contract is presented, a copy of each document required by this section, a statement identifying any preprinted or electronically presented company approved sales materials used and copies of any individualized sales materials.

§114-8-5. Duties of All Insurers that Use Producers.

Each insurer shall:

5.1. Maintain a system of supervision and control to insure compliance with the requirements of this rule that shall include at least the following:

a. Inform its producers of the requirements of this rule and incorporate the requirements of this rule into all relevant producer training manuals prepared by the insurer;

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b. Provide to each producer a written statement of the company's position with respect to the acceptability of replacements providing guidance to its producer as to the appropriateness of these transactions;

c. A system to review the appropriateness of each replacement transaction that the producer does not indicate is in accord with subdivision b of this subsection.

d. Procedures to confirm that the requirements of this rule have been met; and

e. Procedures to detect transactions that are replacements of existing policies or contracts by the existing insurer, but that have not been reported as such by the applicant or producer. Compliance with this rule may include, but shall not be limited to, systematic customer surveys, interviews, confirmation letters, or programs of internal monitoring;

5.2. Have the capacity to monitor each producer's life insurance policy and annuity contract replacements for that insurer, and shall produce, upon request, and make such records available to the Insurance Commission. The capacity to monitor shall include the ability to produce records for each producer's:

a. Life replacements, including financed purchases, as a percentage of the producer's total annual sales for life insurance;

b. Number of lapses of policies by the producer as a percentage of the producer's total annual sales for life insurance;

c. Annuity contract replacements as a percentage of the producer's total annual annuity contract sales;

d. Number of transactions that are unreported replacements of existing policies or contracts by the existing insurer detected by the company's monitoring system as required by subdivision e, subsection 5.1 of this section; and

e. Replacements, indexed by replacing producer and existing insurer;

5.3. Require with or as a part of each application for life insurance or an annuity a signed statement by both the applicant and the producer as to whether the applicant has existing policies or contracts;

5.4. Require with each application for life insurance or an annuity that indicates an existing policy or contract a completed notice regarding replacements as contained in Appendix A;

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5.5. When the applicant has existing policies or contracts, each insurer shall be able to produce copies of any sales material required by subsection 4.5 of this rule and the producer's and applicant's signed statements with respect to financing and replacement for at least five (5) years after the termination or expiration of the proposed policy or contract;

5.6. Ascertain that the sales material required by subsection 4.5 of this rule meets the requirements of this rule and are complete and accurate for the proposed policy or contract;

5.7. If an application does not meet the requirements of this rule, notify the producer and applicant and fulfill the outstanding requirements; and

5.8. Maintains records in paper, photograph, microprocess, magnetic, mechanical or electronic media or by any process that accurately reproduces the actual document.

§114-8-6. Duties of Replacing Insurers that Use Producers.

6.1. Where a replacement is involved in the transaction, the replacing insurer shall:

a. Verify that the required forms are received and are in compliance with this rule;

b. Notify any other existing insurer that may be affected by the proposed replacement within five (5) business days of receipt of a completed application indicating replacement or when the replacement is identified if not indicated on the application, and mail a copy of the available policy summary for the proposed policy or available disclosure document for the proposed contract within five (5) business days of a request from an existing insurer;

c. Be able to produce copies of the notification regarding replacement required in subsection 4.2 of this rule, indexed by producer, for at least five (5) years or until the next regular examination by the insurance department of a company's state of domicile, whichever is later; and

d. Provide to the policy or contract owner notice of the right to return the policy or contract within thirty (30) days of the delivery of the contract and receive an unconditional full refund of all premiums or considerations paid on it, including any policy fees or charges or, in the case of a variable or market value adjustment policy or contract, a payment of the cash surrender value provided under the policy or contract plus the fees and other charges deducted from the gross premiums or considerations or imposed under such policy or contract; such notice may be included in Appendix A or C.

6.2. In transactions where the replacing insurer and the existing insurer are the same or

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subsidiaries or affiliates under common ownership or control allow credit for the period of time that has elapsed under the replaced policy's or contract's incontestability and suicide period up to the face amount of the existing policy or contract. With regard to financed purchases the credit may be limited to the amount the face amount of the existing policy is reduced by the use of existing policy values to fund the new policy or contract.

6.3. If an insurer prohibits the use of sales material other than that approved by the company, as an alternative to the requirements made of an insurer pursuant to subsection 4.5 of this rule, the insurer may:

- a. Require with each application a statement signed by the producer that:
 - 1. Represents that the producer used only company-approved sales material; and
 - 2. States that copies of all sales material were left with the applicant in accordance with subsection 4.4 of this rule; and
- b. Within ten (10) days of the issuance of the policy or contract:
 - 1. Notify the applicant by sending a letter or by verbal communication with the applicant 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 subsection 4.4 of this rule;
 - 2. Provide the applicant with a toll free number to contact company personnel involved in the compliance function if such is not the case; and
 - 3. Stress the importance of retaining copies of the sales material for future reference; and
- c. Be able to produce a copy of the letter or other verification in the policy file for at least five (5) years after the termination or expiration of the policy or contract.

§114-8-7. Duties of the Existing Insurer.

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

7.1. Retain and be able to produce all replacement notifications received, indexed by replacing insurer, for at least five (5) years or until the conclusion of the next regular examination conducted by the Insurance Department of its state of domicile, whichever is later.

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7.2. Send a letter to the policy or contract owner of the right to receive information regarding the existing policy or contract values including a policy summary. The information shall be provided within five (5) business days of receipt of the request from the policy or contract owner.

7.3. Upon receipt of a request to borrow, surrender or withdraw any policy values, send a notice, advising the policy owner that the release of policy values may affect the guaranteed elements, non-guaranteed elements, face amount or surrender value of the policy from which the values are released. The notice shall be sent separate 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.

§114-8-8. Duties of Insurers with Respect to Direct Response Solicitations.

8.1. 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 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 in Appendix B, or other substantially similar form approved by the commissioner.

8.2. 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:

a. Provide to applicants or prospective applicants with the policy or contract a notice, as described in Appendix C, 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, and references not applicable to the product being sold or replaced, 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

b. Comply with the requirements of subdivision b, subsection 6.1 of this rule, if the applicant furnishes the names of the existing insurers, and the requirements of subdivisions c and d, subsection 6.1 and of subsection 6.2 of this rule.

§114-8-9. Violations and Penalties.

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9.1. Any failure to comply with this rule shall be considered a violation of the Unfair Trade Practices Act, W. Va. Code §§33-11-1 *et seq.* Examples of violations include:

- a. Any deceptive or misleading information set forth in sales material;
- b. Failing to ask the applicant in completing the application the pertinent questions regarding the possibility of financing or replacement;
- c. The intentional incorrect recording of an answer;
- d. Advising an applicant to respond negatively to any question regarding replacement in order to prevent notice to the existing insurer; or
- e. 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.

9.2. Policy and contract owners have the right to replace existing life insurance policies or annuity contracts after indicating in or as a part of applications 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 rule.

9.3. Where it is determined that the requirements of this rule have not been met, the replacing insurer shall provide to the policyowner a policy summary for the replacement policy or available disclosure document for the replacement contract and the appropriate notice regarding replacements in Appendix A or C.

9.4. Violations of this rule shall subject the violators to penalties that may include the revocation or suspension of a producer's or company's license, 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 violations were material to the sale, the insurer may be required to make restitution, restore policy or contract values and pay interest on the amount refunded in cash.

§114-8-10. Severability.

10.1. If any section or portion of a section of this rule, or its applicability to any person or circumstances, is held invalid by a court, the remainder of this rule, or the applicability of its provisions to other persons, shall not be affected.

APPENDIX A

**IMPORTANT NOTICE:
REPLACEMENT OF LIFE INSURANCE OR ANNUITIES**

This document must be signed by the applicant and the producer, if there is one, and a copy left with 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 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 interests. 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 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, 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

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If you answered "yes" to either of the above questions, list each existing policy or contract you are contemplating replacing (include the name of the insurer, the insured or annuitant and the policy or contract number if available) and whether each policy 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 you know the facts. Contact your existing company or its agent for information about the old policy or contract. If you request one, a policy summary or available disclosure documents must be sent to you by the existing insurer. Ask for and retain all sales material used by the agent 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 agent 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 agent to determine whether replacement or financing

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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?

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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?

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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 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 you are making a decision that is in your best interest.

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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 interests. 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 you are contemplating replacing (include the name of the insurer, the insured, and the policy or contract number if available) and whether each policy will be replaced or used as a source of financing:

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

Make sure you know the facts. Contact your existing company or its agent for information about the old policy or contract. If you request one, a policy summary or available disclosure documents must be sent to you by the existing insurer. Ask for and retain all sales material used by the agent 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 agent 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 agent 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?