NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Insurance, Financial Institutions and Professional Registration, Attention: Tamara W. Kopp, Receivership Counsel, Director's Office, PO Box 690, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 400—Life, Annuities and Health
Chapter 5—Advertising and Material Disclosures

PROPOSED AMENDMENT

20 CSR 400-5.400 *[Replacement of]* **Life Insurance and Annuities** ***Replacement***. The director is amending the rule title, amending the purpose, deleting sections (1)-(10) and exhibit A. The director is adding new sections (1)-(9) and appendices A, B, and C.

PURPOSE: This amendment updates life insurance and annuity replacement requirements for insurers and producers in accordance with the National Association of Insurance Commissioners Life Insurance and Annuities Replacement Model Regulation #613.

PURPOSE: This rule regulates the activities of insurers, agents, and brokers with respect to the replacement of existing life insurance and annuities and protects the interests of life insurance and annuity purchasers by establishing minimum standards of conduct to be observed in replacement transactions. ***This rule effectuates and aids in the interpretation of sections 375.934, 375.936, and 375.948, RSMo.***

[(1) Purpose. The purpose of this rule is to—

(A) Regulate the activities of insurers and insurance producers with respect to the replacement of existing life insurance and annuities; and

(B) Protect the interests of life insurance and annuity purchasers by establishing minimum standards of conduct to be observed in replacement transactions by—

1. Assuring that purchasers receive information with which a decision can be made in his/her own best interest;

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

3. Establishing penalties for failure to comply with requirements of this rule.

(2) Definition of Replacement. Replacement means any transaction in which new life insurance or a new annuity is to be purchased, and it is known or should be known to the proposing insurance producer or to the proposing insurer if there is no insurance producer, that by reason of that transaction, existing life insurance or annuity has been or is to be—

(A) Lapsed, forfeited, surrendered or otherwise terminated;

(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) Pledged as collateral or subjected to borrowing, whether in a single loan or under a schedule of borrowing over a period of time for amounts in the aggregate exceeding twenty-five percent (25%) of the loan value set forth in the policy.

(3) Other Definitions.

(A) Conservation means any attempt by the existing insurer or its insurance producer to dissuade a policyowner from the replacement of existing life insurance or annuity. Conservation does not include routine administrative procedures such as late payment reminders, late payment offers or reinstatement offers.

(B) Direct-response sales means any sale of life insurance or annuity where the insurer does not utilize an insurance producer in the sale or delivery of the policy.

(C) Existing insurer means the insurance company whose policy is or will be changed or terminated in a manner as described within the definition of replacement.

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

(E) Policy summary or ledger statement as defined by section 376.704, RSMo.

(F) Registered contract means variable annuities, investment annuities, variable life insurance under which the death benefits and cash values vary in accordance with unit values of investments held in separate account or any other contracts issued by life insurance companies which are registered with the Federal Securities and Exchange Commission.

(G) Replacing insurer means the insurance company that issues or proposes to issue a new policy or contract which is a replacement of existing life insurance or annuity.

(4) Exemptions. Unless otherwise specifically included, this rule shall not apply to transactions involving—

(A) Credit life insurance;

(B) Group life insurance or group annuities;

(C) An application to the existing insurer that issued the existing life insurance where a contractual change or conversion privilege is being exercised;

(D) Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company;

(E) Transactions where the replacing insurer and the existing insurer are the same or are subsidiaries or affiliates under common ownership or control; provided, however, insurance producers proposing replacement shall comply with the requirements of subsection (5)(A);

(F) Registered contracts shall be exempt from the requirements of paragraphs (7)(B)2. and 3. requiring provision of policy summary or ledger statement information; however, premium or contract contribution amounts and identification of the appropriate prospectus or offering circular shall be required in lieu of it; and

(G) Policies issued in connection with a pension, profit sharing and individual retirement account or other benefit plan qualifying for tax deductibility of premium.

(5) Duties of Insurance Producers.

(A) Each insurance producer who initiates the application shall submit to the insurer to which an application for life insurance or annuity is presented, with or as part of each application—

1. A statement signed by the applicant as to whether replacement of existing life insurance or annuity is involved in the transaction; and

2. A signed statement as to whether the insurance producer knows replacement is or may be involved in the transaction.

(B) Where a replacement is involved, the insurance producer shall—

1. Present to the applicant, not later than at the time of taking the application, a "Notice Regarding Replacement" in the form as described in Exhibit A, included herein, or other substantially similar form approved by the director. The notice shall be signed by both the applicant and the insurance producer and left with the applicant;

2. Obtain with or as part of each application a list of all existing life insurance or annuity to be replaced, or both, and properly identified by name of insurer, the insured and contract number. If a contract number has not been assigned by the existing insurer, alternative identification, such as an application or receipt number, shall be listed;

3. Leave with the applicant the original or a copy of written or printed communications used for presentation to the applicant; and

4. Submit to the replacing insurer with the application a copy of the replacement notice provided pursuant to paragraph (5)(B)1.

(C) Each insurance producer who uses written or printed communications in a conversation shall leave with the applicant the original or a copy of the materials used.

(6) Duties of All Insurers. Each shall—

(A) Inform its field representatives or other personnel responsible for compliance with this rule of the requirements of this rule; and

(B) Require with or as a part of each completed application for life insurance or annuity, a statement signed by the applicant as to whether the proposed insurance or annuity will replace existing life insurance or annuity.

(7) Duties of Insurers That Use Insurance Producers. Each insurer that uses an insurance producer in a life insurance or annuity sale shall—

(A) With or as part of each completed application for life insurance or annuity, require a statement signed by the insurance producer as to whether s/he knows replacement is or may be involved in the transaction;

(B) Where a replacement is involved—

1. Require from the insurance producer with the application for life insurance or annuity—1) a list of all of the applicant's existing life insurance or annuity to be replaced and 2) a copy of the replacement notice provided the applicant pursuant to paragraph (5)(B)1. The existing life insurance or annuity shall be identified by name of insurer, insured and contract number. If a number has not been assigned by the existing insurer, alternative identification, such as an application or receipt number, shall be listed;

2. Send to each existing insurer a written communication advising of the replacement of proposed replacement and the identification information obtained pursuant to paragraph (7)(B)1. and a policy summary or ledger statement containing policy data on the proposed life insurance or annuity. Life insurance cost index and equivalent level annual dividend figures need not be included in the policy summary or ledger statement. This written communication shall be made within five (5) working days of the date the application is received in the replacing insurer's home or regional office or the date the proposed policy or contract is issued, whichever is sooner; and

3. Each existing insurer or the insurer's insurance producer, that undertakes a conversation, within twenty (20) days from the date the written communication plus the materials required in paragraphs (7)(B)1. and 2. is received by the existing insurer, shall furnish the policyowner with a policy summary for the existing life insurance or a ledger statement containing policy data on the existing policy annuity, or both. All information in the policy summary or ledger statement relating to premiums, cash values, death benefits and dividends shall be computed from the current policy year of the existing life insurance. The policy summary shall include the amount of any outstanding indebtedness, the sum of any dividend accumulations or additions and may include any other information that is not in violation of any rule or statute. Life insurance cost index and equivalent level annual dividend figures need not be included in the policy summary. The replacing insurer may request the existing insurer to furnish it with a copy of the summaries;

(C) As the replacing insurer, maintain evidence of the "Notice Regarding Replace-ment," the policy summary, the contract summary and any ledger statements used and a replacement register, cross-indexed, by replacing insurance producer and existing insurer to be replaced. The existing insurer shall maintain evidence of policy summaries, contract summaries or ledger statements used in any conversation. Evidence that all requirements were met shall be maintained for at least three (3) years or until the conclusion of the next succeeding regular examination by the insurance department of its state of domicile, whichever is earlier; and

(D) As the replacing insurer shall provide in its policy or in a separate written notice which is delivered with the policy that the applicant has a right to an unconditional refund of all premiums paid, which right may be exercised within a period of twenty (20) days commencing from the date of delivery of the policy.

(8) Duties of Insurers With Respect to Direct- Response Sales.

(A) If in the solicitation of a direct response sale, the insurer did not propose the replacement and a replacement is involved, the insurer shall send to the applicant with the policy a replacement notice as described in Exhibit B, or other substantially similar form approved by the director.

(B) If the insurer proposed the replacement, it shall—

1. Provide to applicants or prospective applicants with or as a part of the application a replacement notice as described in Exhibit B, included herein, or other substantially similar form approved by the director;

2. Request from the applicant with or as part of the application, a list of all existing life insurance or annuity to be replaced and properly identified by name of insurer and insured; and

3. Comply with the requirements of paragraph (7)(B)2., if the applicant furnishes the names of the existing insurers and the requirements of subsection (7)(C), except that it need not maintain a replacement register.

(9) Penalties.

(A) Any insurer, insurance producer, representative, officer or employee of that insurer failing to comply with the requirements of this rule shall be subject to those penalties as may be appropriate under the insurance laws.

(B) Patterns of action by policyowners who purchase replacing policies from the same insurance producer, after indicating on the application that replacement is not included, shall be deemed prima facie evidence of the insurance producer's knowledge that replacement was intended in connection with the sale of those policies and the patterns of action shall be deemed prima facie evidence of the insurance producer's intent to violate this rule.

(C) This regulation does not prohibit the use of additional material other than that which is required that is not in violation of the rule or any other statute or rule.

(10) Severability. If any section or portion of a section of this rule or the applicability of it to any person or circumstance, is held invalid by a court, the remainder of this rule or the applicability of that provision to other persons, shall not be affected.

Exhibit A
Replacement Notice
Replacing Your Life Insurance Policy or Annuity?

Are you thinking about buying a new policy and discontinuing or changing an existing policy? 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 policy and the proposed policy.

Make sure you understand the facts. Ask the company or insurance producer that sold you your existing policy to provide you with a policy summary statement.

The reverse side contains a check list of some of the items you should consider in making your decision. TAKE TIME TO READ IT.

Do not let one insurance producer or insurer prevent you from obtaining information from another insurance producer or insurer which may be to your advantage.

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

We are required to notify your existing company that you may be replacing their policy.

Applicant's Signature	*Date*	*Insurance Producer's Signature*	*Date*

Applicant's Name and Address (printed)	*Insurance Producer's Name, Address, Telephone Number and License Number (printed)*

ORIGINAL TO APPLICANT
COPY TO REPLACING INSURER—COPY TO REPLACED INSURER

ITEMS TO CONSIDER

1. If the policy coverages are basically similar, premiums for a new policy may be higher because rates increase as your age increases.
2. Cash values and dividends, if any, may grow slower under a new policy initially because of the initial costs of issuing a policy.
3. Your present insurance company may be able to make a change on terms which may be more favorable than if you replace existing insurance with new insurance.
4. If you borrow against an existing policy to pay premiums on a new policy, death benefits payable under your existing policy will be reduced by the amount of any unpaid loan, including unpaid interest.
5. Current interest rates are not guaranteed. Guaranteed interest rates are usually considerably lower than current rates. What rates are guaranteed?
6. Are premiums guaranteed or subject to change—up or down?
7. Participating policies pay dividends that may materially reduce the cost of insurance over the life of the contract. Dividends, however, are not guaranteed.
8. CAUTION, you are urged not to take action to terminate, assign or alter your existing life insurance coverage until after you have been issued the new policy, examined it and have found it to be acceptable to you; and

REMEMBER, you have twenty (20) days following receipt to examine the contents of any individual life insurance policy or annuity. If you are not satisfied with it for any reason, you have the right to return it to the insurer at its home or branch office, or to the insurance producer through whom it was purchased, for a full refund of premium.

EXHIBIT B
(Name, address and telephone number of the insurance company)
Important Notice Regarding Replacement
of Life Insurance

You have indicated that you intend to replace an existing life insurance policy or policies in connection with the purchase of our life insurance policy. As a result, we are required to send you this notice. Please read it carefully.

Whether it is to your advantage to replace your existing insurance coverage, only you can decide. It is in your best interest, however, to have adequate information before a decision to replace your present coverage becomes final so that you may understand the essential features of the proposed policy and your existing insurance coverage.

You may want to contact your existing life insurance company or its insurance producer for additional information and advice or discuss your purchase with other advisors. The information you receive should be of value to you in reaching a final decision.

If either the proposed policy or the existing insurance you intend to replace is a participating policy, you should be aware that dividends may materially reduce the cost of insurance and are an important factor to consider. Dividends, however, are not guaranteed.

You should recognize that a policy which has been in existence for a period of time may have certain advantages to you over a new policy. If the policy coverages are basically similar, the premiums for a new policy may be higher because rates increase as your age increases. Under your existing policy, the period of time during which the issuing company could [contest the policy because of a material misrepresentation or omission concerning the medical information requested in your application, or] deny coverage for death caused by suicide, may have expired or may expire earlier than it will under the proposed policy. Your existing policy may have options which are not available under the policy being proposed to you or may not come into effect under the proposed policy until a later time during your life. Also, your proposed policy's cash values and dividends, if any, may grow slower initially because the company will incur the cost of issuing your new policy. On the other hand, the proposed policy may offer advantages which are more important to you.*

If you are considering borrowing against your existing policy to pay the premiums on the proposed policy, you should understand that in the event of your death, the amount of unpaid loan, including unpaid interest, will be deducted from the benefits of your existing policy thereby reducing your total insurance coverage.

* * * * * *

(Additional paragraph if a twenty (20)-day money-back guarantee is provided by the insurer.)

After we have issued your policy, you will have twenty (20) days from the date the new policy is received by you to notify us you are cancelling the policy issued on your application and you will receive back all payments you made to us.

* * * * * *

You are urged not to take action to terminate or alter your existing life insurance coverage until you have been issued the new policy, examined it and found it acceptable to you.

* * * * * *

**Use bracketed language only when the application asks health questions.]*

(1) Purpose and Scope.

(A) The purpose of this rule is—

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

2. To protect the interests of life insurance and annuity purchasers by establishing minimum standards of conduct to be observed in replacement or financed purchase transactions. It will—

A. Assure that purchasers receive information with which a decision can be made in his or her own best interest; and

B. Reduce the opportunity for misrepresentation and incomplete disclosure.

(B) Unless otherwise specifically included, this rule shall not apply to transactions involving—

1. Credit life insurance;

2. Group life insurance or group annuities where there is no direct solicitation of individuals by an insurance producer. Direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating or enrolling individuals or, when initiated by an individual member of the group, assisting with the selection of investment options offered by a single insurer in connection with enrolling that individual in group life insurance or a group annuity. Group life insurance or group annuity certificates marketed through direct response solicitation shall be subject to the provisions of section (7) of this rule;

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

4. An application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised; or, when the existing policy or contract is being replaced by the same insurer pursuant to a new policy or contract filed with and approved by the director; or, when a term conversion privilege is exercised among corporate affiliates;

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

6. (Reserved)

A. Policies or contracts used to fund 1) an employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA); 2) a plan described by Sections 401(a), 401(k) or 403(b) of the Internal Revenue Code, where the plan, for purposes of ERISA, is established or maintained by an employer; 3) a governmental or church plan defined in Section 414, 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 Internal Revenue Code; or 4) a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

B. Notwithstanding subparagraph (1)(B)6.A., this rule shall apply to policies or contracts used to fund any plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pre-tax or after-tax basis, and where the insurer has been notified that plan participants may choose from among two (2) or more insurers and there is a direct solicitation of an individual employee by an insurance producer for the purchase of a contract or policy. As used in this subsection, direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating individuals about the plan or arrangement or enrolling individuals in the plan or arrangement or, when initiated by an individual employee, assisting with the selection of investment options offered by a single insurer in connection with enrolling that individual employee in group life insurance or a group annuity;

7. Where new coverage is provided under a life insurance policy or contract and the cost is borne wholly by the insured's employer or by an association of which the insured is a member;

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

9. Structured settlements.

(C) Registered contracts shall be exempt from the requirements of paragraph (5)(A)2. and subsection (6)(B) of this rule with respect to the provision of illustrations or policy summaries; however, premium or contract contribution amounts and identification of the appropriate prospectus or offering circular shall be required instead.

(2) Definitions.

(A) "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.

(B) "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."

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

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

(E) "Financed purchase" means the purchase of a new policy or contract involving the actual or intended use of funds obtained by the withdrawal or surrender of, or by borrowing from values of an existing policy or contract to pay all or part of any premium due on the new policy or contract. For purposes of a regulatory review of an individual transaction only, if a withdrawal, surrender, or borrowing involving the policy or contract values of an existing policy or contract is used to pay premiums on a new policy or contract 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 or contract, it will be deemed *prima facie* evidence of the policyholder's intent to finance the purchase of the new policy or contract with existing policy or contract values. This *prima facie* standard is not intended to increase or decrease the monitoring obligations contained in paragraph (4)(A)5. of this rule.

(F) "Illustration" means a presentation or depiction that includes non-guaranteed elements of a policy of life insurance or annuity contract over a period of years as defined in section 375.1503, RSMo.

(G) "Policy summary," for the purposes of this rule—

1. For policies or contracts other than universal life policies, means a written statement regarding a policy or contract that 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;

2. For universal life policies, means 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.

(H) "Producer," for the purpose of this rule, shall be defined to include agents, brokers, and producers.

(I) "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.

(J) "Registered contract" means an annuity contract or life insurance policy subject to the prospectus delivery requirements of the Securities Act of 1933.

(K) "Replacement" means a transaction in which a new policy or contract is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer if there is no producer, that by reason of the transaction, an existing policy or contract has been or is to be—

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

2. Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;

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.

(L) "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 policy or contract owner related to the policy or contract purchased.

(3) Duties of Producers.

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

(B) If the applicant answered "yes" to the question regarding existing coverage referred to in subsection (3)(A), 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, included herein, or other substantially similar form. 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.

(C) 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.

(D) 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.

(E) Except as provided in subsection (5)(C), 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, including any illustrations related to the specific policy or contract purchased.

(F) Failure to comply with the requirements set forth in section (3) of this rule shall constitute false information and/or misrepresentations and false advertising of insurance policies and/or misrepresentation in insurance applications as those terms are used in section 375.936(4), (6), and (7), RSMo.

(4) Duties of Insurers that Use Producers. Each insurer shall—

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

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

2. 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;

3. A system to review the appropriateness of each replacement transaction that the producer does not indicate is in accord with paragraph (4)(A)2. above;

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

5. 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;

(B) 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 department. The capacity to monitor shall include the ability to produce records for each producer's—

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

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

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

4. 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 paragraph (4)(A)5.; and

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

(C) 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;

(D) 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, included herein;

(E) When the applicant has existing policies or contracts, each insurer shall be able to produce copies of any sales material required by subsection (3)(E), the basic illustration and any supplemental illustrations related to the specific policy or contract that is purchased, 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;

(F) Ascertain that the sales material and illustrations required by subsection (3)(E) of this rule meet the requirements of this rule and are complete and accurate for the proposed policy or contract;

(G) If an application does not meet the requirements of this rule, notify the producer and applicant and fulfill the outstanding requirements;

(H) Maintains records in paper, photograph, microprocess, magnetic, mechanical or electronic media, or by any process that accurately reproduces the actual document; and

(I) Failure to comply with the requirements set forth in section (4) of this rule shall constitute false information and/or misrepresentations and false advertising of insurance policies and/or misrepresentation in insurance applications as those terms are used in section 375.936(4), (6), and (7), RSMo.

(5) Duties of Replacing Insurers that Use Producers.

(A) Where a replacement is involved in the transaction, the replacing insurer shall—

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

2. 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 illustration or 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;

3. Be able to produce copies of the notification regarding replacement required in subsection (3)(B), 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

4. 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 consideration 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 consideration or imposed under such policy or contract. Such notice may be included in Appendix A or C, included herein.

(B) In transactions where the replacing insurer and the existing insurer are the same or 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.

(C) 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 (3)(E), the insurer may—

1. Require with each application a statement signed by the producer that—

A. Represents that the producer used only company-approved sales material; and

B. States that copies of all sales material were left with the applicant in accordance with subsection (3)(D); and

2. Within ten (10) days of the issuance of the policy or contract—

A. 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 (3)(D);

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

C. Stress the importance of retaining copies of the sales material for future reference; and

3. 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.

(D) Failure to comply with the requirements set forth in section (5) of this rule shall constitute false information and/or misrepresentations and false advertising of insurance policies and/or misrepresentation in insurance applications as those terms are used in section 375.936(4), (6), and (7), RSMo.

(6) Duties of the Existing Insurer. Where a replacement is involved in the transaction, the existing insurer shall—

(A) Retain and be able to produce all replacement notifications received, indexed by replacing insurer, for at least five (5) years;

(B) Send a letter to the policy or contract owner of the right to receive information regarding the existing policy or contract values including, if available, an in force illustration or policy summary, if an in force illustration cannot be produced within five (5) business days of receipt of a notice that an existing policy or contract is being replaced. The information shall be provided within five (5) business days of receipt of the request from the policy or contract owner;

(C) 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; and

(D) Failure to comply with the requirements set forth in section (6) of this rule shall constitute false information and/or misrepresentations and false advertising of insurance policies and/or misrepresentation in insurance applications as those terms are used in section 375.936(4), (6), and (7), RSMo.

(7) Duties of Insurers with Respect to Direct Response Solicitations.

(A) In the case of an application that is initiated as a result of a direct response solicitation, the insurer shall require, with or as part of each completed application for a policy or contract, a statement asking whether the applicant, by applying for the proposed policy or contract, intends to replace, discontinue, or change an existing policy or contract. If the applicant indicates a replacement 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, included herein, or other substantially similar form approved by the director.

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

1. Provide to applicants or prospective applicants with the policy or contract a notice, as described in Appendix C, included herein, or other substantially similar form approved by the director. 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 director. The insurer's obligation to obtain the applicant's signature shall be satisfied if it can demonstrate that it has made a diligent effort to secure a signed copy of the notice referred to in this paragraph. The requirement to make a diligent effort shall be deemed satisfied if the insurer includes in the mailing a self-addressed postage prepaid envelope with instructions for the return of the signed notice referred to in this section; and

2. Comply with the requirements of paragraph (5)(A)2., if the applicant furnishes the names of the existing insurers, and the

requirements of paragraphs (5)(A)3., (5)(A)4., and subsection (5)(B).

(C) Failure to comply with the requirements set forth in section (7) of this rule shall constitute false information and/or misrepresentations and false advertising of insurance policies and/or misrepresentation in insurance applications as those terms are used in section 375.936(4), (6), and (7), RSMo.

(8) Violations.

(A) Any failure to comply with this rule shall be considered a violation of the Unfair Trade Practice Act, sections 375.930 to 375.948, RSMo, as more fully set forth in this rule. Examples of violations include:

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

2. Failing to ask the applicant in completing the application the pertinent questions regarding the possibility of financing or replacement;

3. The intentional incorrect recording of an answer;

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

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

(B) Policy and contract owners have the right to replace existing life insurance policies or annuity contracts after indicating in, or as a part of, an application for new coverage that replacement is not their intention; however, patterns of inaccurate recordations of the expression of intention regarding replacement 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.

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

(9) Severability. 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 policy or contract 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 or contract to pay all or part of any premium or payment due on the new policy or contract. 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 or contract and may reduce the amount paid upon the death of the insured or annuitant.

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

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 or contract will be replaced or used as a source of financing:

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

Make sure you know the facts. Contact your existing company or its agent for information about the old policy or contract. If you request one, an in force illustration, 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 your purchase makes sense:

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

POLICY VALUES: **New policies usually take longer to build cash values and to pay dividends.**
Acquisition costs for the old policy may have been paid, you will incur costs for the new one.
What surrender charges do the policies have?

What expense and sales charges will you pay on the new policy?
Does the new policy provide more insurance coverage?

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

IF YOU ARE KEEPING THE OLD POLICY AS WELL AS THE NEW POLICY:

How are premiums for both policies being paid?
How will the premiums on your existing policy be affected?
Will a loan be deducted from death benefits?
What values from the old policy are being used to pay premiums?

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

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

OTHER ISSUES TO CONSIDER FOR ALL TRANSACTIONS:

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

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.

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 policy or contract involves the use of funds obtained by the withdrawal or surrender of or by borrowing some or all of the policy or contract values, including accumulated dividends, of an existing policy or contract, to pay all or part of any premium or payment due on the new policy or contract. 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 or contract and may reduce the amount paid upon the death of the insured or annuitant.

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 or contract will be replaced or used as a source of financing:

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

Make sure you know the facts. Contact your existing company or its agent for information about the old policy or contract. If you request one, an in force illustration, 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?
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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?

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You may need a medical exam for a new policy.
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Suicide limitations may begin anew on the new coverage.

IF YOU ARE KEEPING THE OLD POLICY AS WELL AS THE NEW POLICY:

How are premiums for both policies being paid?

How will the premiums on your existing policy be affected?
Will a loan be deducted from death benefits?
What values from the old policy are being used to pay premiums?

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

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

OTHER ISSUES TO CONSIDER FOR ALL TRANSACTIONS:

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

AUTHORITY: sections 374.045 and 375.143, RSMo Supp. 2013, and sections 375.934, 375.936, and 375.948, RSMo 2000. This rule was previously filed as 4 CSR 190-13.060. Original rule filed Jan. 5, 1970, effective Jan. 15, 1970. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed Sept. 30, 2016.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Insurance, Financial Institutions and Professional Registration, Attention: Tamara W. Kopp, Receivership Counsel, Director's Office, PO Box 690, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 400—Life, Annuities and Health
Chapter 5—Advertising and Material Disclosures

PROPOSED RESCISSION

20 CSR 400-5.410 Disclosure of Material Facts in Annuity Sales. This rule provided standards for the disclosure of certain information about annuity contracts to protect consumers and foster consumer education. The rule specified material information which must be disclosed and the method for disclosing it in connection with the offer and sale of annuity contracts. The goal of this regulation was to ensure that purchasers of annuity contracts understand certain basic features of an annuity contract. This rule was based upon the Annuity Disclosure Model Regulation, adopted by the National Association of Insurance Commissioners in 1998. The rule was a minimum standard, but was not a substitute for complete disclosure of material facts prior to sale as required by law.

PURPOSE: This rule is being rescinded because proposed rule 20 CSR 400-5.800 Annuity Disclosure, is replacing the language contained in this rule.

AUTHORITY: sections 374.040, 374.045, 375.013, 375.936(4) and 375.936(6), RSMo 2000 and 375.144, RSMo Supp. 2005. Original rule filed July 14, 2006, effective Jan. 30, 2007. Rescinded: Filed Sept. 30, 2016.

PUBLIC COST: The proposed rescission will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: The proposed rescission will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Department of Insurance, Financial Institutions and Professional Registration, Attention: Tamara W. Kopp, Receivership Counsel, Director's, PO Box 690, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 400—Life, Annuities and Health
Chapter 5—Advertising and Material Disclosures

PROPOSED RULE

20 CSR 400-5.800 Annuity Disclosure

PURPOSE: This rule effectuates and aids in the interpretation of sections 375.141.1(8), 375.143, and 375.936(4), (6), and (7), RSMo. The purpose of this rule is to provide standards for the disclosure of certain minimum information about annuity contracts to protect consumers and foster consumer education. This rule specifies the minimum information which must be disclosed, the method for disclosing it, and the use and content of illustrations, if used, in connection with the sale of annuity contracts. The goal of this rule is to ensure that purchasers of annuity contracts understand certain basic features of annuity contracts. This rule implements the National Association of Insurance Commissioners (NAIC) Annuity Disclosure Guideline Regulation #245.

(1) Applicability and Scope. This rule applies to all group and individual annuity contracts and certificates except—

(A) Immediate and deferred annuities that contain no non-guaranteed elements;

(B) *(Reserved)*

1. Annuities used to fund—

A. An employee pension plan which is covered by the Employee Retirement Income Security Act (ERISA);

B. A plan described by Sections 401(a), 401(k), or 403(b) of the *Internal Revenue Code*, where the plan, for purposes of ERISA, is established or maintained by an employer;

C. A governmental or church plan defined in Section 414 or a deferred compensation plan of a state or local government or a tax exempt organization under Section 457 of the *Internal Revenue Code*; or

D. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

2. Notwithstanding paragraph (1)(B)1., the rule shall apply to annuities used to fund a 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 insurance company has been notified that plan participants may choose from among two (2) or more fixed annuity providers and there is a direct solicitation of an individual employee by a producer for the purchase of an annuity contract. As used in this subsection, direct solicitation shall not include any meeting held by a producer solely for the purpose of educating or enrolling employees in the plan or arrangement;

(C) Non-registered variable annuities issued exclusively to an accredited investor or qualified purchaser as those terms are defined by the Securities Act of 1933 (15 U.S.C. Section 77a et seq.), the Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.), or the regulations promulgated under either of those acts, and offered for sale and sold in a transaction that is exempt from registration under the Securities Act of 1933 (15 U.S.C. Section 77a et seq.);

(D) *(Reserved)*

1. Transactions involving variable annuities and other registered products in compliance with Securities and Exchange Commission (SEC) rules and Financial Industry Regulatory Authority (FINRA) rules relating to disclosures and illustrations, provided that compliance with section (3) of this rule shall be required after January 1, 2014, unless, or until such time as, the SEC has adopted a summary prospectus rule or FINRA has approved for use a simplified disclosure form applicable to variable annuities or other registered products.

2. Notwithstanding paragraph (1)(D)1., the delivery of the