

# 2024 CFTC REPLACEMENTS

# FACULTY



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# AGENDA



- Definition of “Replacement”
- Duties of Producers
- Duties of Replacing Insurers
- Duties of Replaced Insurers

# THE DEFINITION OF REPLACEMENTS



# DEFINITION – REPLACEMENT

## Replacement

- 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:**



# DEFINITION – REPLACEMENT

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.

# REPLACEMENT – FINANCED PURCHASE



## Financed Purchase

- 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...”
- 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 **4 months before** or **13 months after** the effective date of the new policy, it is a financed purchase.

# FINANCED PURCHASE TIMING





# EXEMPTIONS

Unless specifically included, the regulation shall not apply to transactions involving:

- Credit life.
- Group life/annuity if no direct solicitation by producers).
- Group life/annuity contracts to fund prearranged funeral contracts.
- Policy/contract conversion (with same insurer).
- Proposed coverage to replace life insurance under a binding or conditional receipt issued by the same company.

# EXEMPTIONS

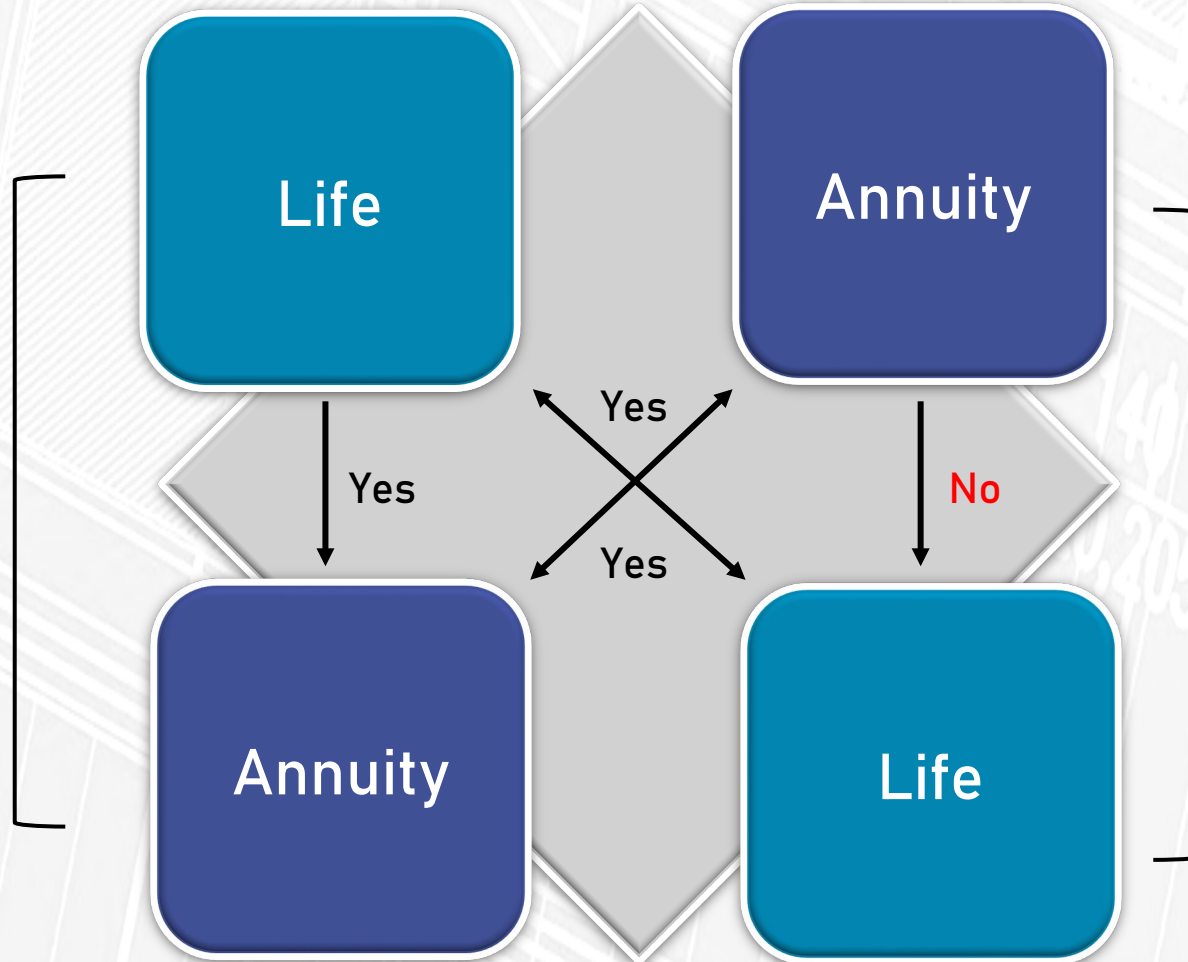
- Life insurance if the **cost is borne wholly by the insured employer** or by an association the insured is a member of.
- Policies/contracts to fund an **employee pension or welfare plan under ERISA** and certain plans maintained by an employer (excludes certain plans when solely funded by the employee).
- **Immediate annuities** when proceeds from a **deferred product** are the source of funding.
- **Structured settlements.**



# COMMON TRANSACTIONS

## Yes (A Replacement)

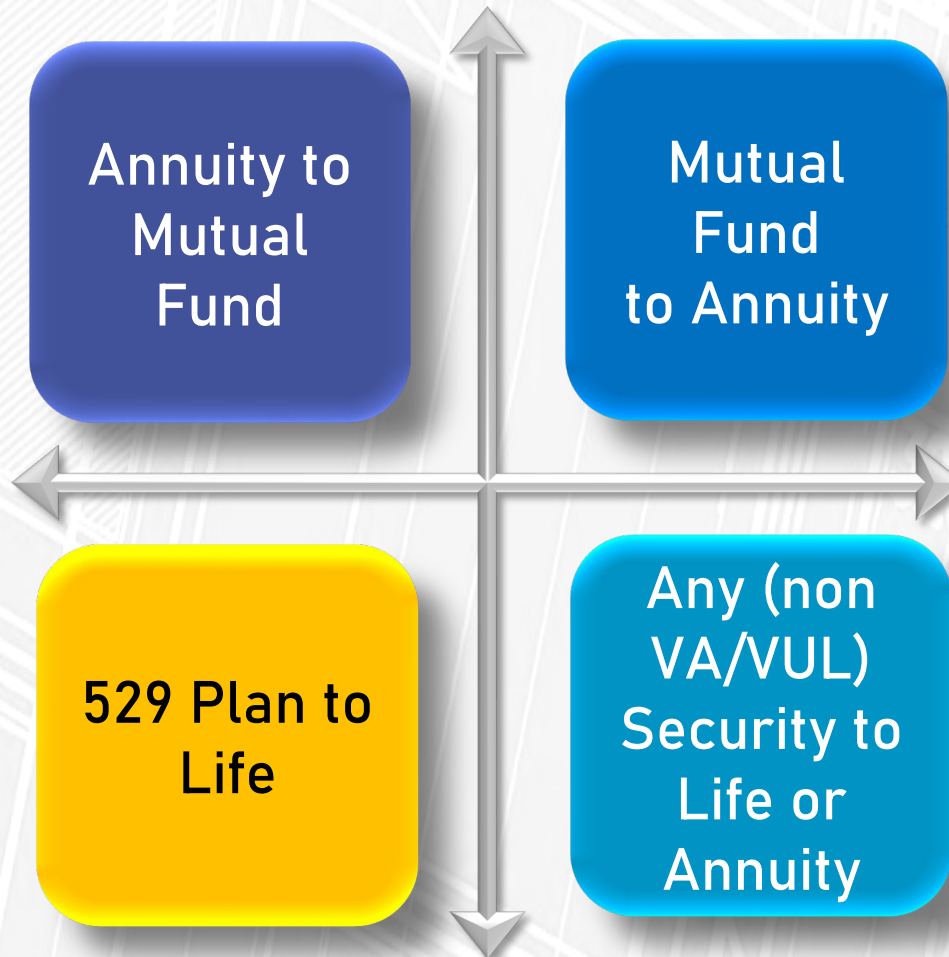
- Life to life, life to annuity, and annuity to annuity money movement qualifies for tax favorable treatment via a 1035 exchange.
- Such transactions are subject to state replacement regulations.



## No (Not A Replacement)

- Annuity to life insurance money movement does not qualify for tax favorable treatment via a 1035 exchange.
- Such transactions are subject to state replacement regulations.

# TRANSACTIONS THAT ARE NOT REPLACEMENTS





# DUTIES OF PRODUCERS



# KEY NAIC MODEL REG REQUIREMENTS

## Duties of Producers

- Ensure the following questions are answered:
  - **Consumer question** Existing policies/contracts?
  - **Producer question** Existing policies/contracts?



# KEY NAIC MODEL REG REQUIREMENTS

## Duties of Producers (continued)

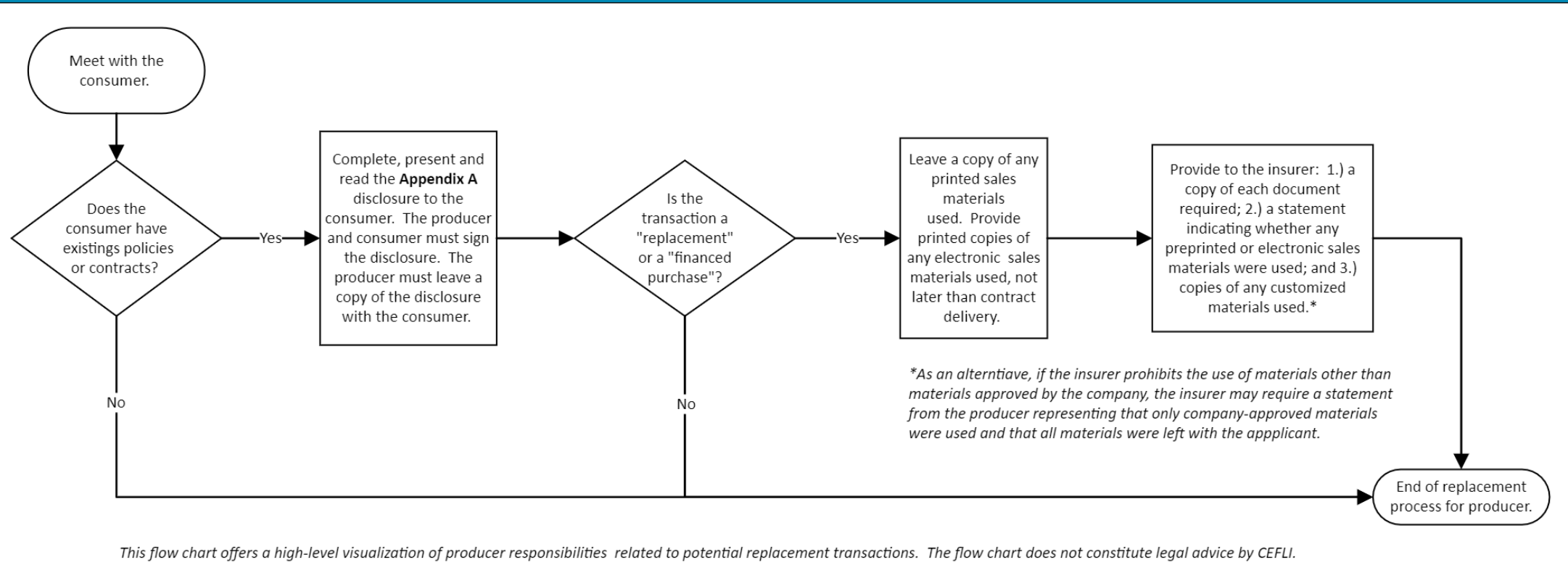
- If either are answered “Yes”:
  - [Present and read](#) Appendix A.
  - Consumer and Producer must [sign the disclosure](#) confirming:
    - The notice was read aloud (or that the applicant did not want the notice to be read aloud).
    - A copy of the notice was left with the consumer. The notice contains information regarding the existing policies/contracts that are proposed to be replaced or used to finance the new policy or contract.

# NAIC MODEL REGULATION (MDL-613)

## Duties of Producers (continued)

- Leave a copy of sales materials with Consumer.
- Provide the insurer with a statement regarding the preprinted or electronically presented sales materials and illustrations used.
- Provide a copy of materials to the insurer.
- Or, if the company only allows the use of preapproved materials, the producer may instead provide an attestation.

# PRODUCER FLOW CHART





# DUTIES OF REPLACING INSURERS



# NAIC MODEL REGULATION (MDL-613)

## Duties of Insurers That Use Producers

- **Inform producers** of the **regulatory requirements** – policies and training.
- **Inform producers**, in writing, of the **insurer's position** regarding acceptable replacements and provide guidance (company policy).
- Have **procedures** to confirm the requirements of the regulation.
- Have a system to **review the appropriateness of a replacement** the producer indicates is not aligned with company standards. **(Many companies won't allow such transactions.)**
- Have **procedures** to detect **unreported replacements** – surveillance/monitoring/oversight.

# NAIC MODEL REGULATION (MDL-613)

## Duties of Insurers That Use Producers (continued)

- **Monitor** each producer's business for **replacement trends** (specific metrics must be maintained).
- As part of the application, **require statements** from both the consumer and the producer, regarding whether the applicant has existing policies or contracts.
- Require a completed copy of **Appendix A** if the consumer has existing policies or contracts (regardless of whether replacement is involved).



# NAIC MODEL REGULATION (MDL-613)

## Duties of Insurers That Use Producers (continued)

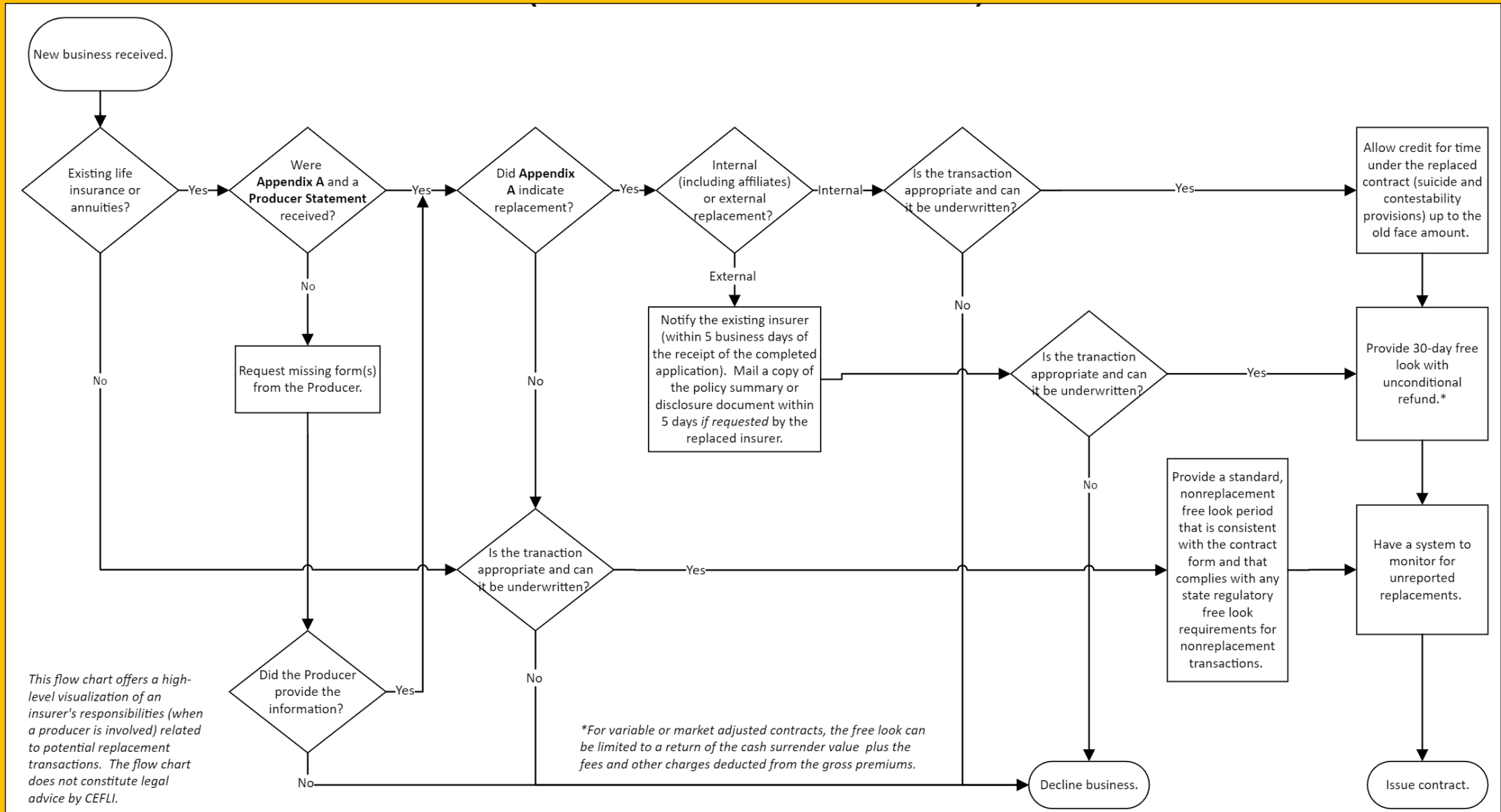
- Internal Replacements - give the client **credit for time in the existing policy**, up to the face amount, for the contestability and suicide clauses of the new contract/policy.
- **30-day free look** from the time of contract delivery.
- **Notify the existing/replaced insurer** of the replacement within 5 business days (in some states, 3 days or 7 days) of receipt of the completed application materials.

# NAIC MODEL REGULATION (MDL-613)

## Duties of Insurers That Use Producers (continued)

- Within 10 days of the issuance of a new contract, notify the client the producer advised he/she left copies of all sales materials with them and provide the toll-free number to contact the company in the event that is not the case.
- Be able to produce evidence of the above.

# REPLACING INSURER FLOW CHART





# AREAS TO WATCH:

- Undisclosed Replacements.
- Incomplete Forms.
- Timeliness of Notice – To Consumers.
- Timeliness of Notice – To Replaced Insurer.
- Offer of the appropriate Free Look Period.
- Emerging Trends (with products, with geographic regions, with certain products, etc.).
- Suitability of the Replacement.
- Failure to maintain a Replacement Register.

# DUTIES OF THE REPLACED INSURER



# NAIC MODEL REGULATION (MDL-613)

## Duties of Existing Insurers

- **Send a letter to the policy or contract owner** of the right to receive information regarding the existing policy or contract values within 5 business days of receipt of a notice that an existing policy or contract is being replaced.
- Upon request from a policyowner for such information, provide the information within 5 business days of receipt of the request.
- Upon receipt of a request to borrow, surrender, reduce, etc., from an existing policy or contract, **advise the policyowner how the change will impact coverage, non-guaranteed elements, contract values, etc.**



# STATE CONSIDERATIONS

- The NAIC Model Regulation is just that ... it's a Model.
  - Each state DOI **can chose to adopt the Model, or not.**
  - States that adopt the Model **may not adopt it verbatim.**
- Be aware of potential **varying state requirements** related to the definition of replacement, insurer and producer responsibilities, and/or variation in the free-look period required.
- If conducting business in New York, learn the requirements of **New York Regulation 60 (Reg 60)**.
  - Regulation 60 is more complex and varies greatly from the NAIC Replacement Model Regulation.

# QUESTIONS



# NETWORKING BREAK

## 3:00 – 3:30 PM