

STATE OF NEW YORK INSURANCE DEPARTMENT
REPORT ON EXAMINATION
OF
TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA
AS OF
DECEMBER 31, 2004

DATE OF REPORT:

MARCH 3, 2006

EXAMINER:

MARK A. MC LEOD

REPORT ON ASSOCIATION EXAMINATION
OF
TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA
AS OF
DECEMBER 31, 2004
BY
THE INSURANCE DEPARTMENTS
OF THE
STATE OF NEW YORK
STATE OF NEVADA

DATE OF REPORT:

MARCH 3, 2006

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STATE OF NEW YORK
INSURANCE DEPARTMENT
25 BEAVER STREET
NEW YORK, NEW YORK 10004

George E. Pataki
Governor

Howard Mills
Superintendent

March 3, 2006

Honorable Howard Mills
Superintendent of Insurance
Albany, New York 12257

Sir:

In accordance with instructions contained in Appointment No. 22380, dated June 1, 2005 and annexed hereto, an examination has been made into the condition and affairs of Teachers Insurance and Annuity Association of America, hereinafter referred to as "the Association" at its home office located at 730 Third Avenue, New York, NY 10017.

Wherever "Department" appears in this report, it refers to the State of New York Insurance Department.

The report indicating the results of this examination is respectfully submitted.



STATE OF NEW YORK
INSURANCE DEPARTMENT
25 BEAVER STREET
NEW YORK, NEW YORK 10004

March 3, 2006

Honorable Howard Mills
Superintendent of Insurance
State of New York

Honorable Mike Kreidler
Chairman, Western Zone
Commissioner of Insurance
State of Washington

Sirs:

An examination has been made into the condition and affairs of Teachers Insurance and Annuity Association of America, hereinafter referred to as "the Association", at its home office located at 730 Third Avenue, New York, NY 10017.

The examination was conducted by the New York Insurance Department, hereinafter referred to as the "the Department", with participation from the State of Nevada representing the Western Zone.

The report on examination is respectfully submitted.

1. EXECUTIVE SUMMARY

This was a limited scope examination of the Association as of December 31, 2004 that included: 1) a review of certain targeted balance sheet items (See item 2 of this report); and 2) a review or audit of certain market conduct activities of the Association (See item 6 of this report)

The examiner's review of a sample of transactions did not reveal any differences which materially affected the Association's financial condition as presented in its financial statements contained in the December 31, 2004 filed annual statement. (See item 5 of this report)

The Association had numerous violations of Department Regulation No. 60 regarding the replacement of annuities, whereby contract holders did not receive full and accurate disclosure in replacement transactions where an agent was involved. The Association has agreed to implement a remediation plan acceptable to the Department to mitigate the deficiencies noted and provide relief to all of the affected contract holders. In addition, the Association has developed and started to implement an audit plan designed to review, test, and monitor compliance with the requirements of Department Regulation No. 60. (See item 6A of this report)

The Association violated Section 3209(b)(1) of the New York Insurance Law for failing to provide applicants with the most recent buyer's guide at or prior to the time the life insurance application was taken. (See item 6B of this report)

2. SCOPE OF EXAMINATION

The prior examination was conducted as of December 31, 1999. This examination covers the period from January 1, 2000 through December 31, 2004. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2004 but prior to the date of this report (i.e., the completion date of the examination).

This was a limited scope examination which included: (1) a review or audit of certain targeted balance sheet items considered by this Department to require analysis, verification or description; (2) a review of certain market conduct activities of the Association; and (3) a review or audit of the items noted in the following paragraph. The balance sheet items targeted for review were bonds, mortgages, real estate, cash, other invested assets, reinsurance and aggregate reserves for life contracts. The market conduct activities targeted for review were advertising and sales practices, underwriting and treatment of policyholders (e.g., claims, surrenders). As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2004 but prior to the date of this report (i.e., the completion date of the examination).

The examiner utilized the National Association of Insurance Commissioners' Examiners Handbook or such other examination procedures, as deemed appropriate, in such review and in the review or audit of the following matters:

- Association history
- Management and control
- Corporate records
- Fidelity bond and other insurance
- Territory and plan of operation
- Market conduct activities
- Growth of Association
- Business in force by states
- Reinsurance
- Accounts and records
- Financial statements

The examiner reviewed the corrective actions taken by the Association with respect to violations contained in the prior report on examination. The results of the examiner's review are contained in item 8 of this report.

This report on examination is confined to financial statements and comments on those matters which involve departure from laws, regulations or rules, or which require explanation or description.

3. DESCRIPTION OF ASSOCIATION

A. History

In 1917, the Carnegie Foundation for the Advancement of Teaching (“the Foundation”) initiated the formation of an organization to provide pensions and insurance for teachers and employees of private educational institutions. On March 4, 1918, the Foundation organized the Teacher Insurance and Annuity Association of America as a legal reserve stock life insurance company under Section 70 of the New York Insurance Law (now Section 1113). The Association commenced business on May 17, 1918.

A plan was initiated to make the Association independent of the Foundation with respect to its finances in 1935. An act of the New York State Legislature creating the “Trustees of T.I.A.A. Stock” (“the Trustees”) became law on June 3, 1937, and the Foundation transferred the Association stock to the Trustees in 1938. Part of the plan also included a proposal by the Association that the Foundation make an endowment grant to it of \$6,700,000 which would obviate any further support for its overhead expenses. The Foundation voted to accept the Association’s proposal and transferred \$2,700,000 to the Association by December 31, 1937. The balance of the endowment was transferred to the Association by the end of 1938.

Effective November 17, 1989, the name of the Trustees of T.I.A.A. Stock was changed to “TIAA Board of Overseers.”

As a companion nonprofit organization to TIAA, CREF was founded in 1952 to provide retirement annuities based on investment in common stock. It was created through an act of the New York State legislature, under which it was organized as a nonprofit company controlled by specified members who generally have a legal function similar to that of shareholders. In the 1980s, CREF registered with the Securities and Exchange Commission (SEC) as an investment company under the Investment Company Act of 1940.

Although the Association had been formed as a New York domestic stock life insurance company, the Association was exempt from federal taxation since its founding in 1918. Effective January 1, 1998, the Association lost its exemption from federal income taxation pursuant to Section 1042 of the Taxpayers Relief Act of 1997.

On November 20, 1996, the Association formed the TIAA Life Insurance Company (now TIAA-CREF Life Insurance Company) as a New York domiciled stock life insurance company,

headquartered in the State of New York under the Association's directly held subsidiary TIAA-CREF Enterprises, Inc. ("Enterprises"). TIAA-CREF Life Insurance Company ("TIAA-CREF Life") was originally established for the purpose of retaining the Association's taxable life insurance and other non-pension business. On December 31, 2005, Enterprises transferred all TIAA-CREF Life's stock to the Association. Currently, TIAA-CREF Life markets life, annuity and health insurance products to the general public. Under an at-cost service agreement, the Association performs the majority of services for the operation of TIAA-CREF Life. TIAA-CREF Life is licensed in fifty states and the District of Columbia.

In 1994, the Association established a Separate Account (VA-1) as a registered variable annuity separate account for both individual and group qualified flexible premium deferred annuities. In 1995, the Association established a second Separate Account (VA-2) as a real estate separate account designed to fund individual and group annuity tax qualified pension plans.

In 1997, the Association initiated expanded eligibility on its pension IRA product, and during 1998 introduced Roth and contributory IRAs. In 2000, the Association began to offer Keogh plans to educators and researchers for tax-deferred investment of self-employment income.

On January 13, 1997, the Association organized and subsequently registered with the U.S. Securities and Exchange Commission its mutual funds. The initial launch of six investment funds has been expanded to include a total of 11 bond and equity funds. Teachers Personal Investors Services, Inc. ("TPIS") and TIAA-CREF Individual & Institutional Services, LLC ("TCIIS") jointly distribute shares of the Association's mutual funds. TCIIS is a wholly owned subsidiary of the Association.

During 1998, the Association and its wholly-owned indirect subsidiary, TIAA-CREF Tuition Financing, Inc. ("TFI"), established a tuition financing business to provide investment management, marketing, administration and customer service for state tuition financing programs around the country. This business is based on federal legislation, which enabled states to set up tuition financing arrangements that provide federal tax deferral of earnings and on which withdrawals used for higher education will be federal income tax-free. As of March 3, 2006, TFI was the exclusive provider of marketing and promotion, customer service, administration, and investment management services for twelve state tuition financing programs.

On July 16, 1998, the TIAA-CREF Trust Company, FSB (“TIAA-CREF Trust”) an indirect wholly-owned subsidiary of Enterprises, opened for business. TIAA-CREF Trust offers trust and investment management services primarily to the Association and CREF participants and their families, and to institutions in education and research. On November 30, 2004, Enterprises transferred their interest in TIAA-CREF Trust to the Association.

During 1999, the Association established institutional mutual funds. This is a family of 23 funds which serves as the underlying investment vehicles for the tuition financing business. Many of these funds also have a retirement and retail class, which are utilized by retail and retirement customers, as well as by customers of the TIAA-CREF Trust. In 2004, seven new Lifecycle Funds were established as additional funds under TIAA-CREF Institutional Mutual Funds. As of December 31, 2004, the value of accumulated seed money pertaining to all of these accounts was approximately \$263.5 million.

On January 30, 2002, TIAA Financial Services, LLC (“TFS”), a direct wholly-owned subsidiary of the Association, was capitalized to serve as a holding company for three entities: TIAA Advisory Services (“TAS”) which provided investment advisory services; TIAA Realty Capital Management, LLC (“TRCM”), which provided real estate advisory services to third parties; and TIAA Global Markets, Inc. (“TGM”) which was formed to issue debt and invest the proceeds in compliance with investment guidelines approved by the TGM Board. The businesses of TAS were transferred to Teachers Advisors, Inc. on January 1, 2006. Subsequently, both TFS and TAS were phased out and TRCM and TGM became direct subsidiaries of the Association. TGM is authorized to issue up to \$5 billion in debt. TGM has \$2.3 billion of Senior Notes outstanding. This debt has the highest possible ratings from all the major rating agencies and is guaranteed by the Association. The guarantee constitutes an unsecured, unsubordinated obligation of the Association. The Association does not anticipate having to perform under the guarantee.

During 2004, Advisors, the registered advisor to the Association’s mutual funds, organized a new division to initiate efforts to expand institutional third party asset management services through both commingled and stand alone accounts. With respect to seeding these commingled accounts, the Association and affiliated entities contributed \$131.5 million in real estate properties to the real estate fund and \$515 million to the bond and equity funds.

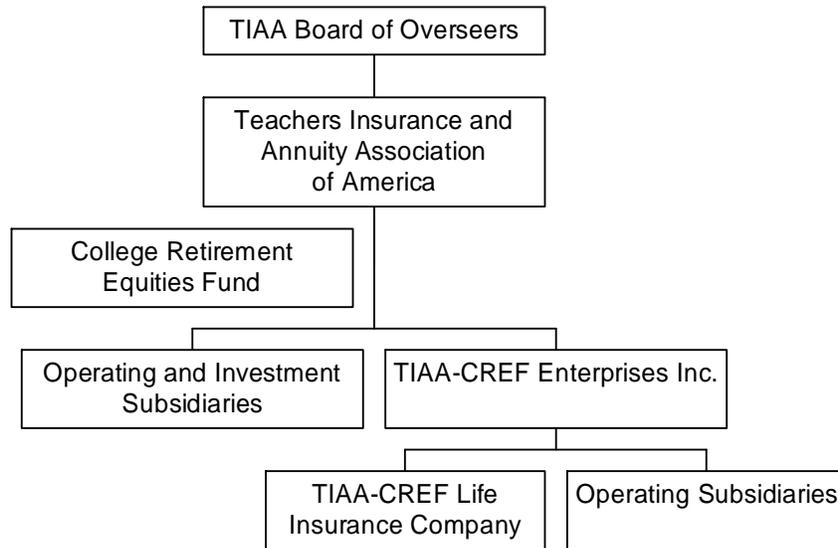
On May 1, 2004, the Association and a subsidiary, TIAA-CREF Life, entered into a series of agreements with Metropolitan Life Insurance Company (“MetLife”) including; an administrative agreement for MetLife to service the long-term care business of the Association and TIAA-CREF Life; an indemnity reinsurance agreement where the Association and TIAA-CREF Life ceded to MetLife 100% of the group and individual long-term care liability; and an assumption reinsurance agreement where, after appropriate filings in each jurisdiction, MetLife will begin, in 2007, the process of offering the Association’s and TIAA-CREF Life’s policyholders the option of transferring their policies to MetLife.

The Association transferred title to land and building located at 485 Lexington Avenue and 750 Third Avenue, New York, New York to 750-485 Fee Owner LLC, an entity formed by SL Green Corp, on July 28, 2004. TIAA has leased and continued to operate the properties after closing pursuant to a Master Lease scheduled to expire on December 31, 2005. As a consequence of the lease terms, TIAA deferred the recognition of gains from disposition of these properties until expiration of the lease under the deposit method of accounting. At December 31, 2005 TIAA recognized the gain of \$236,591,877 on the sale.

B. Holding Company

All of the outstanding stock of the Association is held by the TIAA Board of Overseers, a nonprofit corporation created solely for the purpose of holding the stock of the Association. The Association has direct ownership of 52 operating and investment subsidiaries. In addition, the Association has 100% ownership of TIAA-CREF Enterprises, Inc. a holding company that controls the following operating subsidiaries: TIAA-CREF Life Insurance Company, Teachers Advisors, Inc., Teachers Personal Investors Services, Inc., TCAM Core Property Fund GP LLC, TCAM Core Property Fund REIT LLC, TCAM Core Property Fund Operation GP LLC, TCAM Core Property Fund LP, TIAA-CREF Asset Management Core Property Fund LP and TIAA-CREF Tuition Financing, Inc.

An organization chart reflecting the relationship between the Association and significant entities in its holding company system as of December 31, 2004 follows:



The Association had 21 service agreements in effect during the examination period.

Type of Agreement and Department File Number	Effective Date	Provider(s) of Service(s)	Recipient(s) of Service(s)	Specific Service(s) Covered	Income/ (Expense)* For Each Year of the Examination
1. Amended and Restated Service Agreement	01/01/1999	The Association	TIAA-CREF Life	Administrative and special services	2004 – \$53,677,639 2003 – \$63,000,805 2002 – \$48,166,937 2001 – \$35,063,767 2000 – \$17,728,414
2. Cash Disbursement and Reimbursement Agreement (88-89)	11/30/1998	The Association	TIAA-CREF Individual and Institutional Services (2004), TPIS (2003)	Cash disbursement and related services	2004 – \$ 761,557 2003 – \$ 493,885 2002 – \$ 286,952 2001 – \$ 441,727 2000 – \$ 1,001,459
3. Investment Management Agreement (30)	06/01/1999 Revised 05/22/2002	The Association	Advisors, TIAA-CREF Individual & Institutional Services, INC.	Investment management	2004 – \$8,854,637 2003 – \$9,914,132 2002 – \$4,501,922 2001 – \$2,623,410 2000 – \$4,464,490
4. Participation and Distribution Agreement (205-206)	02/20/2002	The Association	TIAA-CREF Individual and Institutional Services	Underwriting and distribution services	2004 – \$645,808
5. Cash Disbursement and Reimbursement (152-154)	02/20/2002	The Association	TIAA-CREF Life, TPIS and TFI	Cash disbursement and related services and provision of personnel.	2003 – \$25,708,883
6. Clearing Agreement (203)	03/31/2004	The Association	TIAA-CREF Individual and Institutional Services (2004), TPIS (2003)	Clearing agreement between Services and Pershing for Brokerage products.	2004 – \$2,524,691 2003 – \$ 359,134

Type of Agreement and Department File Number	Effective Date	Provider(s) of Service(s)	Recipient(s) of Service(s)	Specific Service(s) Covered	Income/ (Expense)* For Each Year of the Examination
7. Tuition Plan Consortium Distribution Agreement (209)	09/03/2003	The Association	TIAA-CREF Individual and Institutional Services (2004), TPIS (2003)	Underwriting and distribution	2004 – \$3,572,867 2003 – \$1,936,445 2000 – \$1,015,110
8. Distribution Agreement (211)	09/25/1998	The Association	Advisors, TIAA-CREF Individual & Institutional Services, INC. TPIS (2003)	Distribution Agreement for California's Scholarshare Program	2004 – \$ 1,776 2003 – \$ 3,412,506 2002 – \$ 2,781,836 2001 – \$10,820,652 2000 – \$ 7,715,422
9. Service Agreement (143-148)	07/7/1998	The Association	TIAA-CREF Trust	Perform services and provide facilities and personnel.	2004 – \$17,017,136 2003 – \$23,249,502 2002 – \$22,569,172 2001 – \$21,311,534 2000 – \$17,056,939
10. Investment Management Agreement (111-114)	09/15/1994	Advisors	The Association	Investment management	2004 – \$ (1,946,323) 2003 – \$ (1,280,171) 2002 – \$ (1,386,903) 2001 – \$ (1,639,679) 2000 – \$ (2,321,449)
11. Distribution services (115-128)	09/15/1994 (amended 08/01/95 and 11/03/97)	The Association, TPIS	The Association, TIAA-CREF Individual & Institutional Services, INC.	Distribution agreements for contracts funded by separate account VA-1	2004 – \$ 244,996 2003 – \$ 197,039 2002 – \$ 201,982 2001 – \$ 216,300 2000 – \$ 874,178

Type of Agreement and Department File Number	Effective Date	Provider(s) of Service(s)	Recipient(s) of Service(s)	Specific Service(s) Covered	Income/ (Expense)* For Each Year of the Examination
12. Tuition Plan Consortium (209A) Management Agreement	12/23/2002	The Association	TFI, TPIS (2001 and 2002)	Management of the funds	2004 – \$1,944,802 2003 – \$2,538,348 2002 – \$3,136,454 2001 – \$ 605,634 2000 – \$2,121,854
13. Distribution Agreement (35A)	06/01/1999	The Association	TPIS (2004), TIAA-CREF Individual & Institutional Services, INC. (2003)	Distribution of various institutional and retail products	2004 – \$127,324 2003 – \$365,732
14. Amended and Restated Cash Disbursement and Reimbursement Agreements (36-49)	07/01/1997	The Association	Advisors	Cash disbursement and related services and provision of personnel	2004 – \$23,287,581 2003 – \$23,537,003 2002 – \$23,114,306 2001 – \$21,999,371 2000 – \$20,509,554
15. Amended and restated Cash Disbursement and Reimbursement Agreements (50-62)	07/01/1997	The Association	TPIS , TIAA-CREF Individual & Institutional Services, INC.	Cash disbursement and related services and provision of personnel	2004 - \$ 3,967,417 2003 - \$ 5,643,174 2002 - \$ 9,154,059 2001 - \$ 10,642,792 2000 - \$ 13,807,392
16. Cash Disbursement and Reimbursement Agreement (79-80)	11/30/1998	The Association	Advisors	Cash disbursement and related services and provision of personnel	2004 - \$ 1,313,035 2003 - \$ 1,236,956 2002 - \$ 1,065,338 2001 - \$ 1,198,846 2000 - \$ 1,321,436

Type of Agreement and Department File Number	Effective Date	Provider(s) of Service(s)	Recipient(s) of Service(s)	Specific Service(s) Covered	Income/ (Expense)* For Each Year of the Examination
17. Cash Disbursement and Reimbursement Agreement relating to services provided by TFI, TPIS and Services to State Tuition Savings Programs (155-157)	10/14/2004	The Association	TFI, TPIS and TIAA-CREF Individual & Institutional Services, LLC	Cash disbursement and related services and provision of personnel.	2004 - \$47,020,609
18. Cash Disbursement & Reimbursement Agreement (159-172)	06/30/2004	The Association	Advisors	Cash disbursement and related services and provision of personnel.	2004 - \$ 7,473,837
19. New York State College Choice Tuition, LLC ("NYSCCT") (212) Management Agreement	09/25/1998	Advisors	The Association and NYSCCT	The Association agrees to be the program manager and delegates investment management services to Advisors. The Association reimburses Advisors 15 basis points from its management fee	2003 - \$ (2,694) 2002 - \$ (112,548) 2001 - \$ (419,657) 2000 - \$ (368,257)
20. Participation and Distribution Agreement (205-206)	02/20/2002	The Association	TPIS	Underwriting and distribution services	2003 - \$ 1,386,283

Type of Agreement and Department File Number	Effective Date	Provider(s) of Service(s)	Recipient(s) of Service(s)	Specific Service(s) Covered	Income/ (Expense)* For Each Year of the Examination
21. Distribution Agreement (210, 213-222)	Various	TIAA	TFI, TPIS	Distribution Services for the Tuition Financing plans of various states	2003 - \$20,545,576 2002 - \$25,304,210 2001 - \$36,597,187 2000 - \$27,990,816

* Amount of Income or (Expense) Incurred by the Association

C. Management

The constitution of the TIAA Board of Overseers specifies that the Board of Overseers shall consist of seven members. The term of membership shall be seven years with one member elected each year. The constitution also states that the affairs of the Association shall be managed by a board of trustees and that no more than two members of the TIAA Board of Overseers shall be eligible to serve at any one time as trustees of TIAA. The Board of Overseers own all the outstanding stock of TIAA.

The following were the members of the TIAA Board of Overseers as of December 31, 2004:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>	<u>Year First Elected</u>
Herbert M. Allison Jr. Scarsdale, NY	Chairman, President and Chief Executive Officer Teachers Insurance and Annuity Association	2002
William G. Bowen Princeton, NJ	President The Andrew W. Mellon Foundation	1995
Dr. Stanley O. Ikenberry Champaign, IL	Regent Professor and President Emeritus University of Illinois	1998
Arthur Levitt Greenwich, CT	Senior Advisor The Carlyle Group	2002
Franklin D. Raines Washington, DC	Chairman and Chief Executive Officer Federal National Mortgage Association (Fannie Mae)	2002
Samuel O. Thier Boston, MA	Professor of Medicine and Health Care Policy Harvard Medical School	2003

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>	<u>Year First Elected</u>
Alair A. Townsend New York, NY	Publisher – Crain’s New York Business Vice President – Crain Communications Inc.	2000

Franklin D. Raines voluntarily resigned January 27, 2005 from the TIAA Board of Overseers following his resignation from his positions as Chairman and Chief Executive Officer at Fannie Mae. Michael S. McPherson was elected to the Board of Overseers on December 6, 2005 to fill the vacant position.

The bylaws state that the general management of the property, business and affairs of the Association shall be vested in the Board of Trustees. The Board of Trustees shall consist of no less than 13 and no more than 24 trustees. All trustees are elected for a one-year term. The bylaws also specify that the board shall hold an annual meeting on the second Tuesday in June of each year for the election of trustees and for the transactions of any other business that may come before the meeting. The annual meeting may be held at a different date if determined by the Chief Executive Officer or by the TIAA Nominating and Governance Committee and the board may hold other meetings as it may fix by standing resolution. As of December 31, 2004, the board of trustees consisted of 13 members. The board met on a regular basis during the examination period.

The 13 board members and their principal business affiliation, as of December 31, 2004 were as follows:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>	<u>Year First Elected</u>
Herbert M. Allison, Jr. Scarsdale, NY	Chairman, President and Chief Executive Officer Teachers Insurance and Annuity Association of America College Retirement Equities Fund	2002
Elizabeth E. Bailey* Philadelphia, PA	John C. Hower Professor of Public Policy The Wharton School University of Pennsylvania	2002

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>	<u>Year First Elected</u>
Robert C. Clark* Cambridge, MA	Harvard University Distinguished Service Professor Harvard Law School, Harvard University	1988
Estelle A. Fishbein* Baltimore, MD	Vice President and General Counsel, Emerita The John Hopkins University	1987
Marjorie Fine Knowles* Atlanta, GA	Professor Georgia State University College of Law	2002
Robert M. O'Neil* Charlottesville, VA	Professor University of Virginia School of Law	1993
Donald K. Peterson* Basking Ridge, NJ	Chairman and Chief Executive Officer Avaya, Inc.	2004
Sidney A. Ribeau* Bowling Green, OH	President Bowling Green State University	2004
Leonard S. Simon* Monterey, MA	Retired Vice Chairman Charter One Financial Inc.	1981
David F. Swensen* New Haven, CT	Chief Investment Officer Yale University	2003
Ronald L. Thompson* Holland, OH	Former Chairman and Chief Executive Officer Midwest Stamping and Manufacturing Co.	1995
Paul R. Tregurtha* New Canaan, CT	Chairman and Chief Executive Officer Mormac Marine Group, Inc.	1981
Rosalie J. Wolf* New York, NY	Managing Partner Botanica Capital Partners, LLC	1996

* Not affiliated with the Association or any other entity in the holding company system

Estelle A. Fishbein and Robert M. O'Neil retired on July 21, 2005 as trustees due to the board's limiting age requirement. They were replaced the same day by Edward M. Hundert and Marta Tienda.

The examiner's review of the minutes of the meetings of the board of trustees and its committees indicated that meetings were well attended and that each director attended a majority of meetings.

The following is a listing of the principal officers of the Association as of December 31, 2004:

<u>Name</u>	<u>Title</u>
Herbert M. Allison, Jr.	Chairman, President and Chief Executive Officer
Elizabeth A. Monrad	Executive Vice President and Chief Financial Officer
Harry I. Klaristenfeld	Executive Vice President and Chief Actuary
Scott C. Evans	Executive Vice Chairman and Chief Investment Officer
Erwin W. Martens	Executive Vice President, Risk Management
Susan S. Kozik	Executive Vice President and Chief Technology Officer
Dermot J. O'Brien	Executive Vice President, Human Resources
Irwin S. Goldstein	Executive Vice President, Public Affairs
George W. Madison	Executive Vice President and General Counsel
Frances Nolan	Executive Vice President, Client Services
Bertram L. Scott	Executive Vice President, Product Management
Evelyn L. Jones	Vice President and Corporate Secretary

Arti Jurakhan is the designated consumer services officer per Section 216.4(c) of Department Regulation No. 64.

Elizabeth A. Monrad resigned November 15, 2005 from her position as Executive Vice President and Chief Financial Officer. Russell G. Noles was appointed Acting Chief Financial Officer the same day.

Prior to 2005, an annual code of ethics acknowledgement by the Association's officers was not part of the Association's procedures. The code of ethics acknowledgement was only signed by employees, including officers, upon commencement of employment with the Association. In addition, the Association's trustees were exempted from those requirements. Beginning in 2005, the Association implemented an automated process for maintaining, monitoring and reporting code of ethics acknowledgements on an annual basis.

The examiner recommends that the Association ensure that all officers and trustees complete the Code of Ethics Acknowledgement form on an annual basis.

D. Territory and Plan of Operation

The Association is authorized to write life insurance, annuities and accident and health insurance as defined in paragraphs 1, 2 and 3 of Section 1113(a) of the New York Insurance Law.

The Association is licensed to transact business in 50 states, the District of Columbia, Puerto Rico and the U.S. Virgin Islands. In 2004, 20.24% of annuity considerations and 16.11% of life insurance premiums were received from New York. Policies are written on a non-participating basis; however, since the Association's charter states that the corporation's operations shall be conducted "without profit to the corporation or its stockholders," surplus is distributed to its policyholders as excess interest. The Association is a major provider of retirement and insurance benefits. Approximately 98% of the Association's general account reserve liabilities are attributable to pension and other retirement annuities. Originally, participation in the Association was only available to employees of nonprofit educational or research institutions, as well as nonprofit ancillary educational institutions. In 2000, the Association amended its charter to include participation by employees of government agencies and other nonprofit institutions.

The Company operates in conjunction with CREF. Currently, CREF's variable annuity retirement plans are offered through eight separate investment accounts.

The primary products offered by the Association include individual and group qualified retirement annuities, supplemental retirement annuities, individual retirement accounts ("IRAs") and Keogh plans, as well as non-qualified personal annuities. The Association also sells individual insurance policies but this a minor part of overall operations. The Association exited the group life and group disability markets during the examination period.

Policyholders are able to allocate their retirement annuity contributions between the Association's fixed account and various CREF variable accounts which cover a range of investment objectives and styles, including, stock, money market, social choice, bond and inflation-linked bond funds. A real estate separate account option is also available for retirement annuity contributions.

Through TIAA-CREF Life, the Association also offers non-qualified personal annuities and insurance products (traditional and universal life) to the general public.

Financial planning, discretionary and non-discretionary asset management, trust administration and estate planning are offered through TIAA-CREF Trust.

The Association has also entered the tuition financing market (state sponsored 529 plans) through TFI. The tuition financing plans provide tax-advantaged college savings plans. Currently, the Association has contracts with 12 states (includes California but no longer New York) to offer these plans.

The following tables show the percentage of direct premiums received, by state, and by major lines of business for the year 2004:

<u>Life Insurance Premiums</u>		<u>Annuity Considerations</u>	
New York	16.11%	New York	20.24%
California	7.27%	Pennsylvania	7.06%
Pennsylvania	6.53%	Massachusetts	5.82%
Massachusetts	5.50%	Michigan	4.92%
New Jersey	<u>5.34%</u>	New Jersey	<u>4.85%</u>
Subtotal	40.75%	Subtotal	42.89%
All others	<u>59.25%</u>	All others	<u>57.11%</u>
Total	<u>100.00%</u>	Total	<u>100.00%</u>
<u>Accident and Health Insurance Premiums</u>		<u>Deposit Type Funds</u>	
New York	22.24%	New York	13.83%
California	6.00%	California	8.18%
Virginia	5.77%	Massachusetts	6.40%
Pennsylvania	5.46%	Pennsylvania	5.74%
Massachusetts	<u>4.63%</u>	Texas	<u>5.33%</u>
Subtotal	44.10%	Subtotal	39.48%
All others	<u>55.90%</u>	All others	<u>60.52%</u>
Total	<u>100.00%</u>	Total	<u>100.00%</u>

The Association's agency operations are conducted on a direct response basis. The Association does not have a commissioned sales force, and pension annuity premiums are remitted directly by participating institutions. Individual life insurance and non-pension annuities are generally sold by direct mail.

E. Reinsurance

As of December 31, 2004, the Association had reinsurance treaties in effect with five companies, of which four were authorized or accredited. The Association's life and accident and health business is reinsured on a coinsurance, modified-coinsurance, and yearly renewable term basis. Reinsurance is provided on an automatic and facultative basis.

The maximum retention limit for individual life contracts is \$1,500,000. The total face amount of life insurance ceded as of December 31, 2004, was \$4,385,841,000, which represents 10% of the total face amount of life insurance in force. Reserve credit taken for reinsurance ceded to unauthorized companies totaling \$65,037,820 for life insurance and \$577,612,323 for accident and health insurance, was supported by a trust agreement.

The Association entered into an indemnity reinsurance agreement dated October 1, 2002 with Standard Insurance Company ("Standard") to reinsure on a 100% coinsurance basis all the liabilities associated with the Association's group life and group disability blocks of business. The Department approved the agreement on September 30, 2002. At closing, Standard paid the Association \$75 million as a ceding commission and the Association transferred cash equal to the liabilities of \$723.1 million to Standard. The ceding commission was recorded as an increase in surplus, net of direct expenses of \$8.1 million associated with the transaction. The net ceding commission of \$66.9 million will be amortized into income in subsequent periods.

The total face amount of life insurance assumed as of December 31, 2004, was \$5,282,824,522.

During 2005, the Association entered into two additional reinsurance agreements with RGA Reinsurance Company. In accordance with these agreements, the Association assumed credit life, credit accident and health, term life and whole life liabilities through coinsurance funds withheld and modified coinsurance arrangements on a proportional basis. The agreements aggregated \$157,679,359 of assumed premiums at December 31, 2005. Funds withheld totaled \$10,597,738 and modified coinsurance reserve totaled \$136,031,902 at December 31, 2005.

4. SIGNIFICANT OPERATING RESULTS

Indicated below is significant information concerning the operations of the Association during the period under examination as extracted from its filed annual statements. Failure of items to add to the totals shown in any table in this report is due to rounding.

The following table indicates the Association's financial growth during the period under review:

	<u>December 31,</u> <u>1999</u>	<u>December 31,</u> <u>2004</u>	<u>Increase</u> <u>(Decrease)</u>
Admitted assets	<u>\$110,497,431,473</u>	<u>\$163,564,354,330</u>	<u>\$53,066,922,857</u>
Liabilities	<u>\$103,472,003,617</u>	<u>\$152,386,954,339</u>	<u>\$48,914,950,722</u>
Common capital stock	\$ 2,500,000	\$ 2,500,000	\$ 0
Gross paid in and contributed surplus	550,000	550,000	0
Aggregate write-ins for special surplus funds:			
Contingency reserve for investment losses, annuity and insurance mortality and other risks	7,010,159,502	11,174,349,991	4,164,190,489
Contingency reserve for group life insurance	<u>12,218,354</u>	<u>0</u>	<u>(12,218,354)</u>
Total capital and surplus	<u>\$ 7,025,427,856</u>	<u>\$ 11,177,399,991</u>	<u>\$ 4,151,972,135</u>
Total liabilities, capital and surplus	<u>\$110,497,431,473</u>	<u>\$163,564,354,330</u>	<u>\$53,066,922,857</u>

The Association's invested assets as of December 31, 2004, exclusive of separate accounts, were mainly comprised of bonds (75.6%) and mortgage loans (16.0%). The majority (92.9%) of the Association's bond portfolio, as of December 31, 2004, was comprised of investment grade obligations.

The following is the net gain (loss) from operations by line of business after federal income taxes but before realized capital gains (losses) reported for each of the years under examination in the Association's filed annual statements:

	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>
Ordinary:					
Life insurance	\$ 28,030,651	\$ 15,973,589	\$ 25,557,873	\$ 3,660,115	\$ 1,524,081
Individual annuities	1,203,979,924	722,741,963	791,567,640	1,127,884,330	865,778,825
Supplementary contracts	<u>3,679,935</u>	<u>4,144,962</u>	<u>3,316,006</u>	<u>13,463,496</u>	<u>4,486,674</u>
Total ordinary	<u>\$1,235,690,510</u>	<u>\$742,860,514</u>	<u>\$820,441,519</u>	<u>\$1,145,007,941</u>	<u>\$ 871,789,580</u>
Group:					
Life Annuities	\$ 8,513,506	\$ 3,809,789	\$ 4,054,206	\$ 5,040,608	\$ 3,954,956
	<u>43,023,012</u>	<u>56,248,262</u>	<u>56,039,281</u>	<u>103,560,841</u>	<u>196,683,531</u>
Total group	<u>\$ 51,536,518</u>	<u>\$ 60,058,051</u>	<u>\$ 60,093,487</u>	<u>\$ 108,601,449</u>	<u>\$ 200,638,487</u>
Accident and health:					
Group	\$ 3,765,025	\$ (8,984,076)	\$ 29,295,461	\$ 56,159,939	\$ 19,467,731
Other	<u>(7,959,434)</u>	<u>(4,957,317)</u>	<u>(5,126,760)</u>	<u>(6,807,032)</u>	<u>(1,681,237)</u>
Total accident and health	<u>\$ (4,194,409)</u>	<u>\$(13,941,393)</u>	<u>\$ 24,168,701</u>	<u>\$ 49,352,907</u>	<u>\$ 17,786,494</u>
All other lines	<u>\$ (4,120,206)</u>	<u>\$ 552,098</u>	<u>\$ (10,530,447)</u>	<u>\$ (2,488,497)</u>	<u>\$ 3,773,427</u>
Total	<u>\$1,278,912,413</u>	<u>\$789,529,270</u>	<u>\$894,173,260</u>	<u>\$1,300,473,800</u>	<u>\$1,093,987,988</u>

The decrease in ordinary life net income in 2003 and 2004 is due to a revised allocation method for net investment income, which produced a lower percentage of allocated net investment income to be allocated to this line of business (approximately \$17 million in both years as compared to 2002). There was also an increase in death claims of \$6.7 million in 2003.

The increases in group accident and health income in 2002, 2003, and 2004 are due to an indemnity reinsurance agreement with Standard dated October 1, 2002, associated with the Association's group life and group disability blocks of business. On October 1, 2002, the Association reinsured by a 100% indemnity reinsurance agreement with Standard, all liabilities

associated with its group life and group disability block of business. This transfer resulted in a net ceding commission of \$66,916,853, which was amortized into income in subsequent accounting periods. Ceding commissions were amortized into income in the amounts of \$4,182,303, \$16,854,018 and \$17,228,432 for the years 2002, 2003 and 2004, respectively. Also contributing to the increase in 2002 was a reduction in the allocation of expenses to the line of business.

All other lines was used in 2000 for the New York State Tuition Business (i.e., 529 tuition financing plan) that was received by the Association. This business left the Association at year-end 2003. The income is a result of the management fees and expenses associated with the management of this business.

5. FINANCIAL STATEMENTS

The following statements show the assets, liabilities, capital, surplus and other funds as of December 31, 2004, as contained in the Association's 2004 filed annual statement, a condensed summary of operations and a reconciliation of the capital and surplus account for each of the years under review. The examiner's review of a sample of transactions did not reveal any differences which materially affected the Association's financial condition as presented in its financial statements contained in the December 31, 2004 filed annual statement.

A. ASSETS, LIABILITIES, CAPITAL, SURPLUS AND OTHER FUNDS AS OF DECEMBER 31, 2004

Admitted Assets

Bonds	\$114,776,422,227
Stocks:	
Preferred stocks	1,287,644,136
Common stocks	3,722,170,959
Mortgage loans on real estate:	
First liens	24,292,828,234
Other than first liens	500,000
Real estate:	
Properties occupied by the Association	259,421,000
Properties held for the production of income	1,240,941,569
Properties held for sale	206,764,477
Cash, cash equivalents and short term investments	447,444,018
Contract loans	565,586,207
Other invested assets	5,071,860,062
Receivable for securities	3,303,611
Derivatives	7,121,124
Investment income due and accrued	1,373,862,566
Premiums and considerations:	
Uncollected premiums and agents' balances in the course of collection	7,622,437
Deferred premiums, agents' balances and installments booked but deferred and not yet due	65,668,275
Reinsurance	
Other amounts receivable under reinsurance contracts	260,007
Net deferred tax asset	1,024,409,000
Electronic data processing equipment and software	47,166,170
Receivables from parent, subsidiaries and affiliates	628,823,668
Sundry receivables	224,858,418
From Separate Accounts, segregated accounts and protected cell accounts	<u>8,309,676,165</u>
Total admitted assets	<u>\$163,564,354,330</u>

Liabilities, Capital, Surplus and Other Funds

Aggregate reserve for life policies and contracts	\$130,797,628,585
Aggregate reserve for accident and health contracts	363,041
Liability for deposit-type contracts	413,576,732
Contract claims:	
Life	272,668,386
Accident and health	265,483
Policyholders' dividends and coupons due and unpaid	7,488,609
Provision for policyholders' dividends and coupons payable in following calendar year – estimated amounts	
Dividends apportioned for payment	2,206,991,114
Premiums and annuity considerations for life and accident and health contracts received in advance	1,074,841
Contract liabilities not included elsewhere	
Interest maintenance reserve	805,960,685
General expenses due or accrued	186,537,270
Transfers to Separate Accounts due or accrued	6,476,429
Taxes, licenses and fees due or accrued, excluding federal income taxes	20,270,841
Current federal and foreign income taxes	674,081,413
Unearned investment income	2,089,410
Amounts withheld or retained by Association as agent or trustee	99,282,958
Remittances and items not allocated	46,642,259
Liability for benefits for employees and agents if not included above	152,234,462
Miscellaneous liabilities:	
Asset valuation reserve	2,743,548,594
Payable to parent, subsidiaries and affiliates	784,877,828
Payable for securities	63,965,213
Aggregate write-ins for liabilities:	
Security lending collateral	3,544,222,700
Derivatives	619,165,259
Deposit on sale of home office buildings	457,944,771
Deferred gain on assets	116,457,484
Miscellaneous liabilities	51,831,812
Deferred income	1,631,995
From Separate Accounts statement	<u>8,309,676,165</u>
 Total liabilities	 <u>\$152,386,954,339</u>
 Common capital stock	 \$ 2,500,000
Gross paid in and contributed surplus	550,000
 Contingency reserve for investment losses, annuity and insurance mortality and other risks	 <u>11,174,349,991</u>
 Total common capital stock and surplus	 <u>\$ 11,177,399,991</u>
Total liabilities, common capital stock and surplus	<u>\$163,564,354,330</u>

B. CONDENSED SUMMARY OF OPERATIONS

	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>
Premiums and considerations	\$ 6,722,765,296	\$ 6,841,683,931	\$ 8,692,095,806	\$ 8,369,443,890	\$ 8,940,062,625
Investment income	8,573,978,240	8,818,046,270	9,332,233,506	9,456,774,694	9,454,010,622
Commissions and reserve adjustments on reinsurance ceded	357,886	455,189	4,542,204	17,405,211	20,585,672
Miscellaneous income	<u>3,159,348,579</u>	<u>3,519,415,997</u>	<u>3,910,988,863</u>	<u>3,607,728,381</u>	<u>3,126,888,352</u>
 Total income	 <u>\$18,456,450,001</u>	 <u>\$19,179,601,387</u>	 <u>\$21,939,860,379</u>	 <u>\$21,451,352,176</u>	 <u>\$21,541,547,271</u>
 Benefit payments	 \$ 5,659,890,265	 \$ 4,788,047,218	 \$ 5,424,690,100	 \$ 6,146,484,173	 \$ 6,848,147,248
Increase in reserves	5,989,522,641	7,459,178,269	9,483,889,302	7,847,266,156	6,421,158,365
Commissions	0	0	0	0	28,318,027
General expenses and taxes	356,975,100	412,788,506	469,952,161	490,522,185	432,504,053
Increase in loading on deferred and uncollected premiums	2,382,809	2,748,405	952,523	402,030	516,687
Net transfers to (from) Separate Accounts	527,255,242	615,227,751	309,185,515	839,171,999	1,732,421,854
Miscellaneous deductions	<u>141,803,767</u>	<u>130,575,179</u>	<u>257,494,468</u>	<u>226,269,017</u>	<u>299,189,829</u>
 Total deductions	 <u>\$12,677,829,824</u>	 <u>\$13,408,565,328</u>	 <u>\$15,946,164,069</u>	 <u>\$15,550,115,560</u>	 <u>\$15,762,256,063</u>
 Net gain (loss) before dividends and FIT	 \$ 5,778,620,177	 \$ 5,771,036,059	 \$ 5,993,696,310	 \$ 5,901,236,616	 \$ 5,779,291,208
Dividends	4,475,660,137	4,954,722,471	5,120,378,156	4,584,048,051	4,112,964,231
Federal and foreign income taxes incurred	<u>24,047,627</u>	<u>26,784,318</u>	<u>(20,855,106)</u>	<u>16,714,765</u>	<u>572,338,989</u>
 Net gain from operations before net realized capital gains	 \$ 1,278,912,413	 \$ 789,529,270	 \$ 894,173,260	 \$ 1,300,473,800	 \$ 1,093,987,988
Net realized capital gains (losses)	<u>(56,916,015)</u>	<u>(204,290,815)</u>	<u>(1,030,994,141)</u>	<u>(786,139,437)</u>	<u>(553,531,368)</u>
 Net income (loss)	 <u>\$ 1,221,996,398</u>	 <u>\$ 585,238,455</u>	 <u>\$ (136,820,881)</u>	 <u>\$ 514,334,363</u>	 <u>\$ 540,456,620</u>

The increase in net transfers to separate accounts in 2004 was mainly due to improved market conditions and contract holders moving funds from the fixed accounts into the variable funds in the separate accounts.

The increase in premium and annuity considerations in 2002 was due to the following:

- \$500 million increase in IRA considerations;
- \$100 million increase in “other” individual annuity considerations;
- \$300 million increase in individual annuity (renewal) considerations; and
- a \$1 billion increase in transfers from CREF variable products to the Association’s fixed annuity products. These variable product transfers are solely at the policyholder’s discretion.

The reason for the increase in capital losses in 2002 was due to the Association taking write-downs on various securities that were considered to be other than temporarily impaired.

C. CAPITAL AND SURPLUS ACCOUNT

	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>
Capital and surplus, December 31, prior year	\$ <u>7,025,427,856</u>	\$ <u>8,097,404,992</u>	\$ <u>8,651,083,153</u>	\$ <u>9,671,589,321</u>	\$ <u>10,241,462,240</u>
Net income	\$1,221,996,398	\$ 585,238,455	\$ (136,820,881)	\$ 514,334,363	\$ 540,456,620
Change in net unrealized capital gains (losses)	123,348,819	(522,903,468)	(275,033,913)	360,216,970	668,359,931
Change in net unrealized foreign exchange capital gain (loss)	0	(51,362,713)	175,047,642	52,215,766	82,158,850
Change in net deferred income tax	0	0	0	(250,303,700)	267,090,000
Change in non-admitted assets and related items	(40,613,821)	(59,748,602)	(3,107,354,543)	319,031,979	(129,683,469)
Change in reserve valuation basis	0	457,070	0	0	0
Change in asset valuation reserve	(232,754,260)	251,072,721	356,328,185	(25,368,065)	(455,047,949)
Cumulative effect of changes in accounting principles	0	375,324,698	4,013,354,700	0	0
Surplus adjustments:					
Change in surplus as a result of Reinsurance	0	0	62,739,122	(15,356,362)	(17,228,432)
Prior year income (surplus) adj.	<u>0</u>	<u>(24,400,000)</u>	<u>(67,754,144)</u>	<u>(384,898,032)</u>	<u>(20,167,800)</u>
Net change in capital and surplus for the year	\$ <u>1,071,977,137</u>	\$ <u>553,678,161</u>	\$ <u>1,020,506,168</u>	\$ <u>569,872,919</u>	\$ <u>935,937,751</u>
Capital and surplus, December 31, current year	\$ <u>8,097,404,992</u>	\$ <u>8,651,083,153</u>	\$ <u>9,671,589,321</u>	\$ <u>10,241,462,240</u>	\$ <u>11,177,399,991</u>

The decrease in change in net unrealized capital gains (losses) between 2000 and 2001 is primarily due to the private equity portfolio. Due to poor market conditions, the private equity portfolio suffered a \$343 million loss in 2001. Additionally, the long-term bond portfolio had the following losses in bonds in or near default of \$196 million and \$25 million in foreign investments for 2001. Also, the Las Colinas mortgage suffered a \$13 million loss and the common stock of two affiliated companies, TIAA Mutual Fund Seed Money and TIAA Enterprises, Inc. suffered \$55 million and \$68 million losses, respectively in 2001.

The increase in change in net unrealized capital gains (losses) between 2001 and 2002 is primarily due to a \$529 million long-term bond valuation increase and a \$212 million affiliated common stock valuation decrease. The increase in change in net unrealized capital gains (losses) between 2002 and 2003 is primarily due to a \$333 million long-term bond valuation decrease, a \$603 million affiliated common stock valuation increase and a \$242 million other long-term investments valuation increase. The increase in change in net unrealized capital gains (losses) between 2003 and 2004 is primarily due to a \$250 million affiliated common stock valuation decrease, a \$493 million other long-term investments valuation increase and a \$101 million other mortgage valuation increase.

The change in non-admitted assets and related items in 2002 is due to the change in New York regulation to allow deferred income taxes. Non-admitted deferred income tax for 2002 was increased by \$3,176,672,700. The change in 2003 is due to the \$306,866,700 decrease in the non-admitted portion of deferred income taxes. The change in 2004 is due to the \$135,926,000 increase in the non-admitted portion of deferred income taxes.

The change in asset valuation reserve (“AVR”) in 2001 is primarily due to an increase in capital losses of \$354 million. The change between 2002 and 2003 is primarily due to an increase in capital gains of \$738 million. The change in 2004 is primarily due to an increase in capital gains of \$568 million.

As a result of a 2002 internal audit, after the annual statement was prepared and filed with the states, it was discovered that additional impairments were needed to be taken as a result of changes in the investment valuation process as well as additional reserves/contingencies. This resulted in an audit adjustment of \$334,898,036 in the 2002 audited statement, which resulted in a prior year surplus adjustment in the 2003 Annual Statement and reported in the aggregate write-ins for gains and losses in surplus: Prior year income (Surplus) Adj.

D. INTERNAL REVENUE SERVICE AUDIT

The Association's 1998 and 1999 tax returns, which represented the first returns for which the Association's entire business operations were subject to federal income taxation, have been audited by the Internal Revenue Service ("IRS"). In April 2004, the IRS completed its audit and presented the Association with a Revenue Agent Report asserting certain adjustments to the Association's taxable income that would result in additional tax due of \$1.1 billion for the 1998 and 1999 tax years. These adjustments would disallow the deductions for certain intangible assets and would adjust certain Association tax-basis annuity reserves. If the IRS fully prevails in connection with its proposed adjustments, and by applying the same rationale to tax years subsequent to 1999, additional tax and interest due for the tax years 1998-2005 would amount to approximately \$3.3 billion, of which \$1.2 billion has already been accrued as of December 31, 2005. Of the \$3.3 billion in potential taxes due, \$3 billion would result from reserve deductions taken by the Association in earlier years that the IRS would instead spread throughout the annuitants' payout periods, resulting in timing differences. The remaining \$300 million would cause a permanent adjustment to the Association's taxes. Should the Association fully prevail, no tax will be due for 1998-2005, and the Association's net operating losses as of December 31, 2005 would be \$1.4 billion, before consideration of intangible asset deductions, and \$12.4 billion when intangible deductions are included.

The Association's management filed a protest to the IRS' adjustments in 2004, and entered into discussions with the IRS Appeals Division during 2005. The Association believes that its tax positions are supported by substantial authority, and will continue to contest these adjustments through IRS appeals and judicial procedures, as needed. The Association's management believes that it will ultimately prevail to a significant degree. Nonetheless, the Association's management believes that the circumstances surrounding the tax claim by the IRS meet the conditions that require the Association to establish a loss contingency for federal income taxes covering the years 1998-2005.

Although the final resolution of the IRS' asserted adjustments is uncertain, management's current best estimate of the probable loss from this dispute with the IRS, given the current status of the tax claim, requires the Association to establish a contingent tax provision of \$569 million as of December 31, 2005 in addition to the reserve of \$629 million established as of

December 31, 2004. The establishment of this contingent tax provision resulted in a charge against the Association's 2004 and 2005 operations and resulted in a total tax accrual as of December 31, 2005 of \$1.2 billion.

6. MARKET CONDUCT ACTIVITIES

The examiner reviewed various elements of the Association's market conduct activities affecting policyholders, claimants, and beneficiaries to determine compliance with applicable statutes and regulations and the operating rules of the Association.

A. Advertising and Sales Activities

The examiner reviewed a sample of the Association's advertising files and the sales activities of the agency force including trade practices, solicitation and the replacement of insurance policies.

Section 51.5(c) of Department Regulation No. 60 states, in part:

“Where a replacement has occurred or is likely to occur . . .

(2) Notify the insurer whose policy or contract is being replaced and the insurer replacing the life insurance policy or annuity contract of the proposed replacement. Submit to the insurer whose policy or contract is being replaced a list of all life insurance policies or annuity contracts proposed to be replaced, as well as the policy or contract number for such policies or contracts, together with the proper authorization from the applicant, and request the information necessary to complete the ‘Disclosure Statement’ with respect to the life insurance policy or annuity contract proposed to be replaced . . .

(3) Present to the applicant, not later than at the time the applicant signs the application, the ‘IMPORTANT Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts’ and a completed ‘Disclosure Statement’ signed by the agent or broker in the form prescribed by the Superintendent of Insurance and leave copies of such forms with the applicant for his or her records . . .”

Section 51.6(b) of Department Regulation No. 60 states, in part:

“Where a replacement has occurred or is likely to occur, the insurer replacing the life insurance policy or annuity contract shall . . .

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

(3) Examine any proposal used, including the sales material used in the sale of the proposed life insurance policy or annuity contract, and the ‘Disclosure Statement,’

and ascertain that they are accurate and meet the requirements of the Insurance Law and this Part;

(4) Within ten days of receipt of the application furnish to the insurer whose coverage is being replaced a copy of any proposal, including the sales material used in the sale of the proposed life insurance policy or annuity contract, and the completed 'Disclosure Statement' . . .

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

Section 51.6(e) of Department Regulation No. 60 states:

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

Section 51.7(b) of Department Regulation No. 60 states, in part:

“No insurer, agent, broker, representative, officer, or employee of an insurer or any other licensee of this Department shall fail to comply with or engage in other practices that would prevent the orderly working of this Part in accomplishing its intended purpose in the protection of policyholders and contractholders. . . .”

The examiner selected a sample of 147 annuity replacement files issued during the examination period (January 1, 2000 through December 31, 2004) for review from the Association's inventory of replacements. However, due to the Association's failure to accurately track its replacement population, only 39 of the files were actually replacement files (see the table below); the remaining 108 files were not replacements although they were identified as

such by the Association. All of the 39 replacements identified were external replacements. In addition, the Association did not track on its inventory the agent involved with each replacement as required.

<u>Type of Policy or Contract</u>	<u>Number of Replacements Selected</u>	<u>Not Replacements</u>	<u>Number of Replacements Reviewed</u>
Deferred annuities	114	79	35
Immediate annuities	<u>33</u>	<u>29</u>	<u>4</u>
Total	<u>147</u>	<u>108</u>	<u>39</u>

The Association violated Section 51.6(b)(6) of Department Regulation No. 60 for failing to maintain an accurate index of replacements by agent.

In 11 of the 35 (31%) deferred annuity contracts reviewed the Disclosure Statement was not included in the file. Of the 24 deferred annuity contracts that included the Disclosure Statement in the file, seven (29%) were not signed by the applicant or agent. In nine of the 35 (26%) deferred annuity contracts reviewed the Important Notice was not included in the file.

In one of the four immediate annuity contracts reviewed the Disclosure Statement was not included in the file.

In all 15 (13 deferred annuity contracts and two immediate annuity contracts) replacements where it was indicated on the Disclosure Statement that sales material was used, the sales material was not maintained by the Association. In ten (nine deferred annuity contracts and one immediate annuity contract) of the contracts with Disclosure Statements, it was not indicated on the Disclosure Statement whether or not sales material was used and no sales material was maintained by the Association.

In 18 of the 39 (46%) external annuity replacements reviewed, the Association did not: notify the replaced insurer that their contracts were going to be replaced; request the information necessary to complete the Disclosure Statements; or obtain a signed authorization from the applicants to obtain information necessary to complete the Disclosure Statements.

The Association violated Section 51.6(b)(2) of Department Regulation No. 60 by failing to require with or as part of each application a copy of any proposal, including the sales material

used in the sale of the proposed annuity contract, and proof of receipt by the applicant of the Important Notice and the completed Disclosure Statement.

The Association violated Section 51.6(b)(3) of Department Regulation No. 60 by failing to examine any proposal used, including the Disclosure Statement and ascertain that they were accurate.

The Association violated Section 51.6(b)(6) of Department Regulation No. 60 by failing to maintain copies of: any proposal, including the sales material used in the sale of the proposed annuity contract; and the notification of replacement to the insurer whose life insurance policy or annuity contract was to be replaced.

In four of the 26 (15%) deferred annuity files that contained the Important Notice, the applicant signed the application prior to receiving the Important Notice. In eight of the 24 (33%) deferred annuity files that contained a completed Disclosure Statement, the applicant signed the application prior to receiving the completed Disclosure Statement.

The Association violated Section 51.7(b) of Department Regulation No. 60 by preventing the orderly working of the Regulation by accepting applications in cases where the Important Notice and completed Disclosure Statement were not received by the applicants at or prior to the time that the applications were taken.

In 35 of the 39 (90%) external replacement files reviewed, the examiner could not find any evidence that the Association submitted to the replaced insurers any proposal, including the sales materials used in the sale of the proposed annuity contract, and the completed Disclosure Statement within ten days of receipt of the application.

The Association violated Section 51.6(b)(4) of Department Regulation No. 60 for failing to furnish to the insurer whose coverage was being replaced a copy of any proposal, including the sales material used in the sale of the proposed annuity contract, and the completed Disclosure Statement within ten days of receipt of the application.

The Association's replacement procedures on file with the Department require that the agent complete and sign an agent's certification form for every replacement situation. The examiner could not find any evidence that the Association obtained the agent's certification statement signed by the agent or broker in all 39 annuity replacement files reviewed. The examiner notes that the agent's certification is important in that it usually identifies the reasons that a particular replacement policy or contract is appropriate.

The review of the replacement files indicated that the Association is not following its filed procedures with the Department to track the sequence of steps that it must follow from the first contact with the applicant to the completion of the Disclosure Statement to ascertain that all the replacement documents are obtained to comply with Department Regulation No. 60.

The Association violated Section 51.6(e) of Department Regulation No. 60 by failing to follow its filed replacement procedures.

The examiner recommends that the Association follow its filed procedures to track the sequence of steps that it must follow to comply with Department Regulation No. 60 and to document when those steps are executed in the replacement files.

As a result of the aforementioned findings, the Department and the Association have agreed on remediation plans for those contract holders that have been adversely affected. The Association has also developed and started to implement an audit plan designed to review, test, and monitor compliance with the requirements of Department Regulation No. 60.

B. Underwriting and Policy Forms

The examiner reviewed a sample of new underwriting files, both issued and declined, and the applicable policy forms.

1. Section 3209(b) of the New York Insurance Law states, in part:

“No policy of life insurance shall be delivered or issued for delivery in this state . . . unless the prospective purchaser has been provided with the following:
 (1) a copy of the most recent buyer’s guide and the preliminary information . . . at or prior to the time an application is taken. . . .”

Section 53-3.1 of Department Regulation No. 74 states, in part:

“ . . . (b) Each insurer marketing policies to which this Subpart is applicable shall notify the Superintendent whether a policy form is to be marketed with or without an illustration. For all policies forms being actively marketed on the effective date [February 10, 1999] of this Subpart, the insurer shall identify in writing those forms and whether or not an illustration will be used with them. For policy forms filed after the effective date of this Subpart, the identification shall be made at the time of filing. Any previous identification may be changed by notice to the Superintendent.

(c) If the insurer identifies a policy form as one to be marketed without an illustration, any use of an illustration for any policy using that form prior to the first policy anniversary is prohibited . . .

(d) If a policy form is identified by the insurer as one to be marketed with an illustration, a basic illustration prepared and delivered in accordance with this Subpart is required . . .”

The examiner reviewed 30 term and whole life insurance underwriting files and the Association’s correspondence with the Department regarding the approval of the related policy forms (policy forms 101.21, 101.21a, 312.6, 312.6a, 313.1, 313.1a, and 336.6).

The Association did not provide the applicant with the most recent buyer’s guide at or prior to the time the life applications were taken. The Association provides the buyer’s guide to the applicant at the time the policy is delivered.

The Association violated Section 3209(b)(1) of the New York Insurance Law for failing to provide applicants with the most recent buyer’s guide at or prior to the time the life insurance application was taken.

In addition, the Association used policy forms 101.21, 101.21a, 312.6, 312.6a, 313.1, 313.1a, and 336.6 in all 30 cases reviewed without notifying the Superintendent whether they would be marketed with or without an illustration.

The Association violated Section 53-3.1(b) of Department Regulation No. 74 by using policy forms 101.21, 101.21a, 312.6, 312.6a, 313.1, 313.1a, and 336.6 without notifying the Superintendent whether the policy forms were to be marketed with or without an illustration.

2. Section 3201(b)(1) of the New York Insurance Law states, in part:

“No policy form shall be delivered or issued for delivery in this state unless it has been filed with and approved by the superintendent as conforming to the requirements of this chapter and not inconsistent with law. . . .”

Section 3204(a) of the New York Insurance Law states:

“(1) Every policy of life, accident or health insurance, or contract of annuity, delivered or issued for delivery in this state, shall contain the entire contract between the parties, and nothing shall be incorporated therein by reference to any writing, unless a copy thereof is endorsed upon or attached to the policy contract when issued.

(2) No application for the issuance of any policy or contract shall be admissible in evidence unless a true copy was attached to such policy or contract when issued.

(3) Such policy or contract cannot be modified, nor can any rights or requirements be waived, except in a writing signed by a person specified by the insurer in such policy or contract.”

Section 3204(d) of New York Insurance Law states:

“No insertion in or other alteration of any written application for any such policy or contract shall be made by any person other than the applicant without his written consent, except that insertion may be made by the insurer for administrative purposes only in such manner as to indicate clearly that the insertions are not to be ascribed to the applicant.”

In its May 26, 1989 correspondence with the Department, the Association indicated that form 39.1.1 would be used as a supplement to applications for policy forms 101.21 and 101.21a. Form 39.1.1 contains the automatic premium loan (“APL”) option. However, there were 43 policies determined by the examiner to have been issued during the examination period using policy forms 101.21 and 101.21a that did not include form 39.1.1 and therefore did not have the APL option.

The Association violated Section 3201(b)(1) of the New York Insurance Law by not providing form 39.1.1 as a supplement to the applications (application forms 101.21 and 101.21a) to 43 applicants for the Association’s whole life policies when the Association advised the Department that form 39.1.1 would be used as a supplement to the application.

In addition, the Association indicated that 35 of the 43 policies were given the APL option. Furthermore, three of these 35 policyholders utilized the option. The Association has no evidence that these 35 policyholders did in fact select the APL option.

The Association violated Section 3204(a) of the New York Insurance Law by modifying the contract (applying the APL option instead of nonforfeiture options) without obtaining a signature by a person specified by the insurer for such policy or contract.

The Association violated Section 3204(d) by utilizing the APL option (actually making premium loans) for three policyholders without evidence that the policyholders had selected the APL option.

The examiner recommends that the Association provide the APL option (form 39.1.1) to all 43 policyholders who have policies using forms 101.21 and 101.21a.

C. Treatment of Policyholders

The examiner reviewed a sample of various types of claims, surrenders, changes and lapses. The examiner also reviewed the various controls involved, checked the accuracy of the computations and traced the accounting data to the books of account.

Based upon the sample reviewed, no significant findings were noted.

7. INVESTMENT CONTROLS AND RECORDKEEPING

The examiner reviewed the Association's investment operations that included, but was not necessarily limited to, the Association's security pricing process and the Association's reporting of securities in its filed annual statements.

A review of the Association's filing of trust preferred securities revealed that trust preferred securities were filed incorrectly as bonds in Schedule D Part 1 in the 2004 filed annual statement.

Fifty of 59 capital or trust preferred securities identified by Bloomberg were filed in Schedule D Part 1 of the 2004 filed annual statement as long-term bonds even though 19 of the 50 were foreign bank issued perpetual securities and 31 of the 50 were securities with a finite maturity date. These 50 capital or trust preferred securities contain features which require the Association to file the securities with finite maturity dates as preferred stock in Schedule D Part 2 Section 1 according to Part seven of the NAIC Securities Valuation Office ("SVO") Purposes and Procedures Manual debt/equity guidelines. In addition, the foreign bank issued perpetual securities were required to be filed with the SVO.

Schedule D Part 2 Section 1, which identifies preferred stock owned by the Association, contained seven perpetual foreign bank issued trust preferred securities that were not filed with the SVO for the purposes of determining whether they should be reported as preferred stocks (Schedule D Part 2 Section 1), or as common stocks (Schedule D Part 2 Section 2).

The examiner recommends that the Association identify all hybrid and similar securities and file them with the SVO.

The following errors were located in the Association's Schedule D reporting:

1. In Schedule D Part 2 Section 2 of the Association's 2004 filed annual statement, 25 out of 168 common stocks contained the price 1.00 or 100.00 in the column "Rate Per Share Used to Obtain Fair Value." The fair value of these securities, including the fair value of internal subsidiaries, was reported incorrectly. The incorrect valuations were identified by comparing the fair value column to book value, or the market value when available on Bloomberg. Red flags included filings equal to book value, equal to par value, or materially different from the Bloomberg indicated value.

2. The book value was incorrectly reported as the fair value for all 30 interest only mortgage-backed securities.
3. The Association filed 198 “other” foreign securities as domestic. About 121 of the 198 were dual domicile special purpose vehicles. Dual structures are registered both in the United States and abroad. It is the Department’s position that these structures are generally considered foreign.
4. The optionality of two securities reviewed, one credit-linked, and one index-linked, were not filed correctly in the “Bond Characteristics” column in Schedule D Part 1.
5. The Association used “Direct” as the counterparty name in 103 out of 2,075 transactions in Schedule D Part 3, in 115 of the 3,405 transactions in Schedule D Part 4, and in 10 of the 296 transactions in Schedule D Part 5. The only exception to using the actual counterparty name in Schedule D Parts 3 and 5 in the “Name of Vendor” column in the annual statement instructions is “various” which is to be used when the securities were purchased from more than one vendor. The only exception to using the actual counterparty name (vendor or purchaser) in Schedule D Parts 4 and 5 in the “Name of Purchaser” column in the annual statement instructions is “various” which is to be used in the case of several counterparties.
6. The external automated fair value pricing sources (for example, SQX, FT Interactive, Bear Stearns), and internal pricing frequently come up as 100.00, or another price exactly the same as book value. It is unlikely that after interest rate and equity market moves, the fair value of a security remains exactly at 100.00 (or at book value), the value of such sources as well as the methods used are questionable. The fact that a quote simply comes from an external source does not make such quote reliable; the Association should also implement some type of credibility checks to the process. The pricing services may simply default to 100.00 when no real price is available.

The examiner recommends that the Association verify the fair value on at least a sample of securities where fair value appears to be outside the normal range, and take appropriate action to determine fair value where necessary.

The Association is in the process of improving the integrity of the pricing process, having established the Valuation Unit within Investment Services, and by improving the segregation of duties so traders are less involved in the pricing process.

The examiner recommends that when it is necessary for a trader to request price quotes, the counterparty be instructed to send the quote directly to the Valuation Unit.

The examiner also recommends that when vendors are used for pricing, the Association maintain documentation of such quotes, instead of simply inserting those values in a spreadsheet.

The fair value of 13 out of 105 preferred stocks was filed with the same par/book value. While the Association's explanation is satisfactory, and accordingly, the valuation did not violate the annual statement instructions, the examiner recommends that even if the financial statements are not available at the time of the annual statement filing, the Association should, when possible, use its best estimate for fair value, even if internally determined, instead of par value. This would likely reduce the volatility of the valuation.

8. PRIOR REPORT SUMMARY AND CONCLUSIONS

Following are the violations contained in the prior report on examination and the subsequent actions taken by the Association in response to each citation:

<u>Item</u>	<u>Description</u>
A	<p>The Association violated Section 219.5(a) of Department Regulation No. 34-A by not maintaining specimen copies of its “institutional” advertisements in its advertising file.</p> <p>A review of a sample of advertisements indicated that the Association is maintaining specimen copies of its “institutional” advertisements in its advertising file.</p>
B	<p>The Association violated Section 219.4(p) of Department Regulation No. 34-A by not including the city of its home office in some advertisements.</p> <p>The Association included the city of its home office in the sample of advertisements reviewed by the examiner.</p>
C	<p>The Association violated Section 4235(h)(3) of the New York Insurance Law for using group health premium rates that were less than the schedule of rates on file with the Department.</p> <p>The Association filed its current group health schedule of premium rates (i.e., ADEA discounts) with the Department. The Association ceded its Group Health business to Standard Insurance Company in 2002.</p>
D	<p>The Association violated Section 4235(h)(1) of the New York Insurance Law by not filing its current group health schedule of premium rates (i.e., ADEA discounts) with the Department.</p> <p>The Association filed its current group health schedule of premium rates (i.e., ADEA discounts) with the Department. The Association ceded its Group Health business to Standard Insurance Company in 2002.</p>
E	<p>The Association violated Section 1414(e) of the New York Insurance Law by valuing a mortgage loan in excess of 90% of the appraised value of the property.</p> <p>A review did not reveal any instances where the Association valued a mortgage loan in excess of 90% of the appraised value of the property.</p>

9. SUMMARY AND CONCLUSIONS

Following are the violations, recommendations and comments contained in this report:

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
A	The examiner recommends that the Association ensure that all officers and trustees complete the Code of Ethics Acknowledgement form on an annual basis.	16
B	The IRS completed its audit and presented the Association with a Revenue Agent Report asserting certain adjustments to the Association's taxable income that would result in additional tax due of \$1.1 billion for the 1998 and 1999 tax years.	29
C	The Association violated Section 51.6(b)(6) of Department Regulation No. 60 for failing to maintain an accurate index of replacements by agent.	33
D	The Association violated Section 51.6(b)(2) of Department Regulation No. 60 by failing to require with or as part of each application a copy of any proposal, including the sales material used in the sale of the proposed annuity contract, and proof of receipt by the applicant of the Important Notice and the completed Disclosure Statement.	33
E	The Association violated Section 51.6(b)(3) of Department Regulation No. 60 by failing to examine any proposal used, including the Disclosure Statement, and ascertain that they were accurate.	34
F	The Association violated Section 51.6(b)(6) of Department Regulation No. 60 by failing to maintain copies of: any proposal, including the sales material used in the sale of the proposed annuity contract, and the notification of replacement to the insurer whose life insurance policy or annuity contract was to be replaced.	34

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
G	The Association violated Section 51.7(b) of Department Regulation No. 60 by preventing the orderly working of the Regulation by accepting applications in cases where the Important Notice and completed Disclosure Statement were not received by the applicants at or prior to the time that the applications were taken.	34
H	The Association violated Section 51.6(b)(4) of Department Regulation No. 60 for failing to furnish to the insurer whose coverage was being replaced a copy of any proposal, including the sales material used in the sale of the proposed annuity contract, and the completed Disclosure Statement within ten days of receipt of the application.	34
I	The Association violated Section 51.6(e) of Department Regulation No. 60 by failing to follow its filed replacement procedures.	35
J	The examiner recommends that the Association follow its filed procedures to track the sequence of steps that it must follow to comply with Department Regulation No. 60 and to document when those steps are executed in the replacement files.	35
K	As a result of the findings, the Department and the Association have agreed on remediation plans for those contract holders that have been adversely affected. The Association has also developed and started to implement an audit plan designed to review, test, and monitor compliance with the requirements of Department Regulation No. 60.	35
L	The Association violated Section 3209(b)(1) of the New York Insurance Law for failing to provide applicants with the most recent buyer's guide at or prior to the time the life insurance application was taken.	36
M	The Association violated Section 53-3.1(b) of Department Regulation No. 74 by using policy forms 101.21, 101.21a, 312.6, 312.6a, 313.1, 313.1a, and 336.6 without notifying the Superintendent whether the policy forms were to be marketed with or without an illustration.	36
N	The Association violated Section 3201(b)(1) of the New York Insurance Law by not providing form 39.1.1 as a supplement to the applications (application forms 101.21 and 101.21a) to 43 applicants for the Association's whole life policies when the Association advised the Department that form 39.1.1 would be used as a supplement to the application.	37

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
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P	The Association violated Section 3204(d) by utilizing the APL option (actually making premium loans) for three policyholders without evidence that the policyholders had selected the APL option.	37
Q	The examiner recommends that the Association provide the APL option (form 39.1.1) to all 43 policyholders who have policies using forms 101.21 and 101.21a.	37
R	The examiner recommends that the Association identify all hybrid and similar securities and file them with the SVO.	39
S	The examiner recommends that the Association verify the fair value on at least a sample of securities where fair value appears to be outside the normal range, and take appropriate action to determine fair value where necessary.	40
T	The examiner recommends that when it is necessary for a trader to request price quotes, the counterparty be instructed to send the quote directly to the Valuation Unit.	41
U	The examiner recommends that when vendors are used for pricing, the Association maintain documentation of such quotes, instead of simply inserting those values in a spreadsheet.	41
V	The examiner recommends that even if the financial statements are not available at the time of the annual statement filing, the Association should, when possible, use its best estimate for fair value, even if internally determined, instead of par value.	41

The foregoing report on examination is respectfully submitted:

_____/s/_____
Mark McLeod
State of New York
Representing Northeastern Zone

_____/s/_____
Timothy Lee Gadler, JD, CFE, CIE
State of Nevada
Representing Western Zone

APPOINTMENT NO. 22380

STATE OF NEW YORK
INSURANCE DEPARTMENT

I, HOWARD MILLS, Superintendent of Insurance of the State of New York,
pursuant to the provisions of the Insurance Law, do hereby appoint:

MARK MCLEOD

as a proper person to examine into the affairs of the

TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA

and to make a report to me in writing of the condition of the said

COMPANY

with such other information as he shall deem requisite.

*In Witness Whereof, I have hereunto subscribed by name
and affixed the official Seal of the Department
at the City of New York*

this 1st day of June, 2005



HOWARD MILLS
Superintendent of Insurance

A handwritten signature in black ink, appearing to read "Howard Mills", written over a horizontal line.

Superintendent