



NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES
REPORT ON MARKET CONDUCT EXAMINATION
OF THE
LINCOLN LIFE & ANNUITY COMPANY OF NEW YORK

CONDITION:

DECEMBER 31, 2010

DATE OF REPORT:

NOVEMBER 11, 2011

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EXAMINER:

EDEN M. SUNDERMAN

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NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Benjamin M. Lawsky
Superintendent

January 15, 2013

Honorable Benjamin M. Lawsky
Superintendent of Financial Services
New York, New York 10004

Sir:

In accordance with instructions contained in Appointment No. 30642, dated January 24, 2011 and annexed hereto, a market conduct examination has been made into the affairs of Lincoln Life and Annuity Company of New York, hereinafter referred to as “the Company,” at its home office located at 100 Madison Street, Suite 1860, Syracuse, New York 13202.

On October 3, 2011, the Insurance Department merged with the Banking Department to create the New York State Department of Financial Services. Wherever “Department” appears in this report, it refers to the New York State Department of Financial Services.

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

1. EXECUTIVE SUMMARY

The material violations contained in this report are summarized below.

- The Company violated Section 3209(b)(1)(A) of the New York Insurance Law by failing to provide prospective applicants with a copy of the preliminary information that conformed to Section 3209(d) of the New York Insurance Law on or before the date that the application was taken. (See Section 4C of this Report)
- The Company violated several Sections of Department Regulation No. 74 by failing to: provide prospective applicants with preliminary information that conformed to Section 53-2.1(a) of Department Regulation No. 74 on or before the date that the application was taken; provide the insured with a policy summary that conformed to Section 53-2.2(a) of Department Regulation No. 74 upon delivery of the policy; and obtain at the time of sale either a signed basic illustration or a certification from the producer, signed by the applicant, that no illustration conforming to the policy applied for was provided. (See Section 4C of this Report)
- The Company violated Section 41.4(a) of Department Regulation No. 143 by failing to provide an individualized illustration or a generic illustration demonstrating the manner in which the accelerated payment of the death benefit operates on or before the date that the application for insurance was signed. (See Section 4C of this Report)
- The Company violated Section 3201(c)(2) of the New York Insurance Law by issuing the Terminal Illness Accelerated Benefit Rider inequitably when it did not issue the rider automatically to all eligible policies. (See Section 4C of this Report)

2. SCOPE OF EXAMINATION

This examination covers the period from January 1, 2008 through December 31, 2010. As necessary, the examiner reviewed matters occurring subsequent to December 31, 2010 but prior to the date of this report (i.e., the completion date of the examination).

The examination comprised a review of market conduct activities and utilized the National Association of Insurance Commissioners' Market Regulations Handbook or such other examination procedures, as deemed appropriate, in such review.

The examiner reviewed the corrective actions taken by the Company with respect to the market conduct violations and recommendations contained in the prior report on examination. The results of the examiner's review are contained in item 7 of this report.

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

3. DESCRIPTION OF COMPANY

A. History

Jefferson Pilot LifeAmerica Insurance Company (“JPLA”) was incorporated as a stock life insurance company under the laws of New Jersey under the name of Colonial Life Insurance Company of America on October 27, 1897. A certificate of authority dated December 31, 1897 authorized it to commence business and issue policies as a joint stock life insurance company on August 4, 1900. Effective May 18, 1978, the Colonial Life Insurance Company of America was acquired by Chubb Life Insurance Company, a subsidiary of the Chubb Corporation. On March 1, 1996, the Colonial Life Insurance Company of America changed its name to Chubb Colonial Life Insurance Company. Effective May 13, 1997, Chubb Life Insurance Company and its subsidiaries were acquired by Jefferson Pilot Corporation (“JPC”). On May 1, 1998, Chubb Colonial Life Insurance Company changed its name to Jefferson Pilot LifeAmerica Insurance Company.

The Company was incorporated as a stock life insurance company under the laws of New York on June 6, 1996, was licensed on September 27, 1996 and commenced business on October 1, 1996.

On April 3, 2006, Lincoln National Corporation (“LNC”) acquired 100% of the outstanding shares of JPC at which time JPC merged with and into LNC. On April 2, 2007, the Company merged with and into JPLA, which had redomesticated from New Jersey to New York. JPLA was the surviving company and was renamed Lincoln Life and Annuity Company of New York.

The Company is a wholly owned subsidiary of Lincoln National Life Insurance Company (“LNL”), which is an Indiana life insurance company. The ultimate parent of the Company is LNC, a publicly traded financial services firm. The Company, LNL and its affiliate First Penn-Pacific Life Insurance Company (“FPP”), among other entities, are collectively known as the Lincoln Financial Group (“LFG”).

B. Territory and Plan of Operation

The Company 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 Company is licensed to transact business in 50 states, the District of Columbia, and the U.S. Virgin Islands. In 2010, 86.9% of life premiums and 96.7% of annuity considerations were received from New York.

The Company currently offers life insurance, annuity products, and qualified pension plan products and services to individuals and groups in New York. The Company's portfolio includes term life, universal life and variable universal life insurance in addition to individual and group variable and fixed annuities. During 2010, 38.3% of total premiums and considerations were derived from life insurance and 57.0% from annuity business. Policies are written on a non-participating basis.

The Company's operations are divided into two major segments "Retirement Solutions" and "Insurance Solutions." Retirement Solutions offers tax-deferred investment growth and lifetime opportunities fixed and variable annuities that are offered to both the individual and employer-sponsored markets. Insurance Solutions focuses on the creation of wealth for its clients through the manufacture of life insurance products. Products offered include both single and survivorship versions of universal life, variable life, and interest-sensitive whole life, and term insurance. The products are written on a non-participating basis and are distributed through LNL and FPP.

Distribution channels such as broker-dealers, financial planners, banks and general agents within New York are utilized. During the examination period, the Company's principal lines of business sold were ordinary fixed and variable annuities and universal life with a lapse protection rider.

4. MARKET CONDUCT ACTIVITIES

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

A. Advertising and Sales Activities

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

Section 219.2(b) of Department Regulation No. 34-A states:

“Every insurer shall establish and at all times maintain a system of control over the content, form and method of dissemination of all advertisements of its policies. All such advertisements, regardless of by whom written, created, designed or presented, shall be the responsibility of the insurer whose policies are so advertised.”

Section 219.5(a) of Department Regulation No. 34-A states, in part:

“Each insurer shall maintain at its home office a complete file containing a specimen copy of every printed, published or prepared advertisement hereafter disseminated in this state, with a notation indicating the manner and extent of distribution and the form number of any policy advertised . . .”

The examination review of the advertising file maintained by the Company at its home office in Syracuse, New York containing life advertisements disseminated in New York during the examination period revealed that it did not include sufficient details regarding the manner of distribution nor did it consistently contain information regarding the extent of distribution.

The advertising index or log of New York advertisements maintained by the Company indicated generically that the manner of distribution was “Client/Public use (includes Plan Sponsor and/or TPAs)” for all 1,062 life advertisements. From the index the examiner selected a sample of life advertisements and requested that the Company provide the manner and extent of the distribution for the specific advertisements selected. The examiner reviewed the transmittal sheet maintained in the advertising file for the sample of life advertisements and found that it did

not clearly identify how the material was to be used. Besides being unable to more clearly identify the manner in which the material was disseminated, the Company was also unable to identify the extent of distribution for 42 of the 91 (46.1%) New York advertisements selected.

The Company violated Section 219.5(a) of Department Regulation No. 34-A by failing to capture in sufficient detail, the manner and extent of distribution of each advertisement used and disseminated in New York during the examination period.

The examiner recommends that the Company enhance the information maintained in its advertising file (i.e. transmittal sheet) to include more specific information regarding to whom the advertisement was directed (i.e. prospective applicants, existing policyholders, etc.) and how the advertisements were disseminated to the general public (i.e. point of sale, mailed to existing policyholders, mailing list if the ad was disseminated electronically to specific individuals or groups, publications, etc.).

The examiner further recommends that the Company implement a control to ensure that the extent of distribution for each advertising piece be maintained.

Significant violations of Department Regulation No. 60 were discovered during the prior examination, which covered the period from January 1, 2005 through December 31, 2007, and disclosed in the market conduct examination report dated October 17, 2008. Such report remains unfiled to date. Although the Company was notified, via written memoranda, of each of the violations cited in the prior market conduct report while the prior examination was ongoing, a review of a sample of underwriting files produced during the period covered under this examination revealed that the Company failed to take corrective action or alter its procedures in order to bring its underwriting program into compliance with Department Regulation No. 60 guidance. When the Company was asked to explain its rationale for not correcting its procedures, the response was that it was waiting for the draft examination report of that prior period to be presented. The Company further explained that it had interpretation issues with several of the findings in the memoranda and was waiting to see if the Department agreed with the Company's arguments prior to taking any corrective action.

The Company continued to violate the same provisions of Department Regulation No. 60 as contained in the prior examination report, the first draft of which was delivered to the Company on April 26, 2011 but remains unfiled to date. (See Section 7 of this report for more detail)

B. Underwriting and Policy Forms

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

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

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.

1. Section 53-1.4 of Department Regulation No. 74 states, in part:

"(a) In addition to the requirements imposed by Section 53-3.5(e) of Subpart 53-3, each insurer shall maintain at its home or principal office, a complete file containing one specimen copy each of the preliminary information form, policy summary form, and sales illustrations authorized by the insurer for each policy form subject to this Part. Such files shall be subject to regular and periodic inspection by the Department. All such forms shall be maintained in said file for a period of either six years or until the filing of the next regular report on examination of the insurer, whichever is the longer period of time. . . ."

The Company failed to maintain a complete file containing one specimen copy each of the preliminary information form, policy summary form, and sales illustrations authorized by the insurer for each policy form sold in New York during the examination period.

The Company violated Section 53-1.4 of Department Regulation No. 74 by failing to maintain at its home or principal office, a complete file containing one specimen copy each of the preliminary information form, policy summary form, and sales illustrations authorized by the insurer for each policy form for use in New York.

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

"No policy of life insurance shall be delivered or issued for delivery in this state after the applicable effective date, as set forth in subsection (n) of this section, unless the prospective purchaser has been provided with the following:

(A) a copy of the most recent buyer's guide and the preliminary information required by subsection (d) of this section, at or prior to the time an application is taken . . ."

Section 3209(d) of the New York Insurance Law states, in part:

“The preliminary information shall be in writing and include, to the extent applicable, the following . . .

(3) the date of the preliminary information and the generic name, the initial amount of insurance and the initial annual premium for the basic policy . . .

(6) . . . life insurance cost indexes and the equivalent level annual dividend for the basic policy for ten and twenty years, but in no case beyond the premium-paying period . . .”

The examiner reviewed a sample of 42 term life policies where the application was signed during the examination period. In 7 of 42 (16.7%) term cases reviewed, the Company failed to provide preliminary information to the applicant. In 12 of 42 (20.6%) term cases reviewed, the Company provided the preliminary information to the applicant, but after the application was signed.

In 12 out of the 42 (20.6%) term cases reviewed, the Company provided incomplete preliminary information to the applicant. In seven instances, the Company failed to provide the life insurance cost indexes for the basic policy for ten and twenty years as required by Section 3209(d)(6) of the New York Insurance Law

The Company violated Section 3209(b)(1)(A) of the New York Insurance Law by failing to provide prospective applicants with a copy of the preliminary information that conformed to Section 3209(d) of the New York Insurance Law on or before the date that the application was taken.

3. Section 53-2.1 of Department Regulation No. 74 states, in part:

“(a) The preliminary information shall be in writing and include, to the extent applicable, the following . . .

(2) the full name and home office, administrative office or branch or agency office address of the insurer in whose name the life insurance policy is to be written . . .

(7) the effective policy loan annual percentage interest rate and whether this rate is applied in advance or in arrears, adjustable or fixed . . .

(9) a statement advising the applicant that when the policy is issued, a complete policy summary including cost data, based on the benefits, premiums and dividends of the policy as issued will be furnished, and that, following the receipt of the policy and policy summary, there will be a period of not less than ten days

within which the applicant may return the policy for an unconditional refund of the premium paid or the adjusted amount if such policy provides for a market-value adjustment pursuant to Section 3203(a)(11) of the Insurance Law; and

(10) life insurance cost indexes and the equivalent level annual dividend for the basic policy for 10 and 20 years, but in no case beyond the premium-paying period . . .

(c) The preliminary information shall be provided to the prospective purchases at or prior to the time an application is taken and shall be signed and dated by the agent and the applicant and a copy of the preliminary information shall be attached to the application submitted to the insurer. . .”

Section 53-2.2 of Department Regulation No. 74 states, in part:

“(a) A policy summary shall include the following:

(1) a prominently placed title as follows:

"STATEMENT OF POLICY COST AND BENEFIT INFORMATION" . . .

(3) the full name and home office, administrative office or branch or agency office address of the insurer in whose name the life insurance policy is to be or has been written . . .

(6) the effective policy loan annual percentage interest rate specifying whether this rate is applied in advance or arrears, adjustable or fixed, and if adjustable, the frequency at which such rate is to be determined and the index upon which the maximum rate is based at the time the policy is issued . . .

(8) life insurance cost indexes for 10 and 20 years but in no case beyond the premium-paying period. Separate indexes are to be displayed for the basic policy and each optional term life insurance rider . . .

(11) a statement in close proximity to the life insurance cost indexes as follows: ‘AN EXPLANATION OF THE INTENDED USE OF THESE INDEXES IS PROVIDED IN THE BUYER’S GUIDE’ . . .

(e) The policy summary shall be a separate document. . .”

Policy Form LN 850 (8/05) Rev (“MoneyGuard Reserve” product)

The Company notified the Department that policy form LN 850 (8/05) Rev (“MoneyGuard Reserve”) would be marketed with an illustration when the product was filed under Department File No. 0706053. Sometime in 2008, the Company decided that the MoneyGuard Reserve policy would no longer be marketed with the use of an illustration. The Company notified the Department that the MoneyGuard Reserve policy would no longer be illustrated in their 2009 Annual Certification filing.

The Company was not able to produce an example of the preliminary information or policy summary documents used in 2009 and later for policy form LN 850 (8/05) Rev. The examiner’s review of the policy record for a number of MoneyGuard Reserve policies issued in 2009 and 2010 contained a single disclosure document, LCN 200809-2020154, that was titled “illustration”. None of the policy records reviewed contained a policy summary document titled, “STATEMENT OF POLICY COST AND BENEFIT INFORMATION.”

The examiner reviewed the disclosure document used by the Company in 2009 and 2010. The disclosure document failed to contain the preliminary information required by Section 53-2.1(a)(2), (7), and (9) of Department Regulation No. 74. It also failed to contain the policy summary information required by Section 53-2.2(a)(1), (3), and (6) of Department Regulation No. 74 for policies subject to Section 4232(b) of the New York Insurance Law.

Policy Forms SUL 5030N and UL 5049N (“Lincoln LifeGuarantee” (2009))

When the Company initially filed policy forms SUL 5030N (Department File No. 0906069) and UL 5049N (Department File No. 0908043) with the Department, the Company indicated that an illustration would be used to market these policies. The filings were approved by the Department under Circular Letter No. 6 on June 23, 2009 and October 2, 2009 respectively. Subsequently, in its Annual Illustration Certification filing for 2010, dated June 29, 2010, the Company notified the Department that an illustration would no longer be used to market the Lincoln LifeGuarantee universal life products.

The Company was not able to produce an example of the preliminary information provided to applicants of the Lincoln LifeGuarantee products (policy forms SUL 5030N and UL 5049N) after June 29, 2010.

Lincoln LifeGuarantee Applications

The examiner reviewed 56 Lincoln LifeGuarantee applications. 32 applications were signed before June 29, 2010 and 24 applications were signed after June 29, 2010.

In 8 out of 32 (25.0%) Lincoln LifeGuarantee applications that were signed before June 29, 2010, the new business file failed to contain a basic illustration signed by the applicant that was used at the point of sale or a certification of non-illustration form signed by the applicant and the agent as required by Section 53-3.5(b) of Department Regulation No. 74.

The Company violated Section 53-3.5(b) of Department Regulation No. 74 by failing to obtain at the time of sale either a signed basic illustration or a certification from the producer, signed by the applicant, that no illustration conforming to the policy applied for was provided. This violation appeared in the prior report on examination.

The 24 Lincoln LifeGuarantee application files issued after June 2010 contained a document titled "illustration". A review of the single disclosure document that was provided to prospective insureds revealed that it did not contain all of the items required of the preliminary information that complies with Section 53-2.1(a) of Department Regulation No. 74.

In 5 out of 24 (20.8%) application files reviewed, the file failed to contain signed receipt of the preliminary information or proposal that was used at the point of sale.

The Company violated Section 53-2.1(c) of Department Regulation No. 74 by failing to provide prospective applicants with preliminary information that conformed to Section 53-2.1(a) of Department Regulation No. 74 on or before the date that the application was taken.

In 4 out of 24 (16.7%) application files reviewed, the Company failed to provide a policy summary to the insured with delivery of the policy, and in 20 out of 24 (83.3%) application files reviewed, the policy summary provided to the insured with their policy failed to contain all of the information required by Section 53-2.2 of Department Regulation No. 74 for policies subject to Section 4232(b) of the New York Insurance Law.

The Company violated Section 53-2.2 of Department Regulation No. 74 by failing to provide the insured with a policy summary that conformed to Section 53-2.2(a) of Department Regulation No. 74 upon delivery of the policy.

4. Section 41.4(a) of Department Regulation No. 143 states, in part:

“The preliminary information required pursuant to Section 3209(d) of the Insurance Law and all sales illustrations for the accelerated payment of death benefits pursuant to section 1113(a)(1)(A) or (B) of the Insurance Law shall at the insurer's option provide for either:

(1) an individualized illustration . . . or

(2) a generic illustration demonstrating the manner in which the benefit operates. The illustration shall demonstrate the acceleration based on 50 percent of the maximum benefit as permitted by the insurer for acceleration, illustrate by numerical example the effect on the policy's face amount, specified amount, death benefit, accumulation account, cash values, loan balance, premium payments, availability of policy loans and partial withdrawals. The illustration shall demonstrate the benefit for an issue age of 45 with acceleration at age 55. The illustration shall be accompanied by a brief description of the benefit and the qualifying events for payment of benefits.

If the accelerated payment of the death benefits provides for a discounting feature, then the illustration shall be based on a mortality assumption that death will occur within one year or such other mortality basis on file with the superintendent and an interest rate of eight percent. If the accelerated payment of the death benefits provides for an interest accrual under the lien approach then the illustration shall be based on an interest rate of eight percent.”

The Company identified a number of individual life policy forms where an accelerated benefit is available without charge to the applicant/policyholder. The examiner reviewed 49 new business applications (37 universal life and 12 term life) where the applicant applied for a policy form that contains an option to select the terminal illness accelerated death benefit rider. In 7 out of 37 (14.3%) universal life new business applications reviewed during the examination period the Company failed to provide an individualized illustration or a generic illustration demonstrating the manner in which the benefit operates as required by Section 41.4 of Department Regulation No. 143. In 12 out of 37 (36.4%) universal life new business file applications reviewed during the examination period, the Company failed to provide the individualized illustration or a generic illustration demonstrating the manner in which the benefit operates, on or before the date that the application was signed (i.e. Late Disclosure).

The Company violated Section 41.4(a) of Department Regulation No. 143 by failing to provide an individualized illustration or a generic illustration demonstrating the manner in which the accelerated payment of the death benefit operates on or before the date that the application for insurance was signed.

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

"The superintendent may disapprove any life insurance policy formif its issuance would be prejudicial to the interests of policyholders or members or it contains provisions which are unjust, unfair or inequitable."

The guidance contained in the Product Outline for Accelerated Payment of the Death Benefit dated December 15, 1999 that is available in downloadable form on the Department's website states, in part:

"(I)(A)(13) Since the majority of accelerated death benefits are provided by rider the submission letter should identify the policies with which the rider will be used by form number, approval date and Department file number and address how in force policies will be handled. If there is no charge or premium associated with the attachment of the rider to the policy, then the rider should be either automatically sent to all existing policyholders or those existing policyholders should be given written notification of the availability of the rider at any time upon their request. (See Section V of this Outline). For accelerated death benefits which are provided by rider please note that the base policy would be subject to all the requirements of the product outline which are applicable to that type of base policy."

The examiner reviewed policy form filing correspondence dated September 20, 2001 and January 29, 2007 when the Company's Terminal Illness Accelerated Benefit was initially filed with the Department. The filing includes the following written assurance from the Company regarding the policies issued with a Terminal Illness Accelerated Benefit Rider (UL-5020N and SUL-5021-N):

"We have reviewed the Outline for Accelerated Payment of Death Benefit (12/15/99) and believe these forms to be in compliance with these guidelines."

Based upon the Company's assertion all eligible policies would either be issued with the Terminal Illness Accelerated Benefit Rider (N-5680) or the policyholder would be notified in writing that the rider is available at any time upon their request.

However, the examination review of individual life policy forms revealed that although the Company does not charge an additional premium for the Terminal Illness Accelerated Benefit rider at the point of issuance, the Company does not automatically issue the rider to all

eligible policies. The review further revealed that any charge to the policyholder occurs only if the rider is exercised.

The Company violated Section 3201(c)(2) of the New York Insurance Law by issuing the Terminal Illness Accelerated Benefit Rider inequitably when it did not issue the rider automatically to all eligible policies. In response to this violation the Company has stated that it believes that it followed all applicable laws and that its treatment of its accelerated benefit riders was in accordance with the guidance published by the Department.

Nonetheless the examiner recommends and the Company has agreed to notify existing policyholders in writing that the rider is available at any time without charge upon their request (although noting to the policyholder that an administrative charge is applied upon the exercise of the rider) and it will attach the rider automatically to all new issues; additionally, the applicable application forms will be revised and resubmitted to the Department for approval to indicate that the rider will be attached automatically at issue without charge unless the applicant affirmatively decides not to select such rider (and to contain a sentence that if such opt-out is exercised, the policyholder can later select such rider at any time during the lifetime of the insured).

5. AGENT COMPENSATION

Section 4228(f)(1)(A) of the New York Insurance Law states, in part:

“A company shall make annual information filings with respect to any newly-introduced plans or changes under which the company makes payments to agents if such plans are commission plans for which the commission percentages are, in all policy or contract years, no greater than the commission percentages set forth in paragraphs one, two, three and four of subsection (d) of this section, expense allowance plans other than those meeting the definition of a compensation arrangement, plans subject to the provisions of paragraph one of subsection (e) of this section under which compensation is not in excess of two percent of the fund annually in any of the first four policy or contract years, or plans subject to the provisions of paragraph four of subsection (e) of this section . . .”

A review of the Company’s compensation payments made during the examination period revealed that it paid agent compensation on the MYGuarantee Plus 3 year, 4 year, 5 year, 6 year, and 7-10 year individual fixed annuity products and the Insured Income Annuity product during the examination period. The Company did not make an annual information filing for the MyGuarantee Plus individual fixed annuity products and the Insurance Income annuity product in 2008 through 2011 calendar years, inclusive.

The Company violated Section 4228(f)(1)(A) of the New York Insurance Law by paying agent compensation during the examination period according to a schedule of agent compensation that was not filed with the Department.

The Company subsequently made the filing.

6. DATA FILES

The examination commenced on December 8, 2010, with the issuance of the Pre-examination Letter (“PEL”) to the Company, which requested policy level data files for all life, annuity, and accident and health policies that were issued, in force or terminated, as well as claims paid, denied, or pending during the examination period. In addition to providing the data files, reconciliations to support the totals in the data files to the amounts reflected in the various policy exhibits and schedules, as reported in its filed annual statements for the examination period, were required as a verification of the integrity of the data. The requested information was to be provided within 30 days of receipt of the PEL by the Company.

On January 5, 2011, the Company was advised that while the scope of the examination was being limited to a review of the Company’s market conduct operations, the PEL data files were required as part of the market conduct examination and that the data must also reconcile to the amounts reported in the filed Annual Statements for the period under review.

On January 11, 2011, the Company explained that to collect the data from the various administration systems and to be able to reconcile this data with the filed annual statements is extremely time consuming and historically problematic. In later communications, the Company made it clear that it would not be able to provide data that reconciled to the amount reported in its filed annual statements for 2008, 2009 and 2010 within 30 days of receipt of the PEL and further, it would not be able to provide the data before the start of field work that was scheduled for April 2011, approximately 4 months after the PEL was received by the Company. The examiner emphasized that delays in providing the data could have a serious impact on the progress of the exam and that many areas of the market conduct examination depend upon the receipt of the reconciled data for sampling purposes.

On March 4, 2011, the Company provided the examiner with a schedule of deliverable dates for the various PEL data requests. For some data file requests, the Company was granted extensions or additional time to provide the data. In many instances, the examiner experienced problems analyzing the data and revised data files had to be created during the course of the examination which required additional examination resources to re-analyze each new or revised data submission. The delays caused the examination to run over budget from both a time and cost perspective, which in turn led to additional expenses being borne by the Company.

The examiner recommends that the Company develop and implement far more effective procedures so as to ensure that, in the future, it can produce in a timely manner, policy level data that can be reconciled to the various policy exhibits and schedules as reported in the Company's filed annual statements for the period under examination.

7. PRIOR REPORT SUMMARY AND CONCLUSIONS

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

<u>Item</u>	<u>Description</u>
A	<p>The Company violated Section 41.3(a) of Department Regulation No. 143 by failing to include a statement in advertisements for accelerated death benefits that receipt of accelerated death benefits may affect eligibility for public assistance programs.</p> <p>The marketing department has immediately updated its marketing guidelines to include a new disclosure whenever accelerated death benefits are discussed. The new disclosure ("Accelerated death benefits may be taxable and may affect public assistance eligibility.") will be included on new pieces and on existing pieces that reference accelerated death benefits as they are being revised.</p>
B	<p>The Company violated Section 41.3(b) of Department Regulation No. 143 by failing to include a statement in advertisements for accelerated death benefits that receipt of accelerated death benefits may be taxable.</p> <p>The marketing department has immediately updated its marketing guidelines to include a new disclosure whenever accelerated death benefits are discussed. The new disclosure ("Accelerated death benefits may be taxable and may affect public assistance eligibility.") will be included on new pieces and on existing pieces that reference accelerated death benefits as they are being revised.</p>
C	<p>The Company violated Section 51.6(b)(9) of Department Regulation No. 60 by failing to provide a revised Disclosure Statement in situations where the life insurance policy or annuity contract applied for differed from the life insurance policy or annuity contract issued.</p> <p>The Company failed to take corrective action in response to this violation contained in the prior examination report (the first draft of which was delivered to the Company on April 26, 2011 but remains unfiled to date). (See item 4A of this report)</p>
D	<p>The Company violated Section 51.6(b)(3) of Department Regulation No. 60 by failing to examine and ascertain that the Disclosure Statement used in the sale of the proposed policy or annuity contract was accurate and met the requirements of Department Regulation No. 60.</p> <p>The Company failed to take corrective action in response to this violation contained in the prior examination report (the first draft of which was delivered to the Company on April 26, 2011 but remains unfiled to date). (See item 4A of this report)</p>

<u>Item</u>	<u>Description</u>
E	<p>The Company violated Section 51.6(b)(7) of Department Regulation No. 60 by failing to reject the application where the required forms were not received with the application; the forms did not meet the requirements of Department Regulation No. 60 or the forms were not accurate.</p> <p>The Company failed to take corrective action in response to this violation contained in the prior examination report (the first draft of which was delivered to the Company on April 26, 2011 but remains unfiled to date). (See item 4A of this report)</p>
F	<p>The Company violated Section 51.6(b)(4) of Department Regulation No. 60 by failing to furnish the insurer whose coverage was 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 within ten days of receipt of the application.</p> <p>The Company failed to take corrective action in response to this violation contained in the prior examination report (the first draft of which was delivered to the Company on April 26, 2011 but remains unfiled to date). (See item 4A of this report)</p>
G	<p>The examiner recommends that the Company implement a remediation plan acceptable to the Department to mitigate the deficiencies and provide relief to all policyholders and contractholders that did not receive complete, accurate and timely disclosure prior to completing an application to replace their existing life insurance policy and/or annuity contract. The remediation plan should include all affected policyholders and contractholders commencing with the beginning of this examination period through December 31, 2011.</p> <p>During April, 2012, the Company implemented a remediation plan for both its life and annuity policy and contractholders that was acceptable to the Department to mitigate the deficiencies and provide relief to certain identified policyholders and contract holders that did not receive a revised Disclosure Statement in cases where the amount issued differed from that applied for. This plan of remediation was completed in August, 2012 and no policyholder sought rescission or modification of his or her policy or contract.</p>
H	<p>The examiner recommends that the Company develop and implement an audit plan designed to review, test and monitor compliance with Department Regulation No. 60. Such plan should be approved by the Company's board of directors and its audit committee. Also, the results of audits performed should be reviewed by the board of directors and the audit committee.</p> <p>The Company failed to take corrective action in response to this prior report recommendation. (See item 4A of this report)</p>

<u>Item</u>	<u>Description</u>
I	<p>The Company violated Section 3207(b) of the New York Insurance Law by issuing policies on the lives of minors for amounts of life insurance in excess of the limits of such section.</p> <p>The examination revealed that the Company revised its procedures in October 2008. The review of a sample of life insurance policies effectuated on the lives of minors did not reveal any instances where the Company issued amounts in excess of the statutory limits.</p>
J	<p>The Company violated Section 2611(a) of the New York Insurance Law by not obtaining a signed written informed consent from the applicant prior to performing HIV related tests.</p> <p>The examination revealed that the Company implemented revised control procedures effective April 2009 to ensure compliance with Section 2611(a) of the New York Insurance Law. Based upon the examiner's review of 71 life applications taken after March 2009 where HIV related testing was performed, the Company obtained signed written informed consent from the applicant prior to such tests.</p>
K	<p>The Company violated Section 2614 of the New York Insurance Law by using a policy application form that made a distinction associated with an applicant's past lawful travel experiences. This is a repeat violation.</p> <p>The examination revealed that the Company took corrective action on this issue prior to the last date of field work for the 2007 examination. Based upon the examiner's review of new business files, the travel question does not appear on the new applications being used by the Company.</p>
L	<p>The Company violated Section 4221(a)(7) of the New York Insurance Law by failing to provide a statement containing the loan value under the policy at least annually to universal life policyholders.</p> <p>The examination revealed that the Company implemented programming changes to all of its administrative systems to add the loan value under the policy to statements provided to universal life policyholders.</p>

<u>Item</u>	<u>Description</u>
M	<p>The Company violated Section 86.4(d) of Department Regulation No. 95 by failing to place the fraud warning statement immediately above the space provided for the signature of the person executing the claim form.</p> <p>The examination revealed that the Company revised the Life Claimant Statements to include the required fraud language directly above the claimant's signature in February 2009.</p>
N	<p>The Company violated Section 54.11(a) of Department Regulation No. 77 by failing to disclose to its variable universal life policyholders that coverage might terminate unless additional premiums are paid.</p> <p>The examination revealed that the Company implemented programming changes to all of its administrative systems to add the disclosure to statements provided to variable universal life policyholders effective June 2010.</p>
O	<p>The Company violated Section 54.11(a) of Department Regulation No. 77 by failing to include the notice specified in Section 54.10(d) of Department Regulation No. 77 that illustrations of benefits, including death benefits, policy values, and cash surrender values are available upon request.</p> <p>The examination revealed that the Company implemented programming changes to all of its administrative systems to add the notice specified in Section 54.10(d) of Department Regulation No. 77 to statements provided to variable universal life policyholders effective June 2010.</p>
P	<p>The Company violated Section 53-3.5(b) of Department Regulation No. 74 by failing to obtain at the time of sale either a signed basic illustration or a certification from the producer, signed by the applicant, that no illustration conforming to the policy applied for was provided.</p> <p>Although the Company attempted corrective action by revising its procedures, such attempt was insufficient to correct this deficiency in all instances.. (See item 4C of this report)</p>

<u>Item</u>	<u>Description</u>
Q	<p>The Company violated Section 53-3.6(a)(viii) of Department Regulation No. 74 by failing to include a notice in annual reports to universal life policyholders that the policy's net cash surrender value will not maintain insurance in force until the end of the next reporting period unless further premium payments are made assuming guaranteed interest, mortality, and expense loads.</p> <p>The examination revealed that the Company implemented programming changes to all of its administrative systems to include the required notice in statements provided to universal life policyholders effective June 2010.</p>
R	<p>The Company violated Section 53-3.6(b) of Department Regulation No. 74 by disseminating annual reports to universal life policyholders that did not include an inforce illustration or contain the required language concerning the insured's right to request an illustration without charge.</p> <p>The examination revealed that the Company implemented programming changes to all of its administrative systems to add language stating that the insured may annually request an illustration without charge in statements provided to universal life policyholders effective June 2010.</p>
S	<p>The Company violated Section 3211(b)(2) of the New York Insurance Law by failing to include on premium notices sent to certain whole life and term life policyholders that unless such payment is made on or before the date when due or within the specified grace period thereafter, the policy shall terminate or lapse except as to the right to any cash surrender value or nonforfeiture benefit.</p> <p>The examination revealed that the Company implemented changes to its premium notices sent to certain whole life and term life policyholders to include the required language during May 2012.</p>
T	<p>The examiner recommends that the Company add an "opt out" statement on all of its claim forms for the convenience of its claimants.</p> <p>The examination revealed that the Company revised Life Claimant Statements to allow for a lump sum check instead of a default to SecureLine, the retained asset account.</p>

8. SUMMARY AND CONCLUSIONS

Following are the violations and recommendations contained in this report:

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
A	The Company violated Section 219.5(a) of Department Regulation No. 34-A by failing to capture in sufficient detail, the manner and extent of distribution of each advertisement used and disseminated in New York during the examination period.	7
B	The examiner recommends that the Company enhance the information maintained in its advertising file (i.e. transmittal sheet) to include more specific information regarding to whom the advertisement was directed (i.e. prospective applicants, existing policyholders, etc.) and how the advertisements were disseminated to the general public (i.e. point of sale, mailed to existing policyholders, mailing list if the ad was disseminated electronically to specific individuals or groups, publications, etc.).	7
C	The examiner further recommends that the Company implement a control to ensure that the extent of distribution for each advertising piece be maintained.	7
D	The Company continued to violate the same provisions of Department Regulation No. 60 as contained in the prior examination report, the first draft of which was delivered to the Company on April 26, 2011 but remains unfiled to date.	7
E	The Company violated Section 53-1.4 of Department Regulation No. 74 by failing to maintain at its home or principal office, a complete file containing one specimen copy each of the preliminary information form, policy summary form, and sales illustrations authorized by the insurer for each policy form for use in New York.	8
F	The Company violated Section 3209(b)(1)(A) of the New York Insurance Law by failing to provide prospective applicants with a copy of the preliminary information that conformed to Section 3209(d) of the New York Insurance Law on or before the date that the application was taken.	9

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
G	The Company violated Section 53-3.5(b) of Department Regulation No. 74 by failing to obtain at the time of sale either a signed basic illustration or a certification from the producer, signed by the applicant, that no illustration conforming to the policy applied for was provided. This violation appeared in the prior report on examination.	12
H	The Company violated Section 53-2.1(c) of Department Regulation No. 74 by failing to provide prospective applicants with preliminary information that conformed to Section 53-2.1(a) of Department Regulation No. 74 on or before the date that the application was taken.	12
I	The Company violated Section 53-2.2 of Department Regulation No. 74 by failing to provide the insured with a policy summary that conformed to Section 53-2.2(a) of Department Regulation No. 74 upon delivery of the policy.	12
J	The Company violated Section 41.4(a) of Department Regulation No. 143 by failing to provide an individualized illustration or a generic illustration demonstrating the manner in which the accelerated payment of the death benefit operates on or before the date that the application for insurance was signed.	13
K	The Company violated Section 3201(c)(2) of the New York Insurance Law by issuing the Terminal Illness Accelerated Benefit Rider inequitably when it did not issue the rider automatically to all eligible policies.	15
L	The examiner recommends and the Company has agreed to notify existing policyholders in writing that the rider is available at any time without charge upon their request (although noting to the policyholder that an administrative charge is applied upon the exercise of the rider) and it will attach the rider automatically to all new issues; additionally, the applicable application forms will be revised and resubmitted to the Department for approval to indicate that the rider will be attached automatically at issue without charge unless the applicant affirmatively decides not to select such rider (and to contain a sentence that if such opt-out is exercised, the policyholder can later select such rider at any time during the lifetime of the insured).	15
M	The Company violated Section 4228(f)(1)(A) of the New York Insurance Law by paying agent compensation during the examination period according to a schedule of agent compensation that was not filed with the Department. The Company subsequently made the filing.	16

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
N	The examiner recommends that the Company develop and implement far more effective procedures so as to ensure that, in the future, it can produce in a timely manner, policy level data that can be reconciled to the various policy exhibits and schedules as reported in the Company's filed annual statements for the period under examination.	18

Respectfully submitted,

/s/
Eden M. Sunderman
Associate Insurance Examiner

STATE OF NEW YORK)
)SS:
COUNTY OF NEW YORK)

Eden M. Sunderman, being duly sworn, deposes and says that the foregoing report, subscribed by her, is true to the best of her knowledge and belief.

/s/
Eden M. Sunderman

Subscribed and sworn to before me
this _____ day of _____

APPOINTMENT NO. 30642

STATE OF NEW YORK
INSURANCE DEPARTMENT

I, JAMES J. WRYNN, Superintendent of Insurance of the State of New York,
pursuant to the provisions of the Insurance Law, do hereby appoint:

EDEN SUNDERMAN

as a proper person to examine into the affairs of the

LINCOLN LIFE AND ANNUITY COMPANY OF NEW YORK

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

COMPANY

with such other information as she 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 24th day of January, 2011



JAMES J. WRYNN
Superintendent of Insurance

James J. Wrynn
Superintendent