



NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES  
REPORT ON MARKET CONDUCT EXAMINATION  
OF THE  
PHOENIX LIFE INSURANCE COMPANY

CONDITION:

DECEMBER 31, 2012

DATE OF REPORT:

JANUARY 12, 2015

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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OF THE

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EXAMINER:

COURTNEY WILLIAMS

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NEW YORK STATE  
DEPARTMENT *of*  
FINANCIAL SERVICES

Andrew M. Cuomo  
Governor

Maria T. Vullo  
Superintendent

March 26, 2018

Honorable Maria Vullo  
Superintendent of Financial Services  
New York, New York 10004

Madam:

In accordance with instructions contained in Appointment No. 31267, dated January 12, 2015 and annexed hereto, an examination has been made into the condition and affairs of Phoenix Life Insurance Company, hereinafter referred to as “the Company,” at its home office located at One American Row, Hartford, Connecticut 06102.

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 findings and violations contained in this report are summarized below.

- The Company violated Section 3211(b)(2) of the New York Insurance Law by sending lapse notices to its flexible premium universal life policyholders that were not fully compliant. (See item 4C of this report)
- The Company violated Section 243.2(b)(1)(iii) of Department Regulation No. 152 for failing to maintain the contract or policy forms issued including the declaration pages, endorsements, riders, and termination notices of the contract or policy for several selected policies. (See item 5 of this report)

## 2. SCOPE OF EXAMINATION

This examination covers the five-year period from January 1, 2008 to December 31, 2012. As necessary, transactions occurring subsequent to December 31, 2012 but prior to the date of this report (i.e., the completion date of the examination) were also reviewed.

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 6 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

The Company was originally incorporated and commenced business under the laws of Connecticut in May of 1851 as a stock company, under the name of American Temperance Life Insurance Company. The Company's name was changed to Phoenix Mutual Life Insurance Company in 1861. In 1889, an amendment to the charter authorized the complete mutualization of the Company.

Home Life Insurance Company ("Home Life") was originally incorporated under the laws of New York on April 30, 1860 as a stock company and commenced business on May 1, 1860. In 1916, Home Life mutualized.

On July 1, 1992, Home Life merged with and into the Company, the surviving company, pursuant to Section 7105 of the New York Insurance Law. Immediately prior to the merger on July 1, 1992, the Company had redomesticated into New York pursuant to Section 7120 of the New York Insurance Law. The merger was approved by the policyholders of both companies on May 21, 1992 and by the Connecticut and New York State Insurance Departments on March 27, 1992 and June 17, 1992, respectively. Concurrent with the merger, the Company changed its name to Phoenix Home Life Mutual Insurance Company.

On June 25, 2001, the Company converted from a mutual life insurance company to a stock life insurance company, changed its name to Phoenix Life Insurance Company, and became a wholly owned subsidiary of The Phoenix Companies, Inc. ("Phoenix"). The demutualization was accounted for as a reorganization. The Company's unassigned surplus was reclassified as common stock and additional paid in capital. All policyholder membership interests in the former mutual company were extinguished and eligible policyholders received shares of common stock, \$28.8 million in cash and \$12.7 million of policy credits as compensation. To protect the future dividends of these policyholders, a closed block was established for the existing policyholders.

#### B. Territory and Plan of Operations

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 all 50 states, the District of Columbia, Puerto Rico, and the US Virgin Islands. In 2012, 21.1% of life premiums were received from New York, 32.8% of accident and health premiums were received from New York (18.0%) and California (14.8%), 52.6% of annuity considerations were received from New York (24.4%), Florida (14.8%) and New Jersey (13.4%), and 20.7% of deposit type funds were received from California (11.4%) and New York (9.3%).

Policies are written on a participating and non-participating basis.

Through 2008, the Company's agency operations were conducted on a brokerage general agency basis and the Company marketed its products through national and regional broker-dealers, banks, financial planning firms and other insurance companies. As a result of the suspension of the distribution relationships with the Company by State Farm and National Life Group and consistent with the Company's shift to the middle market households, the Company's strategy was to distribute its products through independent producers who typically are affiliated with one or more independent marketing organizations. Additionally, Phoenix established a distribution company, Saybrus Partners, Inc., ("Saybrus") in the fourth quarter of 2009.



#### 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 Company did not issue any new business from 2009 to 2012; therefore, a review of advertising was not performed. The review of sales activities was limited to the termination of appointed agents.

Section 2112(d) of the New York Insurance Law states, in part:

“Every insurer . . . doing business in this state shall, upon termination of the certificate of appointment as set forth in subsection (a) of this section of any insurance agent licensed in this state, or upon termination for cause . . . of the certificate of appointment, of employment, of a contract or other insurance business relationship with any insurance producer, file with the superintendent within thirty days a statement, in such form as the superintendent may prescribe, of the facts relative to such termination for cause. The insurer . . . insurance producer or the authorized representative of the insurer . . . or insurance producer shall provide, within fifteen days after notification has been sent to the superintendent, a copy of the statement filed with the superintendent to the insurance producer at his, or her or its last known address by certified mail, return receipt requested, postage prepaid or by overnight delivery using a nationally recognized carrier. . . .”

In 25 out of 56 (45%) agent files for producers that were terminated during the examination period reviewed, the Company failed to notify the Superintendent of the terminations within thirty days of such terminations. The delay in notification ranged from one to five years for 20 of the terminations. For the remaining five cases, the Company had no record of any submission ever being filed with the Superintendent.

The Company violated Section 2112(d) of the New York Insurance Law by failing to notify the Superintendent of the termination of a number of its producers within thirty days of such termination.

## B. Underwriting and Policy Forms

The Company did not write any new business from 2009 to 2012; therefore, a review of underwriting was not performed.

## 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.

Section 3211 of the New York Insurance Law states, in part:

“(a)(1) No policy of life insurance or non-cancellable disability insurance delivered or issued for delivery in this state . . . shall terminate or lapse by reason of default in payment of any premium, installment, or interest on any policy loan in less than one year after such default, unless, for scheduled premium policies, a notice shall have been duly mailed at least fifteen and not more than forty-five days prior to the day when such payment becomes due, or for life insurance policies in which the amount and frequency of premiums may vary, no earlier than and within thirty days after the day when the insurer determines that the net cash surrender value under the policy is insufficient to pay the total charges that are necessary to the keep the policy in force . . .

(b) The notice required by paragraph one of subsection (a) hereof shall . . .

(2) state the amount of such payment, the date when due, the place where and the person to whom it is payable; and shall also state 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. . . .”

The Company uses various administrative systems for the administration of its life policies. The content of the premium notices generated by each administrative system varies depending on the system that generates the notice.

The examiner reviewed the front and back side of the lapse notice provided to term policyholders during the examination period. The back side of the lapse notice sent to term policyholders contained the following:

**“NOTICE OF TERMINATION**

Unless the premium and/or loan interest due, if any, is paid to Phoenix by the due date shown in the payment summary, this policy will terminate and all coverage

cease, except as provided under the contract's grace period and non-forfeiture provisions.”

The notice of termination should be clear and conspicuous and therefore should appear on the front of the notice.

The examiner also reviewed the insufficiency notice sent to 23 flexible premium universal life policyholders whose policy lapsed during the examination period. While the notices were provided in a timely manner, they did not fully comply with Section 3211(b)(2) of the New York Insurance Law.

- For 12 policies, the insufficiency notice did not include the minimum amount of premium that must be paid to keep the policy in force, the place where and the person to whom the premium amount is payable, and a statement that unless such payment is made on or before the date when due the policy shall terminate or lapse with no value. .
- For three policies, the insufficiency notice did not clearly specify the place where and the person to whom the amount due is payable.
- For three policies, the insufficiency notice did not clearly specify the place where and the person to whom the amount due is payable and the notice did not include the amount of premium that must be paid to keep the policy in force; the date by which payment must be received to keep the policy in force; and that unless such payment is made on or before the date when due, the policy shall terminate or lapse with no value.
- For five policies, the insufficiency notice did not clearly specify the place where and the person to whom the amount due is payable and the notice did not include a statement that unless such payment is made on or before the date when due, the policy shall terminate or lapse with no value.

The Company violated Section 3211(b)(2) of the New York Insurance Law by sending lapse notices to its flexible premium universal life policyholders that were not fully compliant.

The examiner recommends that the Company revise the term lapse notice so that the notice of termination appear on the front side of the lapse notice that is sent at least 15, but not more than 45 days prior to the date when due.

At the Department's request, the Company conducted a study to identify insureds who have died within one year of the lapse of their policy. The Company's research included a cross-check through the social security death master file. The Company identified one policy where death occurred within one year of policy lapse processing.

The examiner recommends that the Company pay the appropriate beneficiary the total death benefit due under the policies where death occurred within one year of policy lapse processing.

The examiner reviewed the corrective actions taken by the Company in response to the violations, recommendations and comments that appeared in the prior report on examination. The Company indicated in their response that they did not take any corrective action with regard to the recommendation that the Company forward a surrender payment letter explaining payment calculations, including any surrender charges incurred, with the surrender benefit check for all traditional surrenders. When the Company processes a surrender of their traditional product, the only item that is sent to the policyholder is a surrender check.

The examiner recommends that the Company forward a surrender payment letter explaining payment calculations, including any surrender charges incurred, with the surrender benefit check for all traditional surrenders. This is a repeat recommendation from the prior examination.

## 5. RECORD RETENTION

Section 243.2 of Department Regulation 152 states, in part:

“Records required for examination purposes and retention period . . .

(b) Except as otherwise required by law or regulation, an insurer shall maintain:

(1) A policy record for each insurance contract or policy form for six calendar years after the date the policy is no longer in force or until after the filing of the report on examination in which the record was subject to review, whichever is longer . . . A

policy record shall include:

(iii) The contract or policy forms issued including the declaration pages, endorsements, riders, and termination notices of the contract or policy. Binders shall be retained if a contract or policy was not issued. . .”

During the review of reserve calculations, the Company could not locate policy forms for several blocks of policies. The Company was unable to provide forms for policies issued by Home Life prior to the merger with the Company. Also, the Company indicated that policy pages do not exist for Servidata CLIC plans, JLS, JLP, or SRL (645 policies) or for Lifecomm CLIC policies (47 policies).

The Company violated Section 243.2(b)(1)(iii) of Department Regulation No. 152 for failing to maintain the contract or policy forms issued including the declaration pages, endorsements, riders, and termination notices of the contract or policy for several selected policies.

The examiner recommends that the Company implement procedures to maintain its contract or policy forms and such other records subject to examination by the superintendent, in accordance with the provisions of Department Regulation No. 152 and that the Company implement controls to ensure that such procedures are followed.

## 6. PRIOR REPORT SUMMARY AND CONCLUSIONS

Following are the market conduct violations, recommendations and comment 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>
C	<p>The examiner commented that the Company announced on March 4, 2009 that it was given notice by State Farm of its intention to suspend the sale of the Company's products, pending a reevaluation of the relationship between the companies, and that on the same date, National Life Group also informed the Company of its intention to suspend the sale of the Company's products.</p> <p>As a result of the suspension of the distribution relationships with State Farm and National Life Group, Phoenix established a distribution company, Saybrus Partners, Inc., in the fourth quarter of 2009.</p>
F	<p>The Company violated Section 51.6(b)(3) of Department Regulation No. 60 by failing to examine and ascertain that the Disclosure Statement was in the form prescribed by the Superintendent and met the requirements of Department Regulation No. 60.</p> <p>The Disclosure Statement that the Company now has available to be used is in compliance with Section 51.6(b)(3) of Department Regulation No. 60. However, a review of replacement transactions was not performed as the Company has not issued any new policies since 2009.</p>
G	<p>The Company violated Section 51.6(b)(7) of Department Regulation No. 60 by failing to, within ten days from the date of receipt of the application, either have the deficiencies corrected or reject the application where the required disclosure forms did not meet the requirements of Department Regulation No. 60.</p> <p>The Company indicated that it has established procedures stating that the applicable business area has 10 days to complete a replacement transaction. The procedures state that the agent will be notified if the forms are not in good order. In that notification, the Company includes details of what is required for the form to be in good order and the timeframe for submission of the form. However, a review of replacement transactions was not performed as the Company has not issued any new policies since 2009.</p>

<u>Item</u>	<u>Description</u>
H	<p>The examiner recommended that the Company indicate in the letter to the replaced company for its annuity replacements that a copy of any proposal, including sales material used in the sale, and the completed Disclosure Statement are enclosed, in accordance with Section 51.6(b)(4) of Department Regulation No. 60.</p> <p>The Company had no annuity sales since 2009 and is currently not selling any annuity products in the state of New York. The Company indicated that should they begin selling annuities in the future, it will indicate in the letter to the replaced company that a copy of any proposal, including sales material used in the sale, and the completed Disclosure Statement are enclosed, in accordance with Section 51.6(6)(4) of Department Regulation No. 60.</p>
I	<p>The Company violated Section 243.2(b) of Department Regulation No. 152 for failing to maintain the documentation received from the replaced insurer that was used to complete the Disclosure Statement.</p> <p>The Company indicated that procedures are in place to ensure that documents received from the replaced insurer for any future replacements will be imaged in the Company's Automated Workflow Distribution System. However, a review of replacement transactions was not performed as the Company did not issue any new policies since 2009.</p>
J	<p>The Company violated Section 3201(b)(1) of the New York Insurance Law by using policy forms that were not filed with and approved by the Superintendent.</p> <p>The Company has not issued any COLI or BOLI products, the policy forms of which were the subject of the violation, since 2009. The Company indicated that corrected policy forms will be filed if they resume the sale of COLI or BOLI products in the future.</p>
K	<p>The Company violated Section 3209(b)(1) of the New York Insurance law by failing to provide the preliminary information to applicants at or prior to the time the application was taken for its Phoenix Protector Term products.</p> <p>The Company no longer issues Phoenix Protector Term which was the subject of the violation. The Company ceased selling the product on August 31, 2009.</p>

<u>Item</u>	<u>Description</u>
L	<p>The Company violated Section 2611(a) and (b) of the New York Insurance Law by requiring an individual proposed for insurance coverage be the subject of an HIV related test without receiving the written informed consent of such individual prior to testing.</p> <p>The Company indicated that it was reinforcing and modifying its underwriting process to comply with Sections 2611(a) and (b) of the New York Insurance Law. However, the Company has not issued any new business since 2009, therefore, compliance could not be verified as an underwriting review was not performed.</p>
M	<p>The Company violated Section 403(d) of the New York Insurance Law and Section 86.4 of Department Regulation No. 95 by utilizing fraud warning statements that differed from the fraud warning statement required by Section 403(d) of the New York Insurance Law without submitting the fraud warning statement to the Insurance Frauds Bureau for prior approval.</p> <p>The examination revealed that the fraud warning statement on the Company's claim forms was updated in November, 2009 to match, verbatim, the language required by Section 403(d) of the New York Insurance Law and Section 86.4 of Department Regulation No. 95. This was verified by the examiner during the claims review.</p>
N	<p>The examiner recommended that the Company forward a surrender payment letter explaining payment calculations, including any surrender charges incurred, with the surrender benefit check, for all traditional surrenders.</p> <p>The Company failed to take corrective action in response to this prior report recommendation. (See item 4C of this report.)</p>



## 7. 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 2112(d) of the New York Insurance Law by failing to notify the Superintendent of the termination of a number of its producers within thirty days of such termination.	6
B	The Company violated Section 3211(b)(2) of the New York Insurance Law by sending lapse notices to its flexible premium universal life policyholders that were not fully compliant.	8
C	The examiner recommends that the Company revise the term lapse notice so that the notice of termination appear on the front side of the lapse notice that is sent at least 15, but not more than 45 days prior to the date when due.	8
D	The examiner recommends that the Company pay the appropriate beneficiary the total death benefit due under the policies where death occurred within one year of policy lapse processing.	9
E	The examiner recommends that the Company forward a surrender payment letter explaining payment calculations, including any surrender charges incurred, with the surrender benefit check for all traditional surrenders. This is a repeat recommendation from the prior examination.	9
F	The Company violated Section 243.2(b)(1)(iii) of Department Regulation No. 152 for failing to maintain the contract or policy forms issued including the declaration pages, endorsements, riders, and termination notices of the contract or policy for several selected policies.	10
G	The examiner recommends that the Company implement procedures to maintain its contract or policy forms and such other records subject to examination by the superintendent, in accordance with the provisions of Department Regulation No. 152 and that the Company implement controls to ensure that such procedures are followed.	10



APPOINTMENT NO. 31267

NEW YORK STATE

**DEPARTMENT OF FINANCIAL SERVICES**

I, BENJAMIN M. LAWSKY, Superintendent of Financial Services of the State of New York, pursuant to the provisions of the Financial Services Law and the Insurance Law, do hereby appoint:

**COURTNEY WILLIAMS**

as a proper person to examine the affairs of the

**PHOENIX LIFE INSURANCE COMPANY**

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

**COMPANY**

with such other information as he shall deem requisite.

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

this 12th day of January, 2015

BENJAMIN M. LAWSKY  
Superintendent of Financial Services

By:



MICHAEL MAFFEI  
ASSISTANT DEPUTY SUPERINTENDENT  
AND CHIEF OF THE LIFE BUREAU

