



NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES
REPORT ON MARKET CONDUCT EXAMINATION
OF THE
PRUDENTIAL INSURANCE COMPANY OF AMERICA

CONDITION:

JUNE 30, 2012

DATE OF REPORT:

MARCH 29, 2013

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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EXAMINER:

MANISH GAJIWALA

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NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Maria T. Vullo
Superintendent

April 25, 2017

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

Madam:

In accordance with instructions contained in Appointment No. 30957, dated February 12, 2013, and annexed hereto, an examination has been made into the condition and affairs of Prudential Insurance Company of America, hereinafter referred to as “the Company,” at its home office located at 751 Broad Street, Newark, NJ 07102.

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 Insurance Regulation No. 64, 11 NYCRR Section 216.4(b) by failing to respond within fifteen (15) business days to complaints received from its policyholders. (See item 4C of this report)
- The Company violated Insurance Regulation No. 152, 11 NYCRR Section 243.2 (b)(4) when it: (a) processed short term and long term disability claims without maintaining the fraud warning statement provided to the claimants in the claim file; and (b) failed to retain the portion of the claimant form containing the fraud warning in other group contract business. (See item 4C of this report)
- The Company violated Insurance Regulation No. 95, 11 NYCRR Section 86.4(a) and (e) by using language that differed from the required fraud warning statement without obtaining prior approval of the Department's Frauds Bureau. (See item 4C of this report)

2. SCOPE OF EXAMINATION

This examination covers the period from January 1, 2009, through June 30, 2012. As necessary, the examiner reviewed matters occurring subsequent to June 30, 2012, 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.

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

On April 3, 1873, the Legislature of the State of New Jersey, by a special act, approved the incorporation of the Company as a stock life insurance corporation under the name of the Widows and Orphans Friendly Society. Business commenced in 1875 and in that same year, by a supplemental act of the Legislature, the Company's name was changed to The Prudential Friendly Society. In 1877, the Company's name was changed, by certificate, to its present designation, The Prudential Insurance Company of America "Prudential." The Company was admitted or licensed in New York State on October 20, 1879. In 1943, the Company mutualized. In 2001, the Company demutualized and has become one of the largest publicly-traded financial institutions within the U.S. life and annuity insurance segment. In recent years, the Company has expanded its international operations, primarily in Asia.

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 in all 50 states, as well as the District of Columbia and other US territories.

As of June 30, 2012, 6.10% of life premiums, 3.50% of annuity considerations, 10.64% of accident and health premiums and 27.78% of deposit-type funds were received from New York.

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 sales activities of the agency force including trade practices, solicitation and the replacement of insurance policies.

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

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. Insurance Regulation No. 64, 11 NYCRR Section 216.4(b) states, in part:

“An appropriate reply shall be made within fifteen (15) business days on all other pertinent communications.”

In 19 out of 175 (10.9%) complaint files reviewed, the examiner confirmed that, the Company did not respond within fifteen business days to complaints received from its policyholders. The average response time for the 19 complaints was 37 business days.

The Company violated Insurance Regulation No. 64, 11 NYCRR Section 216.4(b) by failing to respond within fifteen (15) business days to complaints received from its policyholders.

2. Insurance Regulation No. 152, 11 NYCRR Section 243.2 (b)(4) states, in part:

“Except as otherwise required by law or regulation, an insurer shall maintain: . . . A claim file for six calendar years after all elements of the claim are resolved and the file is closed or until after the filing of the report on examination in which the claim file was subject to review, whichever is longer . . .”

Insurance Regulation No. 95, 11 NYCRR Section 86.4 states, in part:

“(a) . . . all claim forms for insurance, . . . provided to any person residing or located in this State in connection with insurance policies for issuance or issuance for delivery in this State, shall contain the following statement . . .

‘Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the stated value of the claim for each such violation.’ . . . ”

e) . . . insurers may use substantially similar warning statements provided such warning statements are submitted to the Criminal Investigation Unit for prior approval.”

Office of General Counsel (“OGC”) opinion issued February 3, 2005 advises, in part:

“Pursuant to 11 NYCRR § 86.4 (2003) (Regulation 95) the insurance company, or the insurance broker or insurance agent for the insurance company, must provide a written fraud warning statement on the physical application above the insured's signature line. The written fraud warning must be provided to the applicant during the application process.

However, if no physical document styled "application" is to be presented to the applicant for completion and signature, the insurance company, or the insurance broker or insurance agent on behalf of the insurance company, may read the fraud warning statement to the applicant in person or over the telephone during the application process. This reading, and the acknowledgment of it by the applicant, should be recorded and maintained on a durable medium that meets the Departments record retention regulation, 11 NYCRR § 243 (2003) (Regulation 152). Alternatively, during the application process, the insurer or the insurance broker or insurance agent on behalf of the insurance company, may provide a written fraud warning statement to the applicant, and the insurer or the insurance broker or insurance agent on behalf of the insurance company must maintain documentation of this on a durable medium that meets the Department's record retention regulation, 11 NYCRR § 243 (2003) (Regulation 152) . . . ”

The examiner reviewed two telephonic transcripts used to process the Company's short term disability and long term disability claims during the examination period. The examiner did

not find any indication that the fraud warning was ever conveyed, over the telephone, to the claimant. The Company stated that it delivered the fraud warning statement in writing to the claimant during the claim process and that its claim intake process is consistent with an acceptable fraud warning delivery method set forth in OGC Opinion No. 2005-26. However, the examiner was unable to identify the fraud warning statement in the claim file. The Company confirmed that it processed 14,019 claims using the “telephonic transcript” method during the examination period.

The examiner reviewed three other group life contract claims. The Company did not retain the portion of the claimant form containing the fraud warning statement in any of the three claim files reviewed. The Company processed 6,739 claims during the examination period.

The examiner also reviewed nine different versions of claim forms that were used by the Company’s group life Advanced Ordinary System (“AOS”) business system. The Company modified the required fraud warning statement on its claim forms without submitting the claim forms to the Department’s Frauds Bureau for prior approval. The Company processed 60,799 claims using the modified fraud warning statement during the examination period.

The Company violated Insurance Regulation No. 152, 11 NYCRR Section 243.2 (b)(4) when it: (a) processed short term and long term disability claims without maintaining the fraud warning statement provided to the claimants in the claim file; and (b) failed to retain the portion of the claimant form containing the fraud warning in other group contract business.

The Company violated Insurance Regulation No. 95, 11 NYCRR Section 86.4(a) and (e) by using language that differed from the required fraud warning statement without obtaining prior approval of the Department’s Frauds Bureau.

5. SUMMARY AND CONCLUSIONS

Following are the violations contained in this report:

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
A	The Company violated Insurance Regulation No. 64, 11 NYCRR Section 216.4(b) by failing to respond within fifteen (15) business days to complaints received from its policyholders.	5
B	The Company violated Insurance Regulation No. 152, 11 NYCRR Section 243.2 (b)(4) when it: (a) processed short term and long term disability claims without maintaining the fraud warning statement provided to the claimants in the claim file; and (b) failed to retain the portion of the claimant form containing the fraud warning in other group contract business.	7
C	The Company violated Insurance Regulation No. 95, 11 NYCRR Section 86.4(a) and (e) by using language that differed from the required fraud warning statement without obtaining prior approval of the Department's Frauds Bureau.	7

Respectfully submitted,

_____/s/
Manish Gajiwala
Senior Insurance Examiner

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

Manish Gajiwala, being duly sworn, deposes and says that the foregoing report, subscribed by him,
is true to the best of his knowledge and belief.

_____/s/
Manish Gajiwala

Subscribed and sworn to before me
this _____ day of _____

APPOINTMENT NO. 30957

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:

MANISH GAJIWALA

as a proper person to examine the affairs of the

PRUDENTIAL INSURANCE COMPANY OF AMERICA

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 February, 2013

BENJAMIN M. LAWSKY
Superintendent of Financial Services

By:



MICHAEL MAFFEI
ASSISTANT DEPUTY SUPERINTENDENT
AND CHIEF OF THE LIFE BUREAU

