



NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

REPORT ON MARKET CONDUCT EXAMINATION

OF THE

TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA

CONDITION:

DECEMBER 31, 2008

DATE OF REPORT:

JANUARY 22, 2010

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES
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EXAMINER:

MARC TSE

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NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Benjamin M. Lawsky
Superintendent

January 30, 2013

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

Sir:

In accordance with instructions contained in Appointment No. 30498, dated March 12, 2010, 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, New York 10017.

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 Association violated various Sections of Department Regulation No. 60 by 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 life insurance policy or annuity contract, and the completed Disclosure Statement within ten days of receipt of the application; date all materials upon receipt and; provide the replacing insurer with the existing policy information necessary to complete the Disclosure Statement within 20 days of receipt of the request. (See Section 4A of this report.)

2. SCOPE OF EXAMINATION

This examination covers the period from January 1, 2005 through December 31, 2008. As necessary, the examiner reviewed matters occurring subsequent to December 31, 2008 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' (NAIC) Market Regulation Handbook or such other examination procedures, as deemed appropriate, in such review.

The examiner reviewed the corrective actions taken by the Association 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 5 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 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. The Foundation organized the Teachers 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 was incorporated on March 4, 1918 and 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. 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 the Association, College Retirement Equities Fund (“CREF”) was founded in 1952 to provide retirement annuities based on investment in common stock. On November 20, 1996, TIAA-CREF Life Insurance Company (“TIAA-CREF Life”) was established for the purpose of retaining the Association’s taxable life insurance and other non-pension business.

On May 1, 2004, the Association entered into a series of agreements with Metropolitan Life Insurance Company (“MetLife”) for MetLife to: service the Association’s long-term care business; acquire through cession, 100% of the Association’s group and individual long-term care liability and; begin the process of offering the Association’s policyholders the option of transferring their policy to MetLife.

In 2008, the Association had direct ownership of 54 operating and investment subsidiaries.

B. 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, the U.S. Virgin Islands, the Northern Mariana Islands and Canada. In 2008, 39.4% of life premiums were received from New York (13.9%), California (7.4%), Pennsylvania (6.8%), Massachusetts (5.7%) and New Jersey (5.6%). 41.2% of annuity considerations were received from New York (17.2%), Pennsylvania (6.7%), Massachusetts (6.2%), California (5.9%) and New Jersey (4.9%).

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's sales operations are conducted on a branch office and direct response basis. The Association's sales force is compensated with a base salary plus bonuses.

The Association's primary products include individual and group qualified retirement annuities, supplemental retirement annuities, IRA and Keogh plans, as well as non-qualified personal annuities. The Association stopped selling individual life insurance in 2005. Although some life insurance policies remain in force on the Association's books, this business is a minor part of the Association's overall operations. The Association exited their group life and disability, and long-term care businesses on October 1, 2002 and May 1, 2004, respectively.

The Association primarily targets individuals in academic, cultural, medical and research institutions, small business owners and individuals who wish to manage risk and preserve their wealth. Individual annuities and life insurance products are marketed directly to individuals while funding agreements are issued directly to states.

The demand for wealth transfer services has prompted the Association to enter the trust services market through its federally chartered savings bank, TIAA-CREF Trust, an SEC registered investment advisor. TIAA-CREF Trust offers financial planning, discretionary and non-discretionary asset management, trust administration and estate planning services. In addition, TIAA-CREF Trust offers institutional trust services to higher education institutions through endowment management and planned giving programs.

4. 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 51.6(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 . . .

(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”

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 243.2(b) of Department Regulation No. 152 states, in part:

“Except as otherwise required by law or regulation, an insurer shall maintain:

(1) A policy record for each insurance contract or policy 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.

Policy records need not be segregated from the policy records of other states as long as they are maintained in accordance with the provisions of this part. A separate copy need not be maintained in an individual policy record, provided that any data relating to a specific contract or policy can be retrieved pursuant to section 243.3(a) of this Part. A policy record shall include . . .

(iv) other information necessary for reconstructing the solicitation, rating, and underwriting of the contract or policy. . . .”

The examiner reviewed a sample of 40 annuity replacements during the examination period, consisting of 35 external replacements and five internal replacements. Of the 40 annuity replacements, eight (six external replacements and two internal replacements) were sold through the direct response marketing channel. The Association follows previously filed alternate procedures for replacements initiated through the direct response marketing channel. These alternate procedures do not require a Disclosure Statement to be completed, therefore, only the 32 replacements that were sold through the branch office marketing channel required a Disclosure Statement to be completed. Furthermore, 1 of the 32 replacement files did not have the required Disclosure Statement. Thus, only 31 Disclosure Statements were reviewed in the sample. The review revealed the following:

1. In 14 of the 29 external replacements reviewed (48.3%), the examiner noted that the Association was unable to demonstrate that it furnished to 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. Additionally, for three out of the 29 external replacements (10.3%), the Association failed to furnish to the insurer whose coverage was being replaced the completed Disclosure Statement used in the sale of the proposed annuity contract within ten days of receipt of the application.

The Association violated Section 51.6(b)(4) of Department Regulation No. 60 by 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 life insurance policy or annuity contract, and the completed Disclosure Statement within ten days of receipt of the application.

2. In four of the 31 replacements containing Disclosure Statements (12.9%), the Disclosure Statement was not date stamped by the Association.

The Association violated Section 51.6(e) of Department Regulation No. 60 by failing to date all materials upon receipt.

3. In two of the 31 replacements containing Disclosure Statements (6.5%), the Association was unable to furnish the existing insurers' information used to complete the Disclosure Statement. A review of the Disclosure Statement indicates that the information was obtained from the existing insurer and estimates were not used.

The Association violated Section 243.2(b)(1)(iv) of Department Regulation No. 152 by failing to maintain a copy of the information obtained from the existing insurer that was used to complete the Disclosure Statement.

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

“Where a replacement has occurred or is likely to occur, the insurer whose life insurance policy or annuity contract is to be replaced shall:

(1) Upon notice that its existing coverage may be replaced, maintain copies of such notification, indexed by insurer notifying it of such replacement, 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; and

(2) Within twenty days of receipt of a request from a licensee of the Department, for information necessary for completion of the ‘Disclosure Statement’ with respect to the life insurance policy or annuity contract proposed to be replaced, together with proper authorization from the applicant, furnish the required information simultaneously to the agent of record of the existing life insurance policy or annuity contract being replaced and the agent and insurer replacing the life insurance policy or annuity contract. This information shall include the insurer’s customer service telephone number, the current status of the existing life insurance policy or annuity contract and the currently illustrated dividends/interest and other non-guaranteed costs and benefits.”

During 2006 to 2008, the Department received notice of a number of instances where various other insurers, seeking to replace existing Association contracts, alleged that the Association did not reply to requests for information necessary to complete the Disclosure Statement to be provided to the applicant within 20 days. The examiner reviewed 22 of these outgoing replacement requests. The review revealed the following:

For 14 of the 22 outgoing replacements (63.6%), the Association failed to provide the replacing insurer with the existing policy information necessary to complete the Disclosure Statement within 20 days of receipt of the request.

In addition, for one of the 22 outgoing replacements (4.5%), the Association failed to provide the replacing insurer with the existing policy information necessary to complete the Disclosure Statement.

The Association violated Section 51.6(c)(2) of Department Regulation No. 60 by failing to provide the replacing insurer with the existing policy information necessary to complete the Disclosure Statement within 20 days of receipt of the request.

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.

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

5. PRIOR REPORT SUMMARY AND CONCLUSIONS

Following are the violations, recommendation and comment 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 51.6(b)(6) of Department Regulation No. 60 for failing to maintain an accurate index of replacements by agent.</p> <p>The Association maintained an index of replacements by agent in accordance with Section 51.6(b)(6) of Department Regulation No. 60.</p> |
| B | <p>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.</p> <p>The examiner's sample did not reveal violations of Section 51.6(b)(2) of Department Regulation No. 60</p> |
| C | <p>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.</p> <p>The examiner's sample did not reveal violations of Section 51.6(b)(3) of Department Regulation No. 60.</p> |
| D | <p>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.</p> <p>The examiner's review did not reveal violations of Section 51.6(b)(6) of Department Regulation No. 60.</p> |

| <u>Item</u> | <u>Description</u> |
|-------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| E | <p>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.</p> <p>Although the examiner's review revealed several violations of Department Regulation No. 60 the Association did not prevent the orderly working of the Regulation.</p> |
| F | <p>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.</p> <p>The Association failed to take corrective action in response to this prior report violation. (See Item 4A of this report)</p> |
| G | <p>The Association violated Section 51.6(e) of Department Regulation No. 60 by failing to follow its filed replacement procedures.</p> <p>Although the Association was found to have been following their filed replacement procedures, the Association violated Section 51.6(e) of Department Regulation No. 60 by failing to date all materials upon receipt. (See Item 4A of this report)</p> |
| H | <p>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.</p> <p>The Association complied with the recommendation.</p> |
| I | <p>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.</p> <p>The Association implemented the plan as agreed upon with the Department.</p> |

| <u>Item</u> | <u>Description</u> |
|-------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| J | <p>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.</p> <p>The Association discontinued the marketing of new life insurance policies. No new life insurance policies were issued subsequent to the stipulation associated with the prior report.</p> |
| K | <p>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.</p> <p>The review of policy forms did not reveal any instances where the Association failed to notify the Superintendent whether policy forms were to be marketed with or without an illustration.</p> |
| L | <p>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.</p> <p>The Association discontinued the issuance of life insurance. No new life insurance policies were issued subsequent to the stipulation associated with the prior report.</p> |

6. SUMMARY AND CONCLUSIONS

Following are the violations contained in this report:

| <u>Item</u> | <u>Description</u> | <u>Page No(s).</u> |
|-------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|
| A | The Association violated Section 51.6(b)(4) of Department Regulation No. 60 by 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 life insurance policy or annuity contract, and the completed Disclosure Statement within ten days of receipt of the application. This violation appeared in the prior report on examination. | 7 |
| B | The Association violated Section 51.6(e) of Department Regulation No. 60 by failing to date all materials upon receipt. | 7 |
| C | The Association violated Section 243.2(b)(1)(iv) of Department Regulation No. 152 by failing to maintain a copy of the information obtained from the existing insurer that was used to complete the Disclosure Statement. | 8 |
| D | The Association violated Section 51.6(c)(2) of Department Regulation No. 60 by failing to provide the replacing insurer with the existing policy information necessary to complete the Disclosure Statement within 20 days of receipt of the request. | 9 |

APPOINTMENT NO. 30498

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:

MARC TSE

as a proper person to examine into the affairs of the

TEACHERS INSURANCE & 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 12th day of March, 2010

JAMES J. WRYNN
Superintendent of Insurance

Superintendent

