



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

CONDITION:

DECEMBER 31, 2015

DATE OF REPORT:

OCTOBER 28, 2016

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EXAMINER:

FLORA EGBUCHULAM

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NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Maria T. Vullo
Superintendent

April 13, 2018

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

Madam:

In accordance with instructions contained in Appointment No. 31436, dated February 22, 2016, and annexed hereto, an examination has been made into the condition and affairs of The Penn Mutual Life Insurance Company, hereinafter referred to as “the Company,” at its home office located at 600 Dresher Road, Horsham, PA 19044.

Wherever “Department” appears in this report, it refers to the New York State Department of Financial Services.

This 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 several sections of Insurance Regulation No. 60, 11 NYCRR by failing to: (i) provide revised Disclosure Statements in instances where revised disclosure statements were necessary and required; (ii) review Disclosure Statements to ascertain that they were accurate and met the requirements of the Regulation; and (iii) enforce required state and company replacement procedures and designate a principal officer specifically responsible for the monitoring procedures of the Regulation. (See item 4A-3 of this report)
- The Company violated Insurance Regulation No. 152, 11 NYCRR Section 243.2(b)(1)(iv) by failing to maintain various replacement documents needed to complete replacements for life policies and annuity contracts. (See item 4A-3 of this report)
- The Company violated several sections of Insurance Regulation No.74, 11 NYCRR 53, including violation of sections 53-2.7 and 53-2.8 of the Regulation by utilizing a buyer's guide that did not contain all the statements required by Section 53-2.7 of the Regulation or did not contain any portion of the "ADDENDUM TO LIFE INSURANCE BUYER'S GUIDE" required by Section 53-2.8 of the Regulation. (See item 4A-4 of this report)
- The Company violated Section 3201(b)(1) of the New York Insurance Law by issuing 320 annuity contracts using an unapproved version of policy form No. VA-CS.X-11, and by issuing 462 life insurance policies with unapproved endorsement form No. SOP-01. (See item 4B-1 of this report)
- The Company violated Section 2611(a) of New York Insurance Law by failing to obtain proper written informed consent prior to subjecting an applicant to an HIV-related test. (See item 4B-2 of this report)
- The Company violated Section 3211(b)(2) of the New York Insurance Law by failing to include disclosure language on notices of premium due provided to whole life insurance policyholders informing such policyholders that unless 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. (See item 4C-3 of this report)

2. SCOPE OF EXAMINATION

This examination covers the period from January 1, 2010, through December 31, 2015. As necessary, the examiner reviewed matters occurring subsequent to December 31, 2015, 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

The Company was incorporated as a mutual life company under the laws of Pennsylvania on February 24, 1847, and commenced business on May 25, 1847. The Company obtained its New York license on March 1, 1869.

This is the Company's first statutory examination by the Department.

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 all 50 states and the District of Columbia. In 2015, 15.5% of life insurance premiums, 15.2% of annuity considerations, 32% of accident and health premiums, 9.1% of deposit-type funds, and 10% of other considerations were received from New York. Policies are written on a participating and non-participating basis.

The following tables show the percentage of direct premiums received, by state, and by major lines of business for the year 2015:

<u>Life Insurance Premiums</u>		<u>Annuity Considerations</u>	
New York	15.5%	New York	15.2%
California	14.4	Minnesota	10.8
Pennsylvania	6.5	California	8.2
New Jersey	5.7	Florida	8.1
Florida	<u>4.9</u>	Massachusetts	<u>7.2</u>
Subtotal	47.0%	Subtotal	49.5%
All others	<u>53.0</u>	All others	<u>50.5</u>
Total	<u>100.0%</u>	Total	<u>100.0%</u>

<u>Accident and Health Insurance Premiums</u>		<u>Deposit Type Funds</u>	
New York	32.0%	Massachusetts	22.0%
Florida	<u>10.3</u>	Florida	12.0
All others	<u>57.7</u>	New York	<u>9.1</u>
Total	<u>100.0%</u>	Subtotal	43.1%
		All others	<u>56.9</u>
		Total	<u>100.0%</u>

The principal lines of business sold during the examination period are individual life insurance and annuity products offered to affluent individuals, professionals and owners of small-to-medium size entities. The products offered include whole life, term life, universal life, and variable universal life policies, as well as deferred and immediate annuity products. The Company generated most of its premium income from ordinary annuities. In 2014, the Company's net premiums from ordinary life business decreased by approximately \$849 million. This decrease was due to the cession of a block of Guaranteed Protect Universal Life business on December 31, 2014, to The Penn Insurance and Annuity Company, the Company's wholly owned subsidiary, under a coinsurance agreement with funds withheld.

The Company's agency operations consist of two distribution channels, the Career Agency System ("CAS") and the Independent Financial Network ("IFN"), including the Company's proprietary broker-dealer, Hornor, Townsend & Kent, Inc. ("HTK"). The CAS is a retail distribution model that provides life and annuity products directly to consumers. The IFN is a wholesale distribution model that deals with intermediaries, both non-registered independent advisors and registered advisors of independent broker-dealers. Variable products are offered through HTK, which does so through outside independent broker-dealers.

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

1. Insurance Regulation No. 34-A, 11 NYCRR Section 219.4(c) states:

"The use of the terms *instant, savings, guaranteed cost, guaranteed renewable, noncancellable, deposit, investment*, or words of similar import, or phrases which include such words, may, in the context used, be deemed to be misleading and capable of being deceptive."

Insurance Regulation No. 34-A, 11 NYCRR Section 219.4(e) states, in part:

"The words *free, no cost, without cost, no additional cost, at no extra cost, without additional cost*, or words of similar import, may not be used with respect to any benefit or service being made available with the policy. . . ."

Insurance Regulation No. 34-A, 11 NYCRR Section 219.4(h) states:

"Any insurer using the phrase *low cost* or similar term, to characterize its operation, policy portfolio, or a particular policy form shall, upon request of the superintendent, submit to the superintendent such evidence as it may have to substantiate such use."

The examiner reviewed a sample of 38 advertisements used to market life insurance and annuity products during the examination period. Twenty-five advertisements were selected from the Company's advertisement logs and 13 advertisements were selected from the Company's public website. The examiner's review revealed that 6 (15.8%) of the 38 advertisements contain the word "deposit" which, in the contexts used, may be deemed potentially misleading and capable of being deceptive to consumers.

The Company violated Insurance Regulation No. 34-A, 11 NYCRR Section 219.4(c) by using a potentially misleading or deceptive word on advertisements for whole life and annuity products.

The examiner's review also revealed that 4 (10.5%) of the 38 advertisements contained the words and/or phrases, "at no additional cost", or "at no additional charge" to describe the options and benefits being made available with the Company's deferred annuity, universal life, and variable universal life products. Rather than specify the charge for the benefit or service, or state that a charge is included in the premium, the Company used words and phrases that may be deemed potentially misleading and capable of being deceptive to consumers.

The Company violated Insurance Regulation No. 34-A, 11 NYCRR Section 219.4(e) by failing to specify the charge for the benefit or service, or state that a charge is included in the premium for the guaranteed coverage for deferred annuity, universal life, and variable universal life products.

The examiner's review revealed that 3 (7.9%) of the 38 advertisements contained words and/or phrases, "low cost", "lower cost", or similar term, to describe the cost of the annuity and universal life products being offered. The Company was unable to provide sufficient evidence to substantiate the use of the words "low-cost" on the three advertisements for annuity and universal life products.

The Company violated Insurance Regulation No. 34-A, 11 NYCRR Section 219.4(h) by using the words and phrases "low cost" or "lower cost" on advertisements for annuity and universal life products without substantive evidence of such use.

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

"Every insurer, . . . or the authorized representative of the insurer, . . . doing business in this state shall, upon termination of the certificate of appointment . . . of any insurance agent, . . . 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, . . . or the authorized representative of the insurer, . . . 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. . . ."

The examiner reviewed the files of nine agents who were terminated for cause during the examination period and noted that three (33.3%) of the termination-for-cause letters were hand-delivered to the terminated producers.

The Company violated Section 2112(d) of the New York Insurance Law by failing to provide insurance producers termination for cause letters by certified mail, return receipt requested, postage prepaid or by overnight delivery using a nationally recognized carrier.

3. Insurance Regulation No. 60 (2nd Amendment), 11 NYCRR Section 51.5(c) states, in part:

“[Each insurance agent and broker shall]: . . .
 where a replacement has occurred or is likely to occur: . . .
 (3) present to the applicant, not later than at the time the applicant signs the application, the ‘IMPORTANT Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts’ and a completed ‘Disclosure Statement’ signed by the agent or broker in the form prescribed by the Superintendent of Financial Services and leave copies of such forms with the applicant for his or her records. . . .”

Insurance Regulation No. 60 (3rd Amendment), 11 NYCRR Section 51.5(c) states, in part:

“[Each insurance agent and broker shall]: . . .
 where a replacement has occurred or is likely to occur: . . .
 (4) present to the applicant, not later than at the time the applicant signs the application, the “IMPORTANT Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts” and leave a copy of such form with the applicant for the applicant’s records . . .”

Insurance Regulation No. 60 (2nd Amendment), 11 NYCRR Section 51.6(b) states, in part:

“Where a replacement has occurred or is likely to occur, the insurer replacing the life insurance policy or annuity contract shall: . . .
 (2) require with or as part of each application a copy of any proposal, including the sales material used in the sale of the proposed life insurance policy or annuity contract, and proof of receipt by the applicant of the ‘IMPORTANT Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts’ and the completed ‘Disclosure Statement’”

Insurance Regulation No. 60 (3rd Amendment), 11 NYCRR Section 51.6(b) states, in part:

“Where a replacement has occurred or is likely to occur, the insurer replacing the life insurance policy or annuity contract shall: . . .
 (2) require with or as part of each application a copy of the sales material including any proposal, used in the sale of the life insurance policy or annuity contract, and

proof of receipt by the applicant of the ‘IMPORTANT Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts’”

The examiner reviewed a sample of replacement files consisting of 170 new annuity contracts and 191 new life policies issued during the examination period. The sample included both internal and external replacements. The review revealed several deviations from Insurance Regulation No. 60, and significant inconsistencies in following or adhering to the Company’s own replacement guidelines and procedures.

In 5 (2.6%) of the 191 life insurance policy replacements reviewed and in 6 (3.5%) of 170 annuity contract replacements reviewed, the examiner noted that the *IMPORTANT Notice* was either not provided to the applicant, or it was provided to the applicant later than at the time of application. The examiner also noted that in each instance, the Company failed to require with or as part of the application a proof of receipt by the applicant of the “IMPORTANT Notice”.

The Company violated Insurance Regulation No. 60 (2nd Amendment), 11 NYCRR Section 51.5(c)(3) and Insurance Regulation 60 (3rd Amendment), 11 NYCRR Section 51.5(c)(4) as well as Insurance Regulation No. 60 (2nd Amendment), 11 NYCRR Section 51.6(b)(2) and Insurance Regulation No. 60 (3rd Amendment), 11 NYCRR Section 51.6(b)(2) by failing to require with, or as part of the applications, proof of receipt by the applicants of the “IMPORTANT Notice”.

Insurance Regulation No. 60 (2nd Amendment), 11 NYCRR Section 51.6(b) states, in part:

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

(3) Examine any proposal used, including the sales material used in the sale of the proposed life insurance policy or annuity contract, and the ‘Disclosure Statement’, and ascertain that they are accurate and meet the requirements of the Insurance Law and this Part. . . .”

Insurance Regulation No. 60 (3rd Amendment), 11 NYCRR Section 51.6(b) 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) examine the sales material, including any proposal, used in the sale of the life insurance policy or annuity contract, and the ‘Disclosure Statement’, and ascertain that they are accurate and meet the requirements of the Insurance Law and regulations”

In 129 (67.5%) of the 191 life insurance policy replacements reviewed and in 132 (77.6%) of 170 annuity contract replacements reviewed, the examiner noted various inconsistencies on the

Disclosure Statements: failure to record the valuation date, recording an incorrect valuation date, recording replaced policy surrender amounts that differed from the surrender amount on the replaced insurer's document. These inconsistencies indicated that sales material was used when none was actually used or indicated that no sales material was used when sales material was actually used.

The Company violated Insurance Regulation No. 60 (2nd Amendment), 11 NYCRR Section 51.6(b)(3) and Insurance Regulation No. 60 (3rd Amendment), 11 NYCRR Section 51.6(b)(4) by failing to examine and ascertain that the Disclosure Statement was accurate and met the requirements of the Regulation.

Insurance Regulation No. 60 (2nd Amendment), 11 NYCRR Section 51.6(b) states, in part:

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

(4) Within 10 [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’ . . .”

In 33 (19.4%) of the 170 annuity contracts replacements reviewed, the Company failed to provide the company being replaced with a copy of the proposal, including the sales material used in the sale of the proposed life insurance policy, and the completed “Disclosure Statement” or failed to provide the documentation within 10 days of receipt of the completed application.

The Company violated Insurance Regulation No. 60 (2nd Amendment), 11 NYCRR Section 51.6(b)(4) by failing to furnish to the insurer whose coverage is being replaced a copy of the required materials or by failing to provide such materials within the required time frame.

Insurance Regulation No. 60 (2nd Amendment), 11 NYCRR Section 51.6(b) states, in part:

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

(9) in the event the life insurance policy or annuity contract issued differs from the life insurance policy or annuity contract applied for, ensure that the requirements of this Part are met with respect to the information relating to the life insurance policy or annuity contract as issued, including but not limited to the revised ‘Disclosure Statement,’ any revised or additional sales material used and acknowledgement by the applicant of receipt of such revised material.”

Insurance Regulation No. 60 (3rd Amendment), 11 NYCRR Section 51.6(b) states, in part:

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

(10) if an initial ‘Disclosure Statement’ was provided to the applicant prior to the delivery of the life insurance policy or annuity contract and the life insurance policy or annuity contract is issued other than as applied for, then the insurer shall provide the owner a revised ‘Disclosure Statement’ that conforms to the life insurance policy or annuity contract as issued no later than the time of delivery of the policy or contract”

In 31 (16.2%) of 191 internal and external life insurance replacements and in 19 (11.2%) of 170 of internal and external annuity contracts replacements reviewed, the examiner noted that the Company did not provide the applicant with a revised Disclosure Statement, even though the policy or contract was issued “other than as applied for”.

The Company violated Insurance Regulation No. 60 (2nd Amendment), 11 NYCRR Section 51.6(b)(9) and Insurance Regulation No. 60 (3rd Amendment), 11 NYCRR Section 51.6(b)(10) by failing to issue a revised Disclosure Statement in cases where the life policy or annuity contract issued differed from the policy or contract applied for.

Insurance Regulation No. 60 (3rd Amendment), 11 NYCRR Section 51.6(e) states, in part:

“Both the insurer that issued the life insurance policy or annuity contract that 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 . . . shall furnish the superintendent with these procedures and the name and title of the designated principal officer . . . Any changes in these procedures or the designated principal officer shall be furnished to the superintendent within 30 days of such change.”

In 148 (77.5%) of 191 of life insurance replacements reviewed, the Company failed to date stamp replacement documents upon receipt. In addition, the examiner’s review of the replacement function revealed that the Company did not designate a principal officer specifically responsible for the monitoring and enforcement of Insurance Regulation No. 60 procedures during the examination period.

The Company violated Insurance Regulation No. 60 (3rd Amendment), 11 NYCRR Section 51.6(e) by failing to date stamp replacement documents upon receipt and by failing to designate a

principal officer specifically responsible for the monitoring and enforcement of its replacement procedures.

Insurance Regulation No. 152, 11 NYCRR Section 243.2(b) 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. . . . A policy record shall include: . . .

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

In 9 (4.7%) of the 191 life replacements reviewed, the Company failed to maintain one or more replacement documents in the policy record, and in 52 (30.6%) of the 170 annuity replacements reviewed, the Company failed to maintain one or more replacement documents in the policy record. The review of the replacement transactions files revealed:

- (i) In seven of life replacements and in 43 of annuity replacement transactions reviewed, the information obtained from the existing insurer or the support for the proposed policy necessary to complete the “Disclosure Statement” was not maintained in the policy record.
- (ii) In five of the annuity replacements reviewed, a copy of the agent authorization form, which includes a list of all annuity contracts proposed to be replaced, was not maintained in the policy record.
- (iii) In two of the life replacement transactions reviewed and in nine of the annuity replacement transactions reviewed, a copy of the sales material used in the sale was not maintained in the policy record.

The Company violated Insurance Regulation No. 152, 11 NYCRR Section 243.2(b)(1)(iv) by failing to maintain various replacement documents needed to complete replacements for life policies and annuity contracts.

4. Insurance Regulation No. 74, 11 NYCRR Section 53-2.7 states, in part:

“. . . Once you have decided which type of policy to buy, you can use a cost comparison index to help you compare similar policies. Life insurance agents or companies can give you information about several different kinds of indexes that

each work a little differently. One type helps you compare the costs between two policies if you give up the policy and take out the cash value. Another helps you compare your costs if you don't give up your policy before its coverage ends. Some help you decide what kind of questions to ask the agent about the numbers used in an illustration. Each index is useful in some ways, but they all have shortcomings. Ask your agent which will be most helpful to you. Regardless of which index you use, compare index numbers only for similar policies - those that offer basically the same benefits, with premiums payable for the same length of time. . . .”

Insurance Regulation No. 74, 11 NYCRR Section 53-2.8 states, in part:

“ADDENDUM TO LIFE INSURANCE BUYER'S GUIDE

After you have decided which kind of life insurance fits your needs, look for a good buy. Your chances of finding a good buy are better if you use two types of index numbers that have been developed to aid in shopping for life insurance. One is called the "Surrender Cost Index" and the other is the "Net Payment Cost Index." It will be worth your time to try to understand how these indexes are used, but in any event, use them only for comparing the relative costs of similar policies. LOOK FOR POLICIES WITH LOW COST INDEX NUMBERS. . . .”

The examiner reviewed a copy of the life insurance buyer's guide (the “Buyer's Guide”) provided to applicants during the examination period. The Buyer's Guide did not include the language required under Section 53-2.7 of Regulation 74.

The Company violated Insurance Regulation No. 74, 11 NYCRR Section 53-2.7 by using a life insurance buyer's guide that did not include the language required under this section.

The Buyer's Guide also did not include the addendum required under Section 53-2.8 of Regulation 74.

The Company violated Insurance Regulation No. 74, 11 NYCRR Section 53-2.8 by using a life insurance buyer's guide that did not include the addendum required under this section.

Insurance Regulation No. 74, 11 NYCRR Section 53-3.1 states, in part:

“. . . (b) Each insurer marketing policies to which this Subpart is applicable shall notify the Superintendent whether a policy form is to be marketed with or without an illustration. . . . Any previous identification may be changed by notice to the superintendent.

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

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

The examiner reviewed life insurance applications where an illustration was used to market the policy. The review included checking policy forms that were illustrated against the Company's list of annual certifications of policy forms to be marketed with illustrations. The review revealed that policy forms FL-08(S)(NY)-R, T10-95(S)(NY), and IALJ-08(S)(NY), which were not certified to be marketed with illustrations., were marketed with illustrations.

The Company violated Insurance Regulation No. 74, 11 NYCRR Sections 53-3.1(b) and 53-3.1(c) by using illustrations with policy forms that were not certified to be marketed with illustrations.

Insurance Regulation No. 74, 11 NYCRR Section 53-3.3(d) states, in part:

“ . . . Statements substantially similar to the following shall be included on the same page as the numeric summary and signed by the applicant, or the policyowner in the case of an illustration provided at time of delivery, as required in this Subpart.
 (1) A statement to be signed and dated by the applicant or policyowner
 . . .
 (2) A statement to be signed and dated by the insurance producer or other authorized representative of the insurer . . . ”

For 5 of the 84 (5.9%) new business files reviewed, basic illustrations signed and dated by the applicant and the insurance producer were maintained in the policy records. For 13 of the 84 (15.5%) new business files reviewed, there were no basic illustration in the files, but illustrations conforming to the policies as issued were signed and dated by the applicants and the producers after the date the applications were signed. For 62 of the 84 (73.8%) new business files reviewed, illustrations conforming to the policies as issued were maintained in the policy records, but they were prepared after the date the applications were taken, and they were not signed by the applicants or the agents.

The Company violated Insurance Regulation No. 74, Sections 53-3.3(d)(1) and 53-3.3(d)(2) by failing to have the applicants and the insurance producers or other authorized representatives sign and date the illustrations.

Insurance Regulation No. 74, 11 NYCRR Section 53-3.3(f) states, in part:

“ . . . In addition, the insurer shall provide with any illustration showing a suspension of premium: . . . ”

(3) for a participating policy, disclosure that future dividends may be less than those illustrated which may result in the need to continue premium payments or resume premium payments after an initial suspension of such premium payments.”

The examiner reviewed copies of the illustrations for four participating whole life policies. The review revealed that all four policies (100%) did not include the dividend disclosure required under Section 53-3.3(f)(3) of Regulation 74.

The Company violated Insurance Regulation No. 74, 11 NYCRR Section 53-3.3(f)(3) by failing to include the required dividend disclosure on the illustrations for participating whole life policies.

Insurance Regulation No. 74, 11 NYCRR Section 53-3.5 states, in part:

“(a) If a basic illustration is used by an insurance producer or other authorized representative of the insurer in the sale of a life insurance policy and the policy is applied for as illustrated, a copy of that illustration, signed in accordance with this Subpart, shall be submitted to the insurer at the time of policy application. . . . If the policy is issued other than as applied for, a revised basic illustration conforming to the policy as issued shall be sent with the policy. The revised illustration shall conform to the requirements of this Subpart, shall be labeled “Revised Illustration” and shall be signed and dated by the applicant or policyowner and producer. . . . no later than the time the policy is delivered. . . .

(b) If no illustration is used by an insurance producer or other authorized representative of the insurer in the sale of a life insurance policy or if the policy is applied for other than as illustrated, the producer or representative shall certify to that effect in writing on a form provided by the insurer. On the same form the applicant shall acknowledge that no illustration conforming to the policy applied for was provided and shall further acknowledge an understanding that an illustration conforming to the policy as issued will be provided no later than at the time of policy delivery. This form shall be submitted to the insurer at the time of policy application. If the policy is issued, a basic illustration conforming to the policy as issued shall be sent with the policy and signed no later than the time the policy is delivered. A copy shall be provided to the insurer and the policyowner.

. . .
 (d) Such basic illustration or revised illustration shall satisfy the requirements for preliminary information required under Section 3209(d) of the Insurance Law and Section 53-2.1 of this Part, and the requirements for the policy summary required under Section 3209(e) of the Insurance Law and Section 53-2.2 of this Part if delivered to the applicant or policyowner in conformance with this Subpart. . . .”

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. . . .”

The examiner reviewed 84 new business files issued using a policy form identified by the Company as one to be marketed with an illustration. For 80 of the 84 (95.2%) new business files reviewed, the Company failed to provide applicants with basic illustrations at the time of policy applications: for 37 cases, the illustrations were not presented or provided; for 18 cases, the illustrations were presented or were shown to the applicants on a computer screen but were not provided; and for 25 cases, the illustrations were different from the policies applied for.

The Company violated Insurance Regulation No. 74, 11 NYCRR Section 53-3.5(a) by failing to provide applicants with copies of the illustrations, signed by the applicants and the Company's authorized representatives, at the time of applications.

The Company violated Section 3209(b)(1)(A) of the New York Insurance Law by failing to provide the applicant with a compliant Buyer's Guide and the preliminary information that conformed to Section 3209(d) of the New York Insurance Law at or prior to the time the application was taken.

The Company violated Insurance Regulation No. 74, 11 NYCRR Section 53-3.5(b) by accepting applications from producers when no basic illustrations were used at the time of sale for a policy form designated as one to be marketed with an illustration, and by failing to obtain at the time of sale either signed basic illustrations or, where the policies were applied for as other than illustrated, certifications from the producers, signed by the applicants, that no illustrations conforming to the policies applied for were provided.

The Company violated Insurance Regulation No. 74, 11 NYCRR Section 53-3.1(d) by failing to provide applicants with signed illustrations at the time of applications for policies designated as illustrated.

The examiner reviewed 80 new business files that used one of the following life application forms that were filed with the Department using the certified process provided under Insurance Circular Letter No. 6 (2004): PM1143(NY) Version 10/08, PM1143 (NY)-R2,

PM1143 (NY)-R3, and PM1143 (NY)-R4. These application forms included three check-off boxes for illustration acknowledgements that were used in lieu of the certification of non-illustration required by Section 53-3.5 (b) of Regulation 74: (1) an illustration was not presented to me, (2) an illustration was presented to me; however, the policy applied for is different than as illustrated, or (3) an illustration was presented to me on a computer screen.

The examiner recommends that the Company discontinue the use of the illustration acknowledgments on insurance application forms and revise any illustration acknowledgment forms according to the requirements of Insurance Regulation No. 74.

The examiner also recommends that the Company submit revised application forms using the prior approval process, not the certified process, to remove the illustration certification language from the application forms.

Furthermore, the examiner recommends that the Company revise any internal administrative illustration certification form or procedures according to the requirements of Regulation 74.

B. Underwriting and Policy Forms

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

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

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

The examiner’s review of underwriting and replacement files revealed that during the examination period unfiled life insurance endorsement, form No. SOP-01, was used to issue 462 life policies.

The Company used an unfiled variable annuity contract form, form No.VA-CS-X-1, to issue 320 annuity contracts during the examination period. The approved version of this form contains the statement, “Also, the Surrender Charges are higher and the Surrender Charge Period is longer for the Contract that offers Purchase Payment Enhancements”, but the version used did not contain this statement.

The Company violated Section 3201(b)(1) of the New York Insurance Law by issuing 320 annuity contracts using an unapproved version of policy form No. VA-CS-X-11, and by issuing 462 life insurance policies with unapproved endorsement form No. SOP-01.

The examiner recommends that the Company cease using the unapproved versions of policy form No. VA-CS-X-11 and endorsement form No. SOP-01 and file both forms with the Department.

2. HIV/AIDS Test Consent Authorization

Section 2611(a) of the New York Insurance Law states:

“No insurer or its designee shall request or require an individual proposed for insurance coverage to be the subject of an HIV related test without receiving the written informed consent of such individual prior to such testing and without providing general information about AIDS and the transmission of HIV infection.”

The examiner reviewed a sample of 78 life insurance underwriting policy files whereby insurance applicants were subjected to an HIV-related test. In 44 (56.4%) of the 78 cases reviewed, the Company failed to obtain proper written informed consent and failed to provide general information about AIDS and the transmission of HIV-infection prior to subjecting applicants to an HIV-related test.

The Company violated Section 2611(a) of the New York Insurance Law by failing to obtain proper written informed consent prior to subjecting an applicant to an HIV-related test.

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 86.4(d) of Department Regulation No. 95 states:

“Location of warning statements and type size. The warning statements required by subdivisions (a), (b) and (e) of this section shall be placed immediately above the space provided for the signature of the person executing the application or claim form and shall be printed in type which will produce a warning statement of

conspicuous size. On claim forms which require execution by a person other than the claimant, or in addition to the claimant, the warning statements required by subdivisions (a), (b) and (e) of this section shall be placed at the top of the first page of the claim form or in the page containing instructions, either in print, by stamp or by attachment and shall be in type size which will produce a warning statement of conspicuous size.”

The examiner reviewed a sample of 160 claims: 25 disability claims, 85 life insurance death claims, and 50 annuity death claims. None of the 160 claim forms had the fraud warning statement placed immediately above the space provided for the signature of the person executing the application or claim form; the statement was provided in a separate document. According to the Company, the same claim form was used for all claims that were processed during the examination period. The Company processed a total of 3,324 claims, 1,418 life claims, 635 annuity claims, and 1,351 accident and health claims, during the examination period using a non-compliant claim form.

The company violated Insurance Regulation No. 95, 11 NYCRR Section 86.4(d) by failing to place the required fraud warning statement immediately above the space provided for the signature of the person executing the claim form.

2. Section 3227 of the New York Insurance Law states, in part:

“(a) Interest . . . shall be payable by life insurers . . . upon: (1) the value of policies surrendered by policyholders for cash values, including the rollover of annuity funds to other entities, and (2) the funds disbursed as policy loans. Such interest payment shall be added to and be a part of the total sum paid or be paid separately at the option of the insurer.

(b) The interest calculated on amounts described in paragraphs one and two of subsection (a) hereof shall be calculated from the date the documentation necessary to complete the transaction is received by the insurer and shall be payable if the funds are not mailed or delivered by the insurer within ten working days of said receipt.

(c) No interest need be payable pursuant to this section unless the amount of such interest is at least twenty-five dollars or if the payment of benefits by the insurer has been deferred pursuant to other provisions of this chapter. . . .”

The examiner reviewed a sample of 35 life surrender benefit transactions. The examiner noted five (14.29%) instances where the Company was required to pay interest in accordance with Section 3227 of the New York Insurance Law. The Company failed to pay such interest in all five instances.

Two of the five instances were for whole life insurance policies that were issued prior to September 1, 1975, using whole life policy form No. L-70, which contains the provision:

“The Company may defer payment of the Net Cash Value upon surrender for a period not exceeding six months. If payment is so deferred for a period of 30 days or more, interest at the rate of 2.5% per year shall be paid for the deferment.”

The Company’s decision not to pay interest on the two policies was based on the exception of Section 3214(e) of the New York Insurance Law. However, Section 3214(e) does not apply to policies or contracts issued prior to September first, nineteen hundred seventy-five, and only applies to life insurance and annuity death claims, not to life insurance and annuity surrender benefits.

The Company violated Section 3227(b) of the New York Insurance law by failing to pay interest that was at least \$25 on five surrendered benefit transactions within 10 days of the insurer’s receipt of the documentation necessary to complete the transaction.

3. Section 3211(b) of the New York Insurance Law states, in part:

“The notice required by paragraph one of subsection (a) hereof shall: . . .
(2) state the amount of such payment . . . 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 non-forfeiture benefit.”

The examiner reviewed a sample of the notices of premium due for 11 whole life and 8 term life policies that lapsed during the examination period. The notices failed to include the required statement 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 non-forfeiture benefit. The deficient notices of premium due were mailed to 385 whole life policyholders and 2,229 term life policyholders during the examination period.

The Company violated Section 3211(b)(2) of the New York Insurance Law by failing to include disclosure language on notices of premium due provided to whole life insurance policyholders informing such policyholders that unless 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 placed the policies that lapsed, for which a deficient notice of premium due was provided to the policyholder, back in force for one year from the date of default pursuant to Section 3211(a)(1) of the New York Insurance Law. For all such policies where the one-year period has already passed, the Company determined whether the insured is still alive or has deceased.

The Company identified three whole life policies where the insured died during the examination period and within one year of the date of lapse and made prompt restitution to the beneficiaries for the benefits afforded by the policies. Where the Company was unable to locate the beneficiary after due diligence, the unclaimed life insurance proceeds were escheated to the State of New York in accordance with applicable State law.

5. 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 Insurance Regulation No. 34-A, 11 NYCRR Section 219.4(c) by using a potentially misleading or deceptive word on advertisements for whole life and annuity products.	7
B	The Company violated Insurance Regulation No. 34-A, 11 NYCRR Section 219.4(e) by failing to specify the charge for the benefit or service, or state that a charge is included in the premium for the guaranteed coverage for deferred annuity, universal life, and variable universal life products.	7
C	The Company violated Insurance Regulation No. 34-A, 11 NYCRR Section 219.4(h) by using the words and phrases “low cost” or “lower cost” on advertisements for annuity and universal life products without substantive evidence of such use.	7
D	The Company violated Section 2112(d) of the New York Insurance Law by failing to provide insurance providers termination for cause letters by certified mail, return receipt requested, postage prepaid or by overnight delivery using a nationally recognized carrier.	8
E	The Company violated Insurance Regulation No. 60 (2 nd Amendment), 11 NYCRR Section 51.5(c)(3) and Insurance Regulation 60 (3 rd Amendment), 11 NYCRR Section 51.5(c)(4) as well as Insurance Regulation No. 60 (2 nd Amendment), 11 NYCRR Section 51.6(b)(2) and Insurance Regulation No. 60 (3 rd Amendment), 11 NYCRR Section 51.6(b)(2) by failing to require with, or as part of the applications, proof of receipt by the applicants of the “IMPORTANT Notice”.	9
F	The Company violated Insurance Regulation No. 60 (2 nd Amendment), 11 NYCRR Section 51.6(b)(3) and Insurance Regulation No. 60 (3 rd Amendment), 11 NYCRR Section 51.6(b)(4) by failing to examine and ascertain that the Disclosure Statement was accurate and met the requirements of the Regulation.	10
G	The Company violated Insurance Regulation No. 60 (2 nd Amendment), 11 NYCRR Section 51.6(b)(4) by failing to furnish to the insurer whose coverage is being replaced a copy of the required materials or by failing to provide such materials within the required time frame.	10

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
H	The Company violated Insurance Regulation No. 60 (2 nd Amendment), 11 NYCRR Section 51.6(b)(9) and Insurance Regulation No. 60 (3 rd Amendment), 11 NYCRR Section 51.6(b)(10) by failing to issue a revised Disclosure Statement in cases where the life policy or annuity contract issued differed from the policy or contract applied for.	11
I	The Company violated Insurance Regulation No. 60 (3 rd Amendment), 11 NYCRR Section 51.6(e) by failing to date stamp replacement documents upon receipt and by failing to designate a principal officer specifically responsible for the monitoring and enforcement of its replacement procedures.	11
J	The Company violated Insurance Regulation No. 152, 11 NYCRR Section 243.2(b)(1)(iv) by failing to maintain various replacement documents needed to complete replacements for life policies and annuity contracts.	12
K	The Company violated Insurance Regulation No. 74, 11 NYCRR Section 53-2.7 by using a life insurance buyer's guide that did not include the language required under this section.	13
L	The Company violated Insurance Regulation No. 74, 11 NYCRR Section 53-2.8 by using a life insurance buyer's guide that did not include the addendum required under this.	14
M	The Company violated Insurance Regulation No. 74, 11 NYCRR Sections 53-3.1(b) and 53-3.1(c) by using illustrations with policy forms that were not certified to be marketed with illustrations.	14
N	The Company violated Insurance Regulation No. 74, Sections 53-3.3(d)(1) and 53-3.3(d)(2) by failing to have the applicants and the insurance producers or other authorized representatives sign and date the illustrations.	15
O	The Company violated Insurance Regulation No. 74, 11 NYCRR Section 53-3.3(f)(3) by failing to include the required dividend disclosure on the illustrations for participating whole life policies.	15
P	The Company violated Insurance Regulation No. 74, 11 NYCRR Section 53-3.5(a) by failing to provide applicants with copies of the illustration, signed by both the applicants and the Company's authorized representative, at the time of application.	16

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
Q	The Company violated Section 3209(b)(1)(A) of the New York Insurance Law by failing to provide the applicant with a compliant Buyer's Guide and the preliminary information that conformed to Section 3209(d) of the New York Insurance Law at or prior to the time the application was taken.	16
R	The Company violated Insurance Regulation No. 74, 11 NYCRR Section 53-3.5(b) by accepting applications from producers when no basic illustrations were used at the time of sale for a policy form designated as one to be marketed with an illustration, and by failing to obtain at the time of sale either signed basic illustrations or, where the policy were applied for as other than illustrated, certifications from producers, signed by the applicants, that no illustration conforming to the policies applied for were provided.	16
S	The Company violated Insurance Regulation No. 74, 11 NYCRR Section 53-3.1(d) by failing to provide applicants with signed illustrations at the time of application for policies designated as illustrated .	17
T	The examiner recommends that the Company discontinue the use of the illustration acknowledgments on insurance application forms and revise any illustration acknowledgment forms according to the requirements of Insurance Regulation No. 74.	17
U	The examiner also recommends that the Company submit revised application forms using the prior approval process, not the certified process, to remove the illustration certification language from the application forms.	17
V	Furthermore, the examiner recommends that the Company revise any internal administrative illustration certification form or procedures according to the requirements of Regulation No. 74.	17
W	The Company violated Section 3201(b)(1) of the New York Insurance Law by issuing 320 annuity contracts using an unapproved version of policy form No. VA-CS-X-11, and by issuing 462 life insurance policies with unapproved endorsement form No. SOP-01.	18
X	The examiner recommends that the Company cease using the unapproved versions of policy form No. VA-CS-X-11 and endorsement form No. SOP-01 and file both forms with the Department.	18
Y	The Company violated Section 2611(a) of the New York Insurance Law by failing to obtain proper written informed consent prior to subjecting an applicant to an HIV-related test.	18

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
Z	The company violated Insurance Regulation No. 95, 11 NYCRR Section 86.4(d) by failing to place the required fraud warning statement immediately above the space provided for the signature of the person executing the claim form.	19
AA	The Company violated Section 3227(b) of the New York Insurance law by failing to pay interest that was at least \$25 on five surrendered benefit transactions within 10 days of the insurer's receipt of the documentation necessary to complete the transaction.	20
BB	The Company violated Section 3211(b)(2) of the New York Insurance Law by failing to include disclosure language on notices of premium due provided to whole life insurance policyholders informing such policyholders that unless 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.	21

Respectfully submitted,

_____/s/_____
Flora Egbuchulam
Associate Insurance Examiner

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

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

_____/s/_____
Flora Egbuchulam

Subscribed and sworn to before me
this _____ day of _____

NEW YORK STATE

DEPARTMENT OF FINANCIAL SERVICES

I, SHIRIN EMAMI, Acting 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:

FLORA EGBUCHULAM

as a proper person to examine the affairs of the

PENN MUTUAL LIFE INSURANCE COMPANY

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

COMPANY

with such other information as she 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 22nd day of February, 2016

SHIRIN EMAMI

Acting Superintendent of Financial Services

By:

Mark McLeod

MARK MCLEOD

ASSISTANT CHIEF - LIFE BUREAU

