



NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES
MARKET CONDUCT REPORT ON EXAMINATION
OF THE
VOYA RETIREMENT INSURANCE AND ANNUITY COMPANY

CONDITION:

JUNE 30, 2017

DATE OF REPORT:

JUNE 1, 2018

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

MARKET CONDUCT REPORT ON EXAMINATION

OF THE

VOYA RETIREMENT INSURANCE AND ANNUITY COMPANY

AS OF

JUNE 30, 2017

DATE OF REPORT:

JUNE 1, 2018

EXAMINER:

CHONG KIM

TABLE OF CONTENTS

<u>ITEM</u>	<u>PAGE NO.</u>
1. Executive summary	2
2. Scope of examination	3
3. Description of Company	4
A. History	4
B. Holding Company	4
C. Territory and plan of operation	5
4. Market conduct activities	6
A. Advertising and sales activities	6
B. Underwriting and policy forms	8
C. Treatment of policyholders	8
5. Unclaimed benefits	9
6. Summary and conclusions	10



NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Linda A. Lacewell
Superintendent

August 29, 2019

The Honorable Linda A. Lacewell
Superintendent of Financial Services
New York, New York 10004

Madam:

In accordance with instructions contained in Appointment No. 31684, dated October 9, 2017, and annexed hereto, an examination has been made into the condition and affairs of Voya Retirement Insurance and Annuity Company, hereinafter referred to as “the Company,” at its administrative office located at 1000 Woodbury Road, Suite 208, Woodbury, NY 11797. The Company’s home office is located at One Orange Way, Windsor, CT 06095.

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

1. EXECUTIVE SUMMARY

The material violations contained in this report are summarized below.

- The Company violated several sections of 11 NYCRR 51 (Insurance Regulation 60) by failing to maintain with each replacement proof of receipt by the applicant of the IMPORTANT Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts, by failing to maintain with each replacement proof of receipt by the applicant of the complete Disclosure Statement, by failing to obtain an accurate and complete Disclosure Statement signed by the insurance agent or broker in the form prescribed in Appendices 10A or 10B to Regulation 60, by failing to ascertain that the Disclosure Statement is accurate and met the requirements of Regulation 60, and by failing to provide the insurer whose coverage was being replaced with the notification of replacement, including a complete Disclosure Statement and a list of the sales material used in the sale of the annuity contract, within ten days of the delivery of the contract. (See item 4A of this report.)
- The Company violated Section 51.6(b)(8) of 11 NYCRR 51 (Insurance Regulation 60) by failing to maintain copies of the IMPORTANT Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts, by failing to maintain the signed and complete Disclosure Statement, and by failing to maintain the notification of replacement to the insurer whose coverage was being replaced. (See item 4A of this report.)
- The Company violated Section 3240(f)(1) of the New York Insurance Law by failing to reasonably confirm the death of participants and to begin to locate beneficiaries within ninety days after the identification of a potential match made by a death index cross-check or by a search conducted by the Company and by failing to continue to search for beneficiaries until the benefits are escheated according to applicable state law. (See item 5 of this report.)

2. SCOPE OF EXAMINATION

This examination covers the period from January 1, 2011, to June 30, 2017. As necessary, the examiner reviewed matters occurring subsequent to June 30, 2017, but prior to the date of this report.

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 matters which require explanation or description.

3. DESCRIPTION OF COMPANY

A. History

The Company was incorporated as a stock life insurance company in the State of Connecticut on January 13, 1976, under the name Forward Life Insurance Company, and commenced business on April 6, 1976. On December 31, 1976, Aetna Variable Annuity Life Insurance Company merged with and into Forward Life Insurance Company, with Forward Life Insurance Company being the surviving legal entity. Forward Life Insurance Company simultaneously changed its name to Aetna Variable Annuity Life Insurance Company. On January 1, 1980, Aetna Variable Annuity Life Insurance Company changed its name to Aetna Life Insurance and Annuity Company.

On July 19, 1996, U.S. Healthcare, Inc., a Pennsylvania corporation, merged with Aetna Life and Casualty Company, a Connecticut corporation and the ultimate parent of Aetna Life Insurance and Annuity Company, pursuant to an agreement dated March 30, 1996. Aetna, Inc., a Connecticut corporation, was incorporated on March 25, 1996, for effectuating the merger and became the sole owner of the two companies, effective July 19, 1996. After the merger, U.S. Healthcare, Inc. became a subsidiary of Aetna, Inc. and its name was changed to Aetna U.S. Healthcare, Inc.

On January 1, 2002, Aetna Life Insurance and Annuity Company changed its name to ING Life Insurance and Annuity Company, and on June 14, 2012, ING AIH was renamed ING U.S., Inc.

Effective April 7, 2014, ING U.S., Inc. changed its name to Voya Financial, Inc., and on September 1, 2014, Lion Connecticut Holdings, Inc. changed its name to Voya Holdings, Inc. and ING Life Insurance and Annuity Company changed and adopted its present name.

B. Holding Company

The Company is a wholly-owned subsidiary of Voya Holdings, Inc., a Connecticut holding and management company, which, in turn, is wholly owned by Voya Financial, Inc., a Delaware publicly traded corporation and the Company's ultimate parent.

C. 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; the District of Columbia; and the U.S. territories of Guam, Puerto Rico, and the U.S. Virgin Islands. As of June 2017, 57.2% of annuity considerations were received from New York (12.0%), California (10.6%), Texas (7.7%), Ohio (5.8%), Florida (5.2%), Illinois (4.4%), Massachusetts (4.1%), Pennsylvania (4.0%) and New Jersey (3.4%).

The Company offers qualified and nonqualified deferred and immediate annuity contracts, and funding agreements for individuals and employer-sponsored retirement plans with various funding and payout options, as well as nonqualified deferred compensation plans and related services and investment options

The Company's products are generally distributed through pension professionals, independent agents and brokers, third-party administrators, banks, and registered representatives of broker-dealers of Voya Financial Advisors, Inc., a wholly-owned subsidiary.

The Company did not issue any life insurance business during the examination period and its life insurance business is in run-off.

4. MARKET CONDUCT ACTIVITIES

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

A. Advertising and Sales Activities

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

Section 51.6(b) of 11 NYCRR 51 (Insurance Regulation 60) states, in part:

“Where a replacement has occurred or is likely to occur, the insurer replacing the life insurance 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 Contract’;

(3) prior to the delivery of the life insurance policy or annuity contract, require an accurate and complete ‘Disclosure Statement’ signed by the insurance agent or broker in the form prescribed in Appendices 10A or 10B to this Part, including the primary reason or reasons for recommending the new life insurance policy or annuity contract and why the existing life insurance policy or annuity contract cannot meet the applicant’s objectives;

(4) examines 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 promulgated thereunder;

(6) within ten days of the delivery of the life insurance policy or annuity contract, furnish to the insurer that issued the coverage that is being replaced the completed ‘Disclosure Statement’ and a list of the sales material, including any proposal, used in the sale of the life insurance policy or annuity contract with an offer to provide a copy of such material within ten days of a request for the material; . . .

(8) maintain copies of: the sales material, including any proposal, used in the sale of the life insurance policy or annuity contract; proof or receipt by the applicant of the ‘IMPORTANT Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts’; the signed and completed ‘Disclosure Statement’; and the notification of replacement to the insurer that issued the life insurance policy or annuity contract that is to be replaced, indexed by insurance agent or broker, in accordance with Part 243 of this Title (Regulation 152); . . .”

The examiner reviewed 66 replacements, consisting of 50 external and 16 internal replacement files, processed during the examination period. The review revealed that 43 of 66 (65.2%) replacements contained a material error or omission violating 11 NYCRR 51 (Insurance Regulation 60), with some replacements including more than one error or omission. Following are the errors and omissions noted during the review:

1) In 4 replacements (6.0%), the Company could not provide a copy of the “IMPORTANT Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts.”

The Company violated Section 51.6(b)(2) of 11 NYCRR 51 (Insurance Regulation 60) by failing to maintain with each replacement proof of receipt by the applicant of the IMPORTANT Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts.

2) In 5 replacements (7.6%), the Company could not provide a copy of the complete Disclosure Statement signed by the insurance agent or broker and delivered to the applicant.

The Company violated Section 51.6(b)(2) of 11 NYCRR 51 (Insurance Regulation 60) by failing to maintain with each replacement proof of receipt by the applicant of the complete Disclosure Statement.

3) In 25 replacements (37.9%), the Company’s insurance agent or broker did not accurately complete the Disclosure Statement or state the primary reason or reasons for recommending the proposed annuity contract, including how the existing annuity contract cannot meet the participant’s objectives.

The Company violated Sections 51.6(b)(3) of 11 NYCRR 51 (Insurance Regulation 60) by failing to obtain an accurate and complete Disclosure Statement signed by the insurance agent or broker in the form prescribed in Appendices 10A or 10B to Regulation 60, including the primary reason or reasons for recommending the proposed annuity contract and why the existing annuity contract cannot meet the participant’s objectives.

The Company violated Section 51.6(b)(4) of 11 NYCRR 51 (Insurance Regulation 60) by failing to ascertain that the Disclosure Statement is accurate and met the requirements of the Regulation.

4) In 22 external replacements (44.0%), the Company failed to maintain evidence that the notification of replacement to the insurer whose coverage was being replaced, with the

complete Disclosure Statement and a list of the sales material used in the sale of the annuity contract, was provided to the replaced insurer within ten days of the delivery of the contract.

The Company violated Section 51.6(b)(6) of 11 NYCRR 51 (Insurance Regulation 60) by failing to provide the insurer whose coverage was being replaced with the notification of replacement, including a complete Disclosure Statement and a list of the sales material used in the sale of the annuity contract, within ten days of the delivery of the contract.

5) In 24 replacements (36.4%), the Company did not maintain copies of the IMPORTANT Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts, did not maintain the signed and complete Disclosure Statement, and did not maintain the notification of replacement to the insurer whose coverage was being replaced.

The Company violated Section 51.6(b)(8) of 11 NYCRR 51 (Insurance Regulation 60) by failing to maintain copies of the IMPORTANT Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts, by failing to maintain the signed and complete Disclosure Statement, and by failing to maintain the notification of replacement to the insurer whose coverage was being replaced.

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. UNCLAIMED BENEFITS

Section 3240 of the New York Insurance Law states, in part:

“(b)(1)(B) delivered or issued for delivery in this state by an authorized foreign insurer and any account established under or as a result of such policy. . . .

(f) Standards for locating claimants. (1) An insurer shall establish procedures to reasonably confirm the death of an insured or accountholder and begin to locate beneficiaries within ninety days after the identification of a potential match made by a death index cross-check or by a search conducted by the insurer pursuant to subsection (e) of this section. If the insurer cannot locate beneficiaries within ninety days after the identification of a potential match, then the insurer shall continue to search for beneficiaries until the benefits escheat in accordance with applicable state law.”

The Company provided an in force listing of its group employment-based retirement plan accounts, containing 192,520 active accounts under New York plans as of December 31, 2017. Whereby any disposition concerning a passing of a participant, the Company would contact the plan to confirm the participant’s beneficiary and to ultimately determine the disposition of benefit according to its agreement with the plan and applicable law. The examiner reviewed 20 of 429 participants’ accounts, with ages ranging from 90 to 111, and the review revealed that 11 of 20 participants (55.0%) have been deceased but remained on the in force inventory.

In 3 of 11 instances, the Company had previously identified the participant as deceased by its death index cross-check but did not have evidence that it began locating beneficiaries or notifying the plan within ninety days of the identification. In 11 of 11 instances, the Company had previously identified the participant as deceased but failed to continue to search for beneficiaries or to notify the plan until the benefits were escheated to the state according to applicable state law.

At the examiner’s request, the Company conducted a study to identify New York-participants who have passed but remained on the in force inventory. The study revealed 235 New York-accounts that were listed as active and in force but the participants have deceased, the beneficiaries have not been located, and the benefits or proceeds have not been escheated to the State as of December 31, 2017.

The Company violated Section 3240(f)(1) of the New York Insurance Law by failing to reasonably confirm the death of participants and to begin to locate beneficiaries within ninety days after the identification of a potential match made by a death index cross-check or by a search conducted by the Company and by failing to continue to search for beneficiaries until the benefits are escheated according to applicable state law.

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 Company violated Section 51.6(b)(2) of 11 NYCRR 51 (Insurance Regulation 60) by failing to maintain with each replacement proof of receipt by the applicant of the IMPORTANT Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts.	7
B	The Company violated Section 51.6(b)(2) of 11 NYCRR 51 (Insurance Regulation 60) by failing to maintain with each replacement proof of receipt by the applicant of the complete Disclosure Statement.	7
C	The Company violated Sections 51.6(b)(3) of 11 NYCRR 51 (Insurance Regulation 60) by failing to obtain an accurate and complete Disclosure Statement signed by the insurance agent or broker in the form prescribed in Appendices 10A or 10B to Regulation 60, including the primary reason or reasons for recommending the proposed annuity contract and why the existing annuity contract cannot meet the participant's objectives.	7
D	The Company violated Section 51.6(b)(4) of 11 NYCRR 51 (Insurance Regulation 60) by failing to ascertain that the Disclosure Statement is accurate and met the requirements of the Regulation.	7
E	The Company violated Section 51.6(b)(6) of 11 NYCRR 51 (Insurance Regulation 60) by failing to provide the insurer whose coverage was being replaced with the notification of replacement, including a complete Disclosure Statement and a list of the sales material used in the sale of the annuity contract, within ten days of the delivery of the contract.	8
F	The Company violated Section 51.6(b)(8) of 11 NYCRR 51 (Insurance Regulation 60) by failing to maintain copies of the IMPORTANT Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts, by failing to maintain the signed and complete Disclosure Statement, and by failing to maintain the notification of replacement to the insurer whose coverage was being replaced.	8
G	The Company violated Section 3240(f)(1) of the New York Insurance Law by failing to reasonably confirm the death of participants and to begin to locate beneficiaries within ninety days after the identification of a potential match made by a death index cross-check or by a search conducted by the Company and by failing to continue to search for beneficiaries until the benefits are escheated according to applicable state law.	9

Respectfully submitted,

_____/s/
Chong Kim
Senior Insurance Examiner

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

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

_____/s/
Chong Kim

Subscribed and sworn to before me
this _____ day of _____