



NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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In the Matter of

**TRANSAMERICA FINANCIAL LIFE INSURANCE COMPANY,** No. 2018-0072-S

Respondent.

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**CONSENT ORDER**

**WHEREAS**, the Department of Financial Services (the "Department") conducted Financial & Market Conduct Examinations (the "Examinations") of the affairs of Transamerica Financial Life Insurance Company (hereinafter "Respondent") for the periods from January 1, 2006 through December 31, 2009 and January 1, 2010 through December 31, 2014 and issued its Reports on the Examinations dated November 9, 2015 and June 30, 2016, respectively.

**WHEREAS**, this Consent Order contains the Department's findings and the relief agreed to by the Department and Respondent.

**NOW, THEREFORE**, the Department and Respondent are willing to resolve the matters cited herein in lieu of proceeding by notice and hearing.

**FINDINGS**

1. Respondent is a domestic insurance company authorized to transact life, annuities and accident and health insurance business in this State pursuant to Section 1113(a) of the New York Insurance Law.

2. Respondent, for the time period 2006 to 2009:

- a) failed to send to policyholders lapse notices that state the amount and date the payment is due, the place where and the person to whom it is payable, and that unless such payment is made on or before the date when due or within the specified grace period thereafter, the policy shall terminate or lapse except as to the right to any cash surrender value or nonforfeiture benefit;
- b) effectuated life insurance policies on the life of minors that were in excess of the amounts allowed by Law;
- c) used a disclosure form that did not contain the notice that receipt of accelerated death benefits may affect eligibility for public assistance programs and may be taxable nor disclosure of the amount of any additional premium associated with the accelerated payment or, if there is no separately identifiable premium, whether a discount is associated with acceleration; and
- d) failed to provide an annual notification that the policy contains a cash surrender value and that further information, including the amount thereof, is available from the insurer upon written request from the policyowner.

Respondent, for the time period 2010 to 2014:

- e) failed to include in the premium due or insufficiency notices sent to policyholders required disclosure language that states the amount and date the payment is due, the place where and the person to whom it is payable, and that unless such payment is made on or before the date when due or within the specified grace period thereafter, the policy shall terminate or lapse except as to the right to any cash surrender value or nonforfeiture benefit;
- f) failed to demonstrate that pricing was performed prior to the date that various statements of self-support were signed;
- g) failed to examine and ascertain that the information included in the Disclosure Statement was accurate;

- h) failed to, within ten days from the date of receipt of the application, either have any deficiencies corrected or reject the application and so notify the applicant of such rejection and the reason therefore;
  - i) failed to comply with the orderly working of Regulation 60 in accomplishing its intended purpose in the protection of policyholders and contractholders;
  - j) failed to maintain a copy of the information used to complete the Disclosure Statement for the replaced policy and in its policy record, evidence to support the date the Authorization was sent to the replaced company so that the examiner could reconstruct the solicitation, rating, and underwriting of the contract or policy;
  - k) failed to require and maintain proof of receipt by the applicant of the Important Notice and the completed Disclosure Statement;
  - l) failed to provide a revised Disclosure Statement to the applicant in instances where the life insurance policy issued differed from the life insurance policy applied for;
  - m) failed to maintain the agent authorization form as part of the policy record;
  - n) used policy forms that were not filed with and approved by the Superintendent; and
  - o) failed to provide individual universal life policyholders the required 61-day grace period within which to pay sufficient premium to keep the policy in force for three months.
3. Respondent's violations during the aforementioned time periods contravened New York Insurance Law.

### **VIOLATIONS**

4. By reason of the foregoing, as reflected in the Department's Report on the Examination, Respondent violated:
- Insurance Regulation No. 60, 11 NYCRR Section 51.6(b)(3); Insurance Regulation No. 60, 11 NYCRR Section 51.6(b)(7); Insurance Regulation No. 60, 11 NYCRR Section 51.7(b); Insurance Regulation No. 152, 11 NYCRR Section 243.2(b)(1) and 243.2(b)(1)(iv); Insurance Regulation No. 60, 11 NYCRR Section 51.6(b)(2); Insurance Regulation No. 60, 11 NYCRR Section 51.6(b)(9); and Insurance Regulation No. 152, 11 NYCRR Section 243.2(b); and

New York Insurance Law Sections 3211(b)(2); 3207(b); 3230(a)(1) and (2); 3211(g); 4228(h); 3201(b)(1); and 3203(a)(1).

### **AGREEMENT**

**IT IS HEREBY UNDERSTOOD AND AGREED** by Respondent, its successors and assigns (on behalf of its agents, representatives, employees, parent company, holding company, and any corporation, subsidiary or division through which Respondent operates) that:

5. Respondent will correct the violations cited herein and demonstrate to the Department's satisfaction that it has taken the necessary corrective action within three months from the date of Respondent's signing of this Consent Order. Respondent will also take all necessary steps to comply with the New York Insurance Law and Regulations with respect to its insurance products in the future. Within sixty (60) days from Respondent's signing of this Consent Order, the Company shall provide to the Department a detailed remediation plan which provides for restitution to policyholders or their beneficiaries, where applicable, for each violation set forth in 2a) and 2e) of this Consent Order (the "Violations"). The remediation plan is subject to the Department's approval in its sole discretion. The Department may, as a condition of its approval, impose additional remediation requirements to a plan if necessary to satisfactorily rectify the Violations. The plan shall include provisions for, but not limited to:
  - i. For all policyholders whose policy lapsed and they received a deficient premium due or insufficiency notice, the Company placed the policies 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 had already passed, the Company determined if the insured was living. For all insureds that are identified as deceased, the Company will make prompt restitution to the beneficiary for benefits afforded by the policy (including interest from the date of death to the date of payment) or escheat the proceeds in accordance with applicable state law, if after due diligence, the Company is unable to locate the beneficiary. As of May 4, 2018, research indicated that 64 of the affected insureds are deceased. Restitution totaling \$582,436.72 has been paid to the beneficiary in 34 instances. An

additional \$105,415.32 is being aged for escheatment to New York in 7 instances. For 24 deceased insureds with life insurance benefits totaling \$958,802.00, the Company is still in the process of locating the beneficiary so that they can make full restitution. If after due diligence the Company has not located the beneficiary, the proceeds will be escheated in accordance with applicable state law. The Company will report to the Department on a quarterly basis until the Company has either made full restitution to the beneficiary(ies) or has escheated the proceeds to the state for the remaining 24 deceased insureds.

#### **MONETARY PENALTY**

6. Within seven (7) days of the execution of this Consent Order, Respondent shall pay a civil penalty of Seven Hundred Sixty-Two Thousand Seven Hundred Dollars (\$762,700.00). Respondent agrees that it will not claim, assert, or apply for a tax deduction or tax credit with regard to any U.S. federal, state or local tax, directly or indirectly, for any portion of the civil monetary penalty paid pursuant to this Consent Order.
7. The above referenced payment shall be payable to the New York State Department of Financial Services via electronic transfer in accordance with instructions from the Department.

#### **BREACH OF THE CONSENT ORDER**

8. In the event that the Department believes Respondent to be materially in breach of this Consent Order ("Breach"), the Department will provide written notice of such Breach to Respondent and Respondent must, within ten (10) business days from the date of receipt of said notice, or on a later date if so determined in the sole discretion of the Department, appear before the Department and have an opportunity to rebut the evidence, if any, of the Department that a Breach has occurred and, to the extent pertinent, to demonstrate that any such Breach is not material or has been cured.
9. Respondent understands and agrees that Respondent's failure to appear before the Department to make the required demonstration within the specified period as set forth herein is presumptive evidence of Respondent's Breach. Upon a finding of Breach, the

Department has all the remedies available to it under New York or other applicable laws and may use any and all evidence available to the Department for all ensuing examinations, hearings, notices, orders, and other remedies that may be available under New York or other applicable laws.

#### **OTHER PROVISIONS**

10. If Respondent defaults on any of its obligations under this Consent Order, the Department may terminate the Consent Order, at its sole discretion, upon ten (10) days' written notice to Respondent. In the event of such termination, Respondent expressly agrees and acknowledges that this Consent Order shall in no way bar or otherwise preclude the Department from commencing, conducting, or prosecuting any investigation, action, or proceeding, however denominated, related to the Consent Order, against Respondent or from using in any way the statements, documents, or other materials produced or provided by Respondent prior to or after the date of this Consent Order, including, without limitation, such statements, documents, or other materials, if any, provided for purposes of settlement negotiations.
11. The Department has agreed to the terms of this Consent Order based on, among other things, representations made to the Department by Respondent and the Department's own factual examination. To the extent that representations made by Respondent are later found to be materially incomplete or inaccurate, this Consent Order or certain provisions thereof are voidable by the Department in its sole discretion.
12. Upon the request of the Department, Respondent shall provide all documentation and information reasonably necessary for the Department to verify compliance with this Consent Order.
13. All notices, reports, requests, certifications, and other communications to the Department regarding this Consent Order shall be in writing and shall be directed as follows:

If to the Department:

New York State Department of Financial Services  
One State Street, 19<sup>th</sup> Floor  
New York, NY 10004-1511  
Attention: Scott Fischer, Executive Deputy Superintendent for Insurance

If to the Company:

Transamerica Financial Life Insurance Company  
1801 California Street  
Denver, CO 80202  
Attention: Blake S. Bostwick, President

14. This Consent Order and any dispute thereunder shall be governed by the laws of the State of New York without regard to any conflicts of laws principles.
15. Respondent waives its right to further notice and hearing in this matter as to any allegations of past violations up to and including the Effective Date and agrees that no provision of the Consent Order is subject to review in any court or tribunal outside the Department.
16. This Consent Order may not be amended except by an instrument in writing signed on behalf of all parties to this Consent Order.
17. This Consent Order constitutes the entire agreement between the Department and Respondent relating to the violations identified herein and supersedes any prior communication, understanding, or agreement, whether written or oral, concerning the subject matter of this Consent Order. No inducement, promise, understanding, condition, or warranty not set forth in this Consent Order has been relied upon by any party to this Consent Order.
18. In the event that one or more provisions contained in this Consent Order shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Consent Order.

19. Upon execution by the parties to this Consent Order, no further action will be taken by the Department against Respondent for the conduct set forth in this Consent Order, subject to the terms of this Order.
20. This Consent Order may be executed in one or more counterparts, and shall become effective when such counterparts have been signed by each of the parties hereto and So Ordered by the Superintendent of Financial Services.

TRANSAMERICA FINANCIAL LIFE INSURANCE COMPANY

By: [Signature] Dated: 6/8/2018

Blake S. Bostwick  
President

[Signature]



NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

By: [Signature] Dated: 6/14/18

~~Scott Fischer~~ Laura Evangelista  
Executive Deputy Superintendent for Insurance

**THE FOREGOING CONSENT ORDER IS HEREBY APPROVED.**

By: [Signature] Dated: 7/2/18

Maria T. Vullo  
Superintendent of Financial Services