



TARGETED MARKET CONDUCT REPORT ON EXAMINATION

OF THE

PACIFIC LIFE & ANNUITY COMPANY

AS OF DECEMBER 31, 2020

EXAMINER:

IJEOMA NDIKA

DATE OF REPORT:

FEBRUARY 4, 2022

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KATHY HOCHUL
Governor



ADRIENNE A. HARRIS
Superintendent

September 1, 2022

Honorable Adrienne A. Harris
Superintendent of Financial Services
New York, New York 10004

Dear Adrienne A. Harris:

In accordance with instructions contained in Appointment No. 32314, dated October 1, 2021, and annexed hereto, an examination has been made into the condition and affairs of Pacific Life & Annuity Company, hereinafter referred to as “the Company”. The Company’s home office is located at 700 Newport Center Drive, Newport Beach, CA 92660. The examination was conducted remotely because of the COVID-19 pandemic.

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

The report indicating the results of this examination is respectfully submitted.

1. EXECUTIVE SUMMARY

The material violations contained in this report are summarized below:

- The Company violated Section 51.6(e) of 11 NYCRR 51 (Insurance Regulation 60) by using electronic signatures on its Definition of Replacement forms without submitting the change in procedures within 30 days of such change. (See item 4A of this report.)
- The Company violated Section 51.8 of 11 NYCRR 51 (Insurance Regulation 60) by using forms that the superintendent has not determined to be substantially equivalent to the forms set forth in the appendices. (See item 4A of this report.)
- The Company violated Section 2611(a) of the New York Insurance Law by failing to obtain the written informed consent prior to the related HIV testing. (See item 4B-1 of this report.)
- The Company violated Section 2611(b)(5) of the New York Insurance Law by failing to include the Department of Health's statewide toll-free telephone number that may be called for further information about AIDS, the meaning of HIV related test results, and the availability and location of HIV related counseling services. (See item 4B-1 of this report.)
- The Company violated Section 3201(b)(1) of the New York Insurance Law by using application forms, amendment to application forms, and by issuing contracts with application forms that were not filed with or approved by the superintendent. (See item 4B-2 of this report.)
- The Company violated Section 3209(b)(1)(A) of the New York Insurance Law by failing to provide the preliminary information to the applicant at or prior to the time the application was taken. (See item 4B-3 of this report.)
- The Company violated Section 4224(a)(1) of the New York Insurance Law by using multiple application forms for a single product. (See item 4B-4 of this report.)

2. SCOPE OF EXAMINATION

This examination covers the period from January 1, 2018, to December 31, 2020.

The examination comprised a review of the Company's electronic application process and related market conduct activities.

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 stock life insurance company under the laws of California on September 20, 1982 and commenced business on July 1, 1983. The Company is domiciled in the state of Arizona. The Company was licensed in New York on June 9, 1999. It is a wholly owned subsidiary of Pacific Life Insurance Company, a stock life insurance company domiciled in the State of Nebraska. Pacific Mutual Holding Company is Company's the ultimate parent.

B. Territory and Plan of Operation

The Company is authorized to write life insurance, annuities and accident and health insurance as defined in paragraphs 1, 2 and 3 of Section 1113(a) of the New York Insurance Law.

The Company is licensed in all 50 states and the District of Columbia. It is deemed to be a commercially domestic insurer under Section 1501(d) of the New York Insurance Law. In 2020, 74.5% of life insurance premiums, 75.1% of annuity considerations, and 1.7% of deposit-type funds were received from New York. Policies are written on a non-participating basis.

The following tables show the percentage of direct premiums received, by state, and by major lines of business for the year 2020:

<u>Life Insurance Premiums</u>		<u>Annuity Considerations</u>	
New York	74.5%	New York	75.1%
		Colorado	14.4
Subtotal	74.5%	Subtotal	89.5%
All others	<u>25.5</u>	All others	<u>10.5</u>
Total	<u>100.0%</u>	Total	<u>100.0%</u>

The Company's principal lines of business sold during the examination period are variable annuities, fixed annuities, individual life insurance, and structured settlement annuities. The Company offers a variety of variable and fixed annuity products, universal life insurance, indexed-

universal life insurance, variable universal life insurance, term life insurance, and structured settlement annuities.

Fixed and variable annuity products are available through independent third-party FINRA registered broker/dealer firms: national and regional wirehouses, independent planner firms, and financial institutions. Fixed annuity products are also available through independent annuity producers and general agencies. Structured settlement annuities are available through third-party structured settlement producers.

Life insurance products are available through multiple distribution channels including regional life offices, broker-dealer firms, wirehouses and M Financial, an association of independently owned and operated insurance and financial producers. The products are primarily distributed through a regional office.

4. MARKET CONDUCT ACTIVITIES

The examiner reviewed various elements of the Company's electronic application processes for life insurance and annuities to determine compliance with applicable statutes and regulations and the operating rules of the Company.

A. Advertising and Sales Activities

The examiner reviewed a sample of the Company's sales activities, solicitation and the replacement of insurance policies as part of the Company's electronic application process review.

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

“(e) 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...All insurers covered under this Part shall furnish the superintendent with these procedures...by the effective date of this Part. Any changes in these procedures... shall be furnished to the superintendent within 30 days of such change.”

Section 51.8 of 11 NYCRR 51 (Insurance Regulation 60, Third Amendment) states:

“The forms set forth in Appendices 10A, 10B, 10C and 11 of this Title are hereby approved for use as specified in this Part. The forms shall be set forth in at least 12-point type and shall be highlighted as indicated herein. In lieu of the forms set forth in the appendices, an insurer may adopt and use forms that the superintendent has determined to be substantially equivalent to the forms set forth in the appendices.”

The examiner reviewed a sample of 66 life policies issued in 2018 and 2019 and noted that in 23 instances (35%), the Company utilized electronic signatures on the Definition of Replacement forms. The replacement procedures filed by the Company pursuant to Insurance Regulation 60 per Department records require that both the producer and client complete and sign the Definition of Replacement form in a face-to-face meeting. Therefore, the Company cannot use an electronic signature or voice signature involved in the sale of its life insurance policies. The Company only submitted electronic signature procedures for its annuity products. The Company did not submit electronic signature procedures for its life insurance products.

The Company violated Section 51.6(e) of 11 NYCRR 51 (Insurance Regulation 60) by using electronic signatures on its Definition of Replacement forms without submitting the change in procedures within 30 days of such change.

The examiner recommends that the Company submit procedures that allow electronic or voice signatures for the sale of its life insurance policies.

The examiner's review of a sample of the Company's annuities issued revealed that in 22 out of 23 annuities issued in 2020 (95.6%), the Description of Transaction section of the Disclosure Statement contained five columns for existing contracts. The approved Disclosure Statement filed with the Department contained only three columns. In 10 out of 23 cases (43.5%), the Additional Information Section below the Description of Transaction contained the column named "Rider Name" whereas the approved Disclosure Statement filed with the Department does not contain such a column. Therefore, the Company adopted and used forms that the superintendent has not determined to be substantially equivalent to the forms set forth in the appendices.

Furthermore, the Company was unable to provide the Microsoft Word document of the template for the unapproved Disclosure Statement that was used during the examination period. Therefore, the examiner was unable to determine if the form was set forth in at least 12-point font type.

The Company violated Section 51.8 of 11 NYCRR 51 (Insurance Regulation 60) by using forms that the superintendent has not determined to be substantially equivalent to the forms set forth in the appendices.

B. Underwriting and Policy Forms

The examiner reviewed a sample of new underwriting files, both issued and declined, and the applicable policy forms as part of the Company's electronic application process review.

1. Section 2611 of the New York Insurance Law states:

- “(a) 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.”
(b) Written informed consent to an HIV related test shall consist of a written authorization that is dated and includes at least the following:

(5) the department of health's statewide toll-free telephone number that may be called for further information about AIDS, the meaning of HIV related test results, and the availability and location of HIV related counseling services...”

The examiner’s review of a sample of 41 life insurance electronic applications revealed that in 1 case (2.4%), the Company did not obtain the written informed consent form prior to the related HIV testing. The examiner also noted that seven written informed consent forms signed by the applicants did not contain the statewide toll-free telephone number that may be called for further information about AIDS, the meaning of HIV related test results, and the availability and location of HIV related counseling services.

The Company violated Section 2611(a) of the New York Insurance Law by failing to obtain the written informed consent prior to the related HIV testing.

The Company violated Section 2611(b)(5) of the New York Insurance Law by failing to include the Department of Health’s statewide toll-free telephone number that may be called for further information about AIDS, the meaning of HIV related test results, and the availability and location of HIV related counseling services.

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

“(1) 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. . . .”

A) The examiner’s review of a sample of 106 annuity contracts issued during the examination period revealed that in 56 instances (52.8%), the Company utilized updated application forms that were not filed with and approved by the superintendent.

I. In 18 out of the 56 instances, Page 2 of the application form contained “Guaranteed Term: 3 Years under Contract Options Elected.” Such a 3-year option is not available under the filed form number 25-2228-S-14. The Company’s approved Memorandum or Variable filing for this form states: “Any additions to the available features will be submitted for approval in a revised memorandum of variable material prior to use.” However, the Department never received any revised Memorandum or Variable filings to add the 3-Year guaranteed term option under contract options elected.

II. In 3 out of the 56 instances, Page 3 of the application form contained “Guaranteed Term: 3 Years under Section 8 (Guaranteed Term)”. Such a 3-year option is not available under the filed policy form number 25-2228-14. The Company’s approved Memorandum or Variable filing for this form states: “Any additions to the available features will be submitted for approval in a revised memorandum of variable material prior to use.” The Department never received any revised Memorandum or Variable filings to add the 3-Year guaranteed term option under Section 8 (Guaranteed Term). Furthermore, the sentence “This term is only available if the Expected Total Payment Amount is \$100,000 or greater” in Section 8 is also not on the approved policy form.

III. In 13 out of the 56 instances:

- i. Section 11A of the sample application form contained different riders from the filed application form for the Guaranteed Minimum Withdrawal Benefit Options under the filed policy form number 25-2252-15. The Company’s approved Memorandum or Variable filing for this form states: “Any additions to the available features will be submitted for approval in a revised memorandum of variable material prior to use.” However, the Department never received any revised Memorandum or Variable filings to change the options under the Guaranteed Minimum Withdrawal Benefit.
- ii. Section 11B of the sample application form states: “If the contract to be issued is a qualified contract (IRA, SIMPLE IRA, SEP-IRA, TSA/403(b), 401(a), 401(k) or Keogh/HR-10), benefits provided under the optional Guaranteed Minimum Accumulation Benefit rider may have limited usefulness in connection with. . . . If you plan to exercise any of the Guaranteed Minimum Accumulation Benefit Rider benefits before or after your required minimum distribution. . . .” Section 11B of the filed application form states: “If the contract to be issued is a qualified contract (IRA, SIMPLE IRA, SEP-IRA, TSA/403(b), 401(a), 401(k) or Keogh/HR-10), benefits provided under the optional GPA 3 Select Rider may have limited usefulness in connection with. . . . If you plan to exercise any of the GPA 3 Select Rider benefits before or after your required minimum distribution. . . .” Thus, the

change from GPA 3 Select Rider into Guaranteed Minimum Accumulation Benefit Rider has not been filed and approved by the Department.

IV. In 2 out of the 56 instances:

- i. Section 10A of the sample application form contained different riders from the filed application form for the Guaranteed Minimum Withdrawal Benefit Options under the policy form file number 25-2272-15. The Company's approved Memorandum or Variable filing for this form states: "Any additions to the available features will be submitted for approval in a revised memorandum of variable material prior to use." However, the Department never received any revised Memorandum or Variable filings to change the options under Guaranteed Minimum Withdrawal Benefit.
- ii. Section 10B of the sample application form states: "If the contract to be issued is a qualified contract (IRA, SIMPLE IRA, SEP-IRA, TSA/403(b), 401(a), 401(k) or Keogh/HR-10), benefits provided under the optional Guaranteed Minimum Accumulation Benefit rider may have limited usefulness in connection with. . . . If you plan to exercise any of the Guaranteed Minimum Accumulation Benefit Rider benefits before or after your required minimum distribution. . . ." Section 10B of the filed application form states: "If the contract to be issued is a qualified contract (IRA, SIMPLE IRA, SEP-IRA, TSA/403(b), 401(a), 401(k) or Keogh/HR-10), benefits provided under the optional GPA 3 Select rider may have limited usefulness in connection with. . . . If you plan to exercise any of the GPA 3 Select Rider benefits before or after your required minimum distribution. . . ." The change from GPA 3 Select Rider into Guaranteed Minimum Accumulation Benefit Rider has not been filed with and approved by the Department.
- iii. Section 11 of the sample application form deleted the entire DCA Plus Term section and replaced the sentence stating that: "DCA IS NOT AVAILABLE WITH THIS CONTRACT." In the approved version of this form, the bracketing is not permitted and it is also not permitted to allow for the entire section to be deleted and replaced with "DCA IS NOT AVAILABLE WITH THIS CONTRACT". For example, the name of the section (DCA Plus Term) is not bracketed in the approved version. Therefore, the Company should not remove it from the sample application form.

- V. The examiner noted that in 2 of the 56 instances, Section 6 of the sampled policy form contains an extra option for QLAC-Qualified Longevity Annuity Contract. Section 6 also contains an extra small item numbered 2 print which states: “Complete the Qualified Longevity Annuity Contract Certification form” which was not included in the approved policy form number 25-2294. The Department never received any revised Memorandum or Variable Material filings to add the extra option in Section 6 or the extra small print item numbered 2 below Section 6.
- VI. The examiner noted that in 18 of the 56 instances, Section 11B of the policy application form contained an extra sentence: “Payment increases are not available with Qualified contracts”. Under policy form number 25-2181-14B, this sentence does not appear in the approved version of the application form and also does not appear as alternate text in the approved Memorandum of Variable filing.

The examiner’s review of the Company’s electronic application filing indicated that the filing did not fully address the process of the application in an electronic or telephonic manner in which the consumer is directly interacting with that electronic or telephonic process.

- B) The examiner’s review of a sample of 96 life policies issued during the examination period revealed 4 instances (4.2%), the applications utilized for newly issued policies were signed electronically. The examiner determined that these applications are not intended for internet use or any sort of electronic procedures, commerce, or signatures. The examiner’s review also revealed that in 7 instances (7.3%), the Company utilized Amendment to Application forms that were not filed with and approved by the superintendent.

The Company violated Section 3201(b)(1) of the New York Insurance Law by using application forms, amendment to application forms, and by issuing contracts with application forms that were not filed with or approved by the superintendent.

The examiner recommends that the Company resubmit its electronic application filing to fully address the process of taking the application in an electronic or telephonic manner in which the consumer is directly interacting with that electronic or telephonic process.

3. Section 3209 of the New York Insurance Law states, in part:

“ . . . (b)(1) 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 a sample of 20 term life policies issued in 2018 and 2019 and noted that in 4 instances (20%), the preliminary information was not provided to the applicant at or prior to the application date.

The examiner reviewed a sample of 2 variable universal life policies issued in 2018 and noted that in all instances (100%), the Company failed to provide the preliminary information to the applicant at or prior to the time the application was taken.

The Company violated Section 3209(b)(1)(A) of the New York Insurance Law by failing to provide the preliminary information to the applicant at or prior to the time the application was taken.

4. Section 4224(a) of the New York Insurance Law states in part:

“No life insurance company doing business in this state . . . shall:
(1). Make or permit any unfair discrimination between individuals of the same class and of equal expectation of life, in the amount or payment or return of premiums, or rates charged for policies of life insurance or annuity contracts, or in the dividends or other benefits payable thereon, or in any of the terms and conditions thereof.”

The examiner’s review of the Company’s annuity policy forms revealed that for the Pacific Choice variable annuity product, the Company utilized two separate applications for this single product that had different terms and conditions with regards to the surrender charge periods and optional riders. For this product, the Company used forms 25-2252-15 and 25-2235-S-15. The Company indicated that policy form 25-2235-S-15 was used with only one distributor.

The Company violated Section 4224(a)(1) of the New York Insurance Law by using multiple application forms for a single product.

C. Option to Opt-Out

The examiner verified that the applicants had an opportunity to opt out of the electronic process as required by Section 309 of the New York State Technology 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 Section 51.6(e) of 11 NYCRR 51 (Insurance Regulation 60) by using electronic signatures on its Definition of Replacement forms without submitting the change in procedures within 30 days of such change.	7
B	The examiner recommends that the Company submit procedures that allow electronic or voice signatures for the sale of its life insurance policies.	7
C	The Company violated Section 51.8 of 11 NYCRR 51 (Insurance Regulation 60) by using forms that the superintendent has not determined to be substantially equivalent to the forms set forth in the appendices.	7
D	The Company violated Section 2611(a) of the New York Insurance Law by failing to obtain the written informed consent prior to the related HIV testing.	8
E	The Company violated Section 2611(b)(5) of the New York Insurance Law by failing to include the Department of Health's statewide toll-free telephone number that may be called for further information about AIDS, the meaning of HIV related test results, and the availability and location of HIV related counseling services.	8
F	The Company violated Section 3201(b)(1) of the New York Insurance Law by using application forms, amendment to application forms, and by issuing contracts with application forms that were not filed with or approved by the superintendent.	11
G	The examiner recommends that the Company resubmit its electronic application filing to fully address the process of taking the application in an electronic or telephonic manner in which the consumer is directly interacting with that electronic or telephonic process.	11
H	The Company violated Section 3209(b)(1)(A) of the New York Insurance Law by failing to provide the preliminary information to the applicant at or prior to the time the application was taken.	12

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
I	The Company violated Section 4224(a)(1) of the New York Insurance Law by using multiple application forms for a single product.	12

Respectfully submitted,

I. Ndika

Ijeoma Ndika
Senior Insurance Examiner

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

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

I. Ndika

Ijeoma Ndika

Subscribed and sworn to before me

this 20th day of October, 2022

Audrey Hall

AUDREY HALL
Notary Public, State of New York
No. 01HA6274800
Qualified in Kings County
Commission Expires January 28, 2025

APPOINTMENT NO. 32314

NEW YORK STATE

DEPARTMENT OF FINANCIAL SERVICES

I, ADRIENNE A. HARRIS, 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:

IJEOMA NDIKA

as a proper person to examine the affairs of the

PACIFIC LIFE & ANNUITY COMPANY

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

COMPANY

with such other information as he shall deem requisite.

*In Witness Whereof, I have hereunto subscribed my name
and affixed the official Seal of the Department
at the City of New York*

this 1st day of October, 2021

*ADRIENNE A. HARRIS
Acting Superintendent of Financial Services*

By:

Mark McLeod

*MARK MCLEOD
DEPUTY CHIEF - LIFE BUREAU*

