

**REPORT OF  
MARKET CONDUCT EXAMINATION  
OF**

**TRANSAMERICA OCCIDENTAL LIFE  
INSURANCE COMPANY**

Cedar Rapids, Iowa

**AS OF  
April 6, 2009**

**COMMONWEALTH OF PENNSYLVANIA**



**INSURANCE DEPARTMENT  
BUREAU OF MARKET CONDUCT**

**Issued: June 2, 2009**

# TRANSAMERICA OCCIDENTAL LIFE INSURANCE COMPANY

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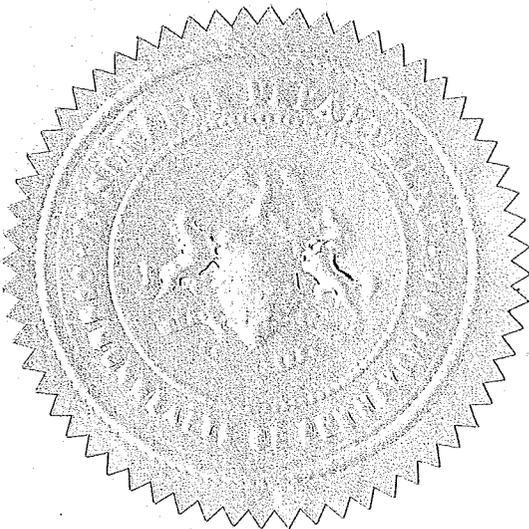
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BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

ORDER

AND NOW, this 22<sup>ND</sup> day of July, 2008, in accordance with Section 905(c) of the Pennsylvania Insurance Department Act, Act of May 17, 1921, P.L. 789, as amended, P.S. § 323.5, I hereby designate Ronald A. Gallagher, Deputy Insurance Commissioner, to consider and review all documents relating to the market conduct examination of any company and person who is the subject of a market conduct examination and to have all powers set forth in said statute including the power to enter an Order based on the review of said documents. This designation of authority shall continue in effect until otherwise terminated by a later Order of the Insurance Commissioner.



  
\_\_\_\_\_  
Joel S. Ario  
Insurance Commissioner

BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

IN RE: : VIOLATIONS:

TRANSAMERICA LIFE : Section 671-A of Act 147 of 2002  
INSURANCE COMPANY : (40 P.S. § 310.71)  
(F/K/A TRANSAMERICA :  
OCCIDENTAL LIFE INSURANCE : Sections 354, 404-A, 408-A(e)(1)(ii),  
COMPANY) : 408-A(e)(2)(iii), and 410E(a)(2) of the  
4333 Edgewood Road, N.E. : Insurance Company Law, Act of  
Cedar Rapids, IA 52499 : May 17, 1921, P.L. 682, No. 284 (40  
 : P.S. §§ 477b, 625-4, 625-8 and 510)  
 :  
 : Title 31, Pennsylvania Code, Sections  
 : 81.6(a)(1), 81.6(a)(2)(ii), 83.3,  
 : 83.3(a)(4)(i), 146.5, 146.6 and  
 : 146.7  
 :  
 : Title 18, Pennsylvania Consolidated  
 : Statutes, Section 4117(k)  
 :  
 :  
 Respondent. : Docket No. MC09-05-015

CONSENT ORDER

AND NOW, this *2ND* day of *JUNE*, 2009, this Order is hereby  
issued by the Insurance Department of the Commonwealth of Pennsylvania pursuant  
to the statutes cited above and in disposition of the matter captioned above.

1. Respondent hereby admits and acknowledges that it has received proper notice of its rights to a formal administrative hearing pursuant to the Administrative Agency Law, 2 Pa.C.S. § 101, et seq., or other applicable law.

2. Respondent hereby waives all rights to a formal administrative hearing in this matter, and agrees that this Consent Order shall have the full force and effect of an order duly entered in accordance with the adjudicatory procedures set forth in the Administrative Agency Law, supra. or other applicable law.

#### FINDINGS OF FACT

3. The Insurance Department finds true and correct each of the following Findings of Fact:

- (a) Respondent is Transamerica Life Insurance Company, and maintains its address at 4333 Edgewood Road, N.E., Cedar Rapids, Iowa 52499. Effective October 1, 2008, Transamerica Occidental Life Insurance Company merged into Respondent.
- (b) A market conduct examination of Transamerica Occidental Life Insurance Company (TOLIC) was conducted by the Insurance Department covering the period from July 1, 2007 to June 30, 2008.

- (c) On April 6, 2009 , the Insurance Department issued a Market Conduct Examination Report of TOLIC to Respondent.
  
- (d) A response to the Examination Report was provided by Respondent on May 6, 2009.
  
- (e) The Examination Report notes violations of the following:
  - (i) Section 671-A of Act 147 of 2002 (40 P.S. § 310.71), which prohibits producers from transacting business within this Commonwealth without written appointment as required by the Act;
  
  - (ii) Section 354 of the Insurance Company Law (40 P.S. § 477b), which prohibits issuing, selling, or disposing of any policy, contract or certificate until the forms have been submitted to, and formally approved by, the Insurance Commissioner;
  
  - (iii) Section 404-A of the Insurance Company Law, No. 284 (40 P.S. §625-4), which requires when the individual policy or annuity is delivered to the policyholder by the producer by hand, a delivery receipt shall be used. This receipt must be in at least a duplicate set and state the date the policy or annuity was received by the policyholder. The receipt date shall be the date on which the policyholder and producer sign the delivery receipt, and such

date shall commence any applicable policy or annuity examination period. Copies of the delivery receipt must be provided to the policyholder on the date of policy or annuity delivery and to the issuing insurer. When the individual policy or annuity is delivered by a means other than by hand-delivery by the producer, the insurer shall establish appropriate means of verifying delivery by the producer of the policy or annuity and of establishing the date from which any applicable policy or examination period shall commence;

(iv) Section 408-A(e)(1)(ii) of the Insurance Company Law, No. 284 (40 P.S. § 625-8), which states if the policy is issued other than as applied for, a revised basic illustration conforming to the policy as issued shall be mailed or delivered with the policy. The revised illustration shall conform to the requirements for basic illustrations contained in this act and shall be labeled "Revised Illustration." The statement shall be signed and dated by the policy owner and producer no later than the time the policy is delivered. A copy shall be provided to the policy owner no later than the time the policy is delivered and to the insurer as soon as practical after the policy is delivered;

(v) Section 408-A(e)(2)(iii) of the Insurance Company Law, No. 284 (40 P.S. § 625-8), states the following applies if no illustration is used by a producer in the sale of a life insurance policy or if a computer screen illustration is

displayed. If the policy is issued, a basic illustration conforming to the policy as issued shall be sent with the policy and signed by the policy owner no later than the time the policy is delivered. A copy shall be provided to the policy owner at the time the policy is delivered;

- (vi) Section 410E(a)(2) of the Insurance Company Law, No. 284 (40 P.S. § 510d), which states individual fixed dollar annuity contracts which are offered as replacements for an existing annuity contract or life insurance policy with the same insurer or insurer group shall not be entered into in the Commonwealth of Pennsylvania unless they shall have prominently printed on the first page of such contract or attached thereto a notice stating in substance that the contract holder shall be permitted to return the contract within at least forty-five (45) days of its delivery;
- (vii) Title 31, Pennsylvania Code, Section 81.6(a)(1), which requires an insurer that uses an agent or broker in a life insurance or annuity sale shall require with or as part of a completed application for life insurance or annuity, a statement signed by the agent or broker regarding whether the broker knows replacement is or may be involved in the transaction;
- (viii) Title 31, Pennsylvania Code, Section 81.6(a)(2)(ii), which states an insurer that uses an agent or broker in a life insurance or annuity sale shall, if replacement is involved: Send to each existing insurer a written

communication advising of the replacement or proposed replacement and the identification information obtained under subparagraph (I) and in the case of life insurance, the disclosure statement as required by Section 83.3, or ledger statement containing comparable policy data on the proposed life insurance. This written communication shall be made within 5 working days of the date the application is received in the replacing insurer's home or regional office, or the date the proposed policy or contract is issued, whichever is sooner;

- (ix) Title 31, Pennsylvania Code, Section 83.3, which requires written disclosure. A life insurance agent, broker or insurer soliciting the type of business to which this subchapter applies shall provide a prospective purchaser with a written disclosure statement clearly labeled as such;
- (x) Title 31, Pennsylvania Code, Section 83.3(a)(4)(i), which requires the disclosure statement to list the name of the producer, home address or agency address and home or agency telephone number of the insurance producer making the solicitation;
- (xi) Title 31, Pennsylvania Code, Section 146.5, which requires every insurer, upon receiving notification of a claim, shall within 10 working days, acknowledge the receipt of such notice unless payment is made within such

period of time. If an acknowledgement is made by means other than writing, an appropriate notation of such acknowledgement shall be made in the claim file of the insurer and dated;

- (xii) Title 31, Pennsylvania Code, Section 146.6 states that if an investigation cannot be completed within 30 days, and every 45 days thereafter, the insurer shall provide the claimant with a reasonable written explanation for the delay and state when a decision on the claim may be expected;
- (xiii) Title 31, Pennsylvania Code, Section 146.7, which requires within 15 working days after receipt by the insurer of properly executed proof of loss, the first party claimant shall be advised of the acceptance or denial of the claim by the insurer; and
- (xiv) Title 18, Pennsylvania Consolidated Statutes, Section 4117(k), which requires all applications for insurance and all claim forms shall contain or have attached thereto the following notice: “Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties”.

## CONCLUSIONS OF LAW

4. In accord with the above Findings of Fact and applicable provisions of law, the Insurance Department makes the following Conclusions of Law:

- (a) Respondent is subject to the jurisdiction of the Pennsylvania Insurance Department.
  
- (b) TOLIC's violations of Section 671-A of Act 147 of 2002 are punishable by the following, under Section 691-A of Act 147 of 2002 (40 P.S. § 310.91):
  - (i) suspension, revocation or refusal to issue the certificate of qualification or license;
  - (ii) imposition of a civil penalty not to exceed five thousand dollars (\$5,000.00) for every violation of the Act;
  - (iii) an order to cease and desist; and
  - (iv) any other conditions as the Commissioner deems appropriate.
  
- (c) TOLIC's violation of Section 354 of The Insurance Company Law is punishable by the following, under Section 354 of The Insurance Company Law (40 P.S. § 477b):

- (i) suspension or revocation of the license(s) of Respondent;
- (ii) refusal, for a period not to exceed one year thereafter, to issue a new license to Respondent;
- (iii) imposition of a fine of not more than one thousand dollars (\$1,000.00) for each act in violation of the Act.

(d) TOLIC's violations of Sections 404-A, 408-A, and 410E of the Insurance Company Law, No. 284 (40 P.S. §§625-4, 625-6 and 625-8) are punishable by the following, under 40 P.S. § 625-10: Upon determination by hearing that this act has been violated, the commissioner may issue a cease and desist order, suspend, revoke or refuse to renew the license, or impose a civil penalty of not more than \$5,000 per violation.

(e) TOLIC's violations of Title 31, Pennsylvania Code, Chapter 81, are punishable under Title 31, Pennsylvania Code, Section 81.8(b) and (c), which provide failure to comply, after a hearing, may subject a company to penalties provided in 40 P.S. § 475. Failure to comply shall be considered a separate violation and may not be considered in lieu of a proceeding against the company for a violation of 40 P.S. §§472, 473 or 474. In addition, failure to make the disclosure may be considered a violation of the Unfair Insurance Practices Act (40 P.S. §§ 1171.1 to 1171.15);

- (f) TOLIC's violations of Title 31, Pennsylvania Code, Chapter 83 are punishable under Title 31, Pennsylvania Code, Section 83.6:
- (i) For failing to insure adequate disclosure of basic information, after a hearing, a company may be subject to the penalties provided under 40 P.S. § 475, for violations of 40 P.S. §§ 472 through 474. In addition, failure to make the disclosure outlined in this subchapter may be considered a violation of 40 P.S. §§ 1171.1 through 1171.15.
- (g) TOLIC's violations of Title 31, Pennsylvania Code, Sections 146.5, 146.6 and 146.7 are punishable under Section 9 of the Unfair Insurance Practices Act (40 P.S. §§ 1171.9):
- (i) cease and desist from engaging in the prohibited activity;
  - (ii) suspension or revocation of the license(s) of Respondent.
- (h) In addition to any penalties imposed by the Commissioner for TOLIC's violations of the Unfair Insurance Practices Act (40 P.S. §§ 1171.1 – 1171.5), the Commissioner may, under Sections 10 and 11 of the Unfair Insurance Practices Act (40 P.S. §§ 1171.10, 1171.11) file an action in which the Commonwealth Court may impose the following civil penalties:

- (i) for each method of competition, act or practice which the company knew or should have known was in violation of the law, a penalty of not more than five thousand dollars (\$5,000.00);
- (ii) for each method of competition, act or practice which the company did not know nor reasonably should have known was in violation of the law, a penalty of not more than one thousand dollars (\$1,000.00).

ORDER

5. In accord with the above Findings of Fact and Conclusions of Law, the Insurance Department orders and Respondent consents to the following:

- (a) Respondent, the successor of TOLIC, shall cease and desist from engaging in the activities described herein in the Findings of Fact and Conclusions of Law.
- (b) Respondent shall file an affidavit stating under oath that it will provide each of its directors, at the next scheduled directors meeting, a copy of the adopted Report and related Orders. Such affidavit shall be submitted within thirty (30) days of the date of this Order.

(c) Respondent shall pay a penalty of Forty Thousand Dollars (\$40,000.00) to the Commonwealth of Pennsylvania.

(d) Payment shall be made by check payable to the Commonwealth of Pennsylvania. Payment should be directed to Sharon L. Fraser, Bureau of Market Conduct, 1227 Strawberry Square, Harrisburg, Pennsylvania 17120. Payment must be made no later than thirty (30) days after the date of this Order.

6. In the event the Insurance Department finds that there has been a breach of any of the provisions of this Order, based upon the Findings of Fact and Conclusions of Law contained herein may pursue any and all legal remedies available, including but not limited to the following: The Insurance Department may enforce the provisions of this Order in the Commonwealth Court of Pennsylvania or in any other court of law or equity having jurisdiction; or the Department may enforce the provisions of this Order in an administrative action pursuant to the Administrative Agency Law, supra, or other relevant provision of law.

7. Alternatively, in the event the Insurance Department finds that there has been a breach of any of the provisions of this Order, the Department may declare this Order to be null and void and, thereupon, reopen the entire matter for appropriate action pursuant to the Administrative Agency Law, supra, or other relevant provision of law.

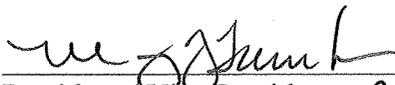
8. In any such enforcement proceeding, Respondent may contest whether a breach of the provisions of this Order has occurred but may not contest the Findings of Fact and Conclusions of Law contained herein.

9. Respondent hereby expressly waives any relevant statute of limitations and application of the doctrine of laches for purposes of any enforcement of this Order.

10. This Order constitutes the entire agreement of the parties with respect to the matters referred to herein, and it may not be amended or modified except by an amended order signed by all the parties hereto.

11. This Order shall be final upon execution by the Insurance Department. Only the Insurance Commissioner or a duly authorized delegee is authorized to bind the Insurance Department with respect to the settlement of the alleged violations of law contained herein, and this Consent Order is not effective until executed by the Insurance Commissioner or a duly authorized delegee.

BY: TRANSAMERICA LIFE INSURANCE  
COMPANY, Respondent, as successor to  
TRANSAMERICA OCCIDENTAL LIFE  
INSURANCE COMPANY

  
\_\_\_\_\_  
President, Vice President - Compliance

  
\_\_\_\_\_  
Secretary + Treasurer

  
\_\_\_\_\_  
COMMONWEALTH OF PENNSYLVANIA  
By: Ronald A. Gallagher, Jr.  
Deputy Insurance Commissioner

## **I. INTRODUCTION**

The Market Conduct Examination was conducted on Transamerica Occidental Life Insurance Company; hereafter referred to as “Company,” at the Company’s office located in Cedar Rapids, Iowa, October 28, 2008, through January 30, 2009. Subsequent review and follow-up was conducted in the office of the Pennsylvania Insurance Department.

Pennsylvania Market Conduct Examination Reports generally note only those items, to which the Department, after review, takes exception. A violation is any instance of Company activity that does not comply with an insurance statute or regulation. Violations contained in the Report may result in imposition of penalties. Generally, practices, procedures, or files that were reviewed by Department examiners during the course of an examination may not be referred to in the Report if no improprieties were noted. However, the Examination Report may include management recommendations addressing areas of concern noted by the Department, but for which no statutory violation was identified. This enables Company management to review these areas of concern in order to determine the potential impact upon Company operations or future compliance.

Throughout the course of the examination, Company officials were provided status memoranda, which referenced specific policy numbers with citation to each section of law violated. Additional information was requested to clarify apparent violations. An exit conference was conducted with Company officials to discuss the various types of violations identified during the examination and review written summaries provided on the violations found.

The courtesy and cooperation extended by the Officers and Employees of the Company during the course of the examination is acknowledged.

The following examiners participated in the Examination and in the preparation of this Report.

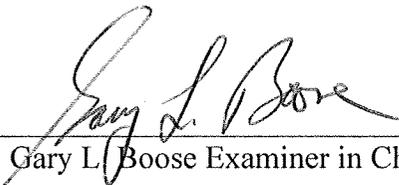
Daniel Stemcosky, AIE, FLMI, MCM  
Market Conduct Division Chief

Gary L. Boose, MCM  
Market Conduct Examiner

Michael T. Vogel, MCM  
Market Conduct Examiner

## Verification

Having been duly sworn, I hereby verify that the statements made in the within document are true and correct to the best of my knowledge, information and belief. I understand that false statements made herein are subject to the penalties of 18 Pa. C.S. §4903 (relating to false swearing).

  
\_\_\_\_\_  
Gary L. Boose Examiner in Charge

Sworn to and Subscribed Before me

This 19 Day of February, 2009

  
\_\_\_\_\_  
Notary Public

COMMONWEALTH OF PENNSYLVANIA  
NOTARIAL SEAL  
THERESA M. SENECA, Notary Public  
City of Harrisburg, Dauphin County  
My Commission Expires Aug. 15, 2010

## **II. SCOPE OF EXAMINATION**

The Market Conduct Examination was conducted pursuant to the authority granted by Sections 903 and 904 (40 P.S. §§323.3 and 323.4) of the Insurance Department Act and covered the experience period of July 1, 2007, through June 30, 2008, unless otherwise noted. The purpose of the examination was to ensure compliance with Pennsylvania insurance laws and regulations.

The examination focused on the Company's operation in areas such as: Advertising, Producer Licensing, Consumer Complaints, Forms, Underwriting Practices and Procedures, Rating and Claim Handling Practices and Procedures.

The Company was requested to identify the universe of files for each segment of the review. Based on the universe sizes identified, random sampling was utilized to select the files reviewed for this examination.

During the course of the examination, for control purposes, some of the review segments identified in this Report may have been broken down into various sub-categories by line of insurance or Company administration. These specific sub-categories, if not reflected individually in the Report, would be included and grouped within the respective general categories of the Examination Report.

### III. COMPANY HISTORY AND LICENSING

Transamerica Occidental Life Insurance Company (TOLIC) was incorporated as Occidental Life Insurance Company under the laws of the State of California on June 30, 1906 and commenced insurance operations of August 14, 1906. The name was changed to Transamerica Occidental Life Insurance Company in 1981. In 1999, the Company was acquired by the AEGON Insurance Group. The Company was re-domesticated and reincorporated to the State of Iowa on December 31, 2000, and is now an Iowa domiciled company.

TOLIC operates in the United States, Puerto Rico, Guam, Hong Kong, Japan, and Singapore. The target market is the high-end, affluent market with the average case size being approximately \$650,000. The products marketed by TOLIC are term life, universal life, fixed annuities, and variable universal life.

The primary division that currently markets TOLIC is Transamerica Insurance and Investment Group (TIIG) located in Cedar Rapids and Los Angeles. It is comprised of four sales units all of which market through independent producers. These are:

- A general agency distribution system,
- Two retail broker/dealers – Transamerica Financial Advisors (TFA) and InterSecurities Inc. (ISI)
- National accounts, and
- Pacific Rim operations which includes Hong Kong, Japan, and Singapore.

The Transamerica Capital Management (TCM) division, located in Cedar Rapids, Iowa, administers TOLIC fixed and variable annuities.

The Worksite Marketing Division (WMD), located in Little Rock, Arkansas sells TOLIC group universal life insurance through a third party administrator, Vision Financial Corporation.

TOLIC is licensed in all states except New York. TOLIC is licensed to sell life, disability, annuities and variable contracts in the state of Pennsylvania.

TOLIC was merged into Transamerica Life Insurance Company, October 1, 2008.

As of their December 2007, annual statement for Pennsylvania, Transamerica Occidental Life Insurance Company reported direct premium for ordinary life insurance, annuities and deposit-type contract funds in the amount of \$77,960,831 and direct premium for accident and health in the amount of \$5,575,350.

#### **IV. ADVERTISING**

Title 31, Pennsylvania Code, Section 51.2(c) provides that “Any advertisements, whether or not actually filed or required to be filed with the Department under the provisions of this Regulation may be reviewed at any time at the discretion of the Department.” The Department, in exercising its discretionary authority for reviewing advertising, requested the Company to provide a copy of the advertising certificate of compliance as required by Title 31, Pennsylvania Code, Section 51.5. No violations were noted.

## V. FORMS

The Company was requested to provide a list and copies of all policy and/or member forms, conversion contracts, applications, riders, amendments and endorsements used during the experience period. The forms provided and forms reviewed in various underwriting sections of the exam were reviewed to ensure compliance with Insurance Company Law, Section 354 and Title 18, Pennsylvania Consolidated Statutes, Section 4117(k), Fraud notice.

The following violations were noted:

### **1 Violation – Insurance Company Law, Section 354 (40 P.S. §477b)**

*It shall be unlawful for any insurance company, association, or exchange, including domestic mutual fire insurance companies, doing business in this Commonwealth, to issue, sell, or dispose of any policy, contract, or certificate, covering life, health, accident, personal liability, fire, marine, title, and all forms of casualty insurance or contracts pertaining to pure endowments or annuities, or any other contracts of insurance, or use applications, riders, or endorsements, in connection therewith, until the forms of the same have been submitted to and formally approved by the Insurance Commissioner.*

Evidence of Department's approval could not be established for the form noted. The application form number and description are listed in the table below.

<b>Form #</b>	<b>Description</b>
1-006 11-159	Premium Deposit Agreement

## **2 Violations - Title 18, Pennsylvania Consolidated Statutes, Section 4117(k)**

All applications for insurance and all claim forms shall contain or have attached thereto the following notice: “Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties.” The following applications for insurance did not contain or have attached the required fraud statement.

<b>Form Number</b>	<b>Description</b>
APA 40-3307	Application
MPS 1 – 101	Application

## VI. PRODUCER LICENSING

The Company was requested to provide a list of all producers active and terminated during the experience period. Section 671-A (40 P.S. §310.71) of the Insurance Department Act prohibits producers from doing business on behalf of or as a representative of any entity without a written appointment from that entity. Section 641.1-A (40 P.S. §310.41a) of the Insurance Department Act prohibits a company from accepting insurance applications or securing any insurance business through anyone acting without a license. Section 671.1-A (40 P.S. §310.71a) of the Insurance Department Act requires the Company to report all producer terminations to the Department.

The Company provided a list of 16,249 active and terminated producers. A random sample of 100 producers was compared to departmental records of producers to verify appointments, terminations and licensing. In addition, a comparison was made on the individuals identified as producers on applications reviewed in the policy issued sections of the exam.

The following violations were noted:

### **2 Violations – Insurance Department Act, No. 147, Section 671-A (40 P.S. §310.71)**

*(a) Representative of the insurer. – An insurance producer shall not act on behalf of or as a representative of the insurer unless the insurance producer is appointed by the insurer. An insurance producer not acting as a representative of an insurer is not required to be appointed.*

*(b) Representative of the consumer. – An insurance producer acting on behalf of or representing an insurance consumer shall execute a written agreement with the insurance consumer prior to representing or acting on their behalf that:*

- (1) *Delineates the services to be provided; and*
  - (2) *Provides full and complete disclosure of the fee to be paid to the insurance producer by the insurance consumer.*
- (c) *Notification to department. – An insurer that appoints an insurance producer shall file with the department a notice of appointment. The notice shall state for which companies within the insurer’s holding company system or group the appointment is made.*
- (d) *Termination of appointment. – Once appointed, an insurance producer shall remain appointed by an insurer until such time as the insurer terminates the appointment in writing to the insurance producer or until the insurance producer’s license is suspended, revoked or otherwise terminated.*
- (e) *Appointment fee. – An appointment fee of \$12.50 will be billed annually to the insurer for each producer appointed by the insurer during the preceding calendar year regardless of the length of time the producer held the appointment with the insurer. The appointment fee may be modified by regulation.*
- (f) *Reporting. – An insurer shall, upon request, certify to the department the names of all licensees appointed by the insurer.*

The Company failed to file a notice of appointment and submit appointment fees to the Insurance Department for the following producers. The Company listed the first producer as appointed; however, Department records did not indicate his appointment during the experience period. The second producer was listed as the producer on an application in an underwriting section of the exam; however, Department records did not indicate his appointment at the time of the date on the application.

<b>Producer</b>
Brian Kauffman
Bruce Slaff

## VII. CONSUMER COMPLAINTS

The Company was requested to identify all consumer complaints received during the experience period and provide copies of consumer complaint logs for 2004, 2005, 2006 and 2007. The Company identified 28 consumer complaints received during the experience period. Of the 28 complaints identified, 11 were forwarded from the Department. All 28 complaint files were requested, received and reviewed. The Company provided complaint logs as requested. The Department's list of written consumer complaints that were forwarded to the Company during the experience period was compared to the Company's complaint log.

The complaint files and the 4 years of complaint logs were reviewed for compliance with the Unfair Insurance Practices Act, No. 205 (40 P.S. §1171). Section 5(a)(11) of the Act requires maintenance of a complete record of all complaints received during the preceding four (4) years. The record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of the complaint and the time it took to process each complaint. Written complaint files involving claims were also reviewed for compliance with Title 31, Pennsylvania Code, Section 146.5(b) and 146.5(c), Unfair Claims Settlement Practices.

The following violation was noted:

### **1 Violation – Title 31, Pennsylvania Code, Section 146.5 Failure to Acknowledge Pertinent Communication**

*(b) Every insurer, upon receipt of an inquiry from the Department respecting a claim shall, within 15 working days of receipt of the inquiry, furnish the Department with an adequate response to the inquiry.*

*(c) An appropriate reply shall be made within 10 working days on other pertinent communication from a claimant which reasonably suggest that a response is expected.*

The Company response was untimely to the complainant in the file noted.

## **VIII. UNDERWRITING**

The Underwriting review was sorted and conducted in 13 general segments.

- A. Underwriting Guidelines
- B. Group Universal Life Policies Issued
- C. Group Certificates Issued
- D. Individual Fixed Annuity Contracts Issued
- E. Individual Term Life Policies Issued
- F. Individual Universal Life Policies Issued
- G. Individual Variable Life Policies Issued
- H. Individual Whole Life Policies Issued
  - I. Individual Fixed Annuity Contracts Issued as Replacements
  - J. Individual Term Life Policies Issued as Replacements
  - K. Individual Universal Life Policies Issued as Replacements
  - L. Individual Whole Life Policies Issued as Replacements
- M. Individual Universal Life Conversions

Each segment was reviewed for compliance with underwriting practices and included forms identification and producer identification. Issues relating to forms or licensing appear in those respective sections of the Report and are not duplicated in the Underwriting portion of the Report.

### **A. Underwriting Guidelines**

The Company was requested to provide all underwriting guidelines and manuals utilized during the experience period. The documentation provided was reviewed to ensure underwriting guidelines were in place and being followed in a uniform and consistent manner and that no underwriting practices or procedures were in place that could be considered discriminatory in nature, or specifically prohibited by statute or regulation. No violations were noted.

The following guidelines were reviewed:

1. Underwriting writing manuals
2. Underwriting Guidelines
3. Calculators
4. Field Communications
5. International Information
6. Medical Director Notes
7. Life Guide on the Web
8. Swiss Re Life Guide
9. Underwriting Audit Program
10. Swiss Re Underwriting Manual
11. Certificate Level Underwriting Guidelines
12. TCM Annuity Products

The manuals were reviewed to ensure underwriting guidelines were in place and being followed in a uniform and consistent manner and no underwriting practices or procedures were in place that could be considered discriminatory in nature, or specifically prohibited by statute or regulation. No violations were noted.

### **B. Group Universal Life Policies Issued**

The Company was requested to provide a list of all group life policies issued during the experience period. The Company provided a list of 1 group universal life policy issued. The file was requested, received and reviewed. The policy file was reviewed to determine compliance to issuance statutes and regulations. No violations were noted.

### **C. Group Certificates Issued**

The Company was requested to provide a list of all certificate holders enrolled during the experience period. The Company provided a list of 322 group certificates issued. A random sample of 25 certificates issued was requested, received and reviewed. The files were reviewed to ensure compliance with Title 18, Pennsylvania Consolidated Statutes, Section 4117(k). No violations were noted.

### **D. Individual Fixed Annuity Contracts Issued**

The Company identified a universe of 15 fixed annuity contracts issued during the experience period. All 15 annuity contracts were requested, received and reviewed. Annuity contracts were reviewed to determine compliance with issuance, and replacement statutes and regulations. The following violation was noted:

#### **1 Violation – Insurance Company Law, Section 410E(a)(2) (40 P.S. §510d)**

*Individual fixed dollar annuity contracts which are offered as replacements for an existing annuity contract or life insurance policy with the same insurer or insurer group shall not be entered into in the Commonwealth of Pennsylvania unless they shall have prominently printed on the first page of such contract or attached thereto a notice stating in substance that the contract holder shall be permitted to return the contract within at least forty-five (45) days of its delivery.*

The required 45 day “free look” statement was incorrectly stated on the file noted.

## **E. Individual Term Life Policies Issued**

The Company identified a universe of 635 individual term life policies issued during the experience period. A random sample of 50 term life policies was requested, received and reviewed. The policy files were reviewed to determine compliance to issuance, underwriting, and replacement statutes and regulations. The following violations were noted:

### **2 Violations - Title 31, Pennsylvania Code, Section 81.6(a)(1)**

*An insurer that uses an agent or broker in a life insurance or annuity sale shall:*

*Require with or as part of a completed application for life insurance or annuity a statement signed by the agent or broker as to whether the broker knows replacement is or may be involved in the transaction.*

The agents statement on replacement was not completed for the 2 files noted.

### **3 Violations - Insurance Company Law, Section 404-A (40 P.S. §625-4)**

*When the individual policy or annuity is delivered to the policyholder by the producer by hand, a delivery receipt shall be used. This receipt must be in at least a duplicate set and state the date the policy or annuity was received by the policyholder. The receipt date shall be the date on which the policyholder and producer sign the delivery receipt, and such date shall commence any applicable policy or annuity examination period. Copies of the delivery receipt must be provided to the policyholder on the date of policy or annuity delivery and to the issuing insurer. When the individual policy or annuity is delivered by a means other than by hand delivery by the producer, the insurer shall establish appropriate means of verifying delivery by the producer of the policy or annuity and of establishing the date from which any applicable policy or examination period shall commence.*

Verification of the date of policy delivery could not be established in the 3 files noted.

## **F. Individual Universal Life Policies Issued**

The Company identified a universe of 70 life policies issued during the experience period. A random sample of 25 individual universal life policies issued was requested, received and reviewed. The files were reviewed to determine compliance to issuance, underwriting, and replacement statutes and regulations. The following violations were noted:

### **13 Violations -Title 31, Pennsylvania Code, Section 83.3(a)(4)(i)**

*A disclosure statement shall describe the name of the agent or broker, home address or agency address and the home or agency telephone number of the insurance agent or broker making the solicitation.*

The agent's telephone number and/or address were absent from the disclosure statements in the 13 files noted.

### **1 Violation - Insurance Company Law, Section 404-A (40 P.S. §625-4)**

*When the individual policy or annuity is delivered to the policyholder by the producer by hand, a delivery receipt shall be used. This receipt must be in at least a duplicate set and state the date the policy or annuity was received by the policyholder. The receipt date shall be the date on which the policyholder and producer sign the delivery receipt, and such date shall commence any applicable policy or annuity examination period. Copies of the delivery receipt must be provided to the policyholder on the date of policy or annuity delivery and to the issuing insurer. When the individual policy or annuity is delivered by a means other than by hand delivery by the producer, the insurer shall establish appropriate means of verifying delivery by the producer of the policy or annuity and of establishing the date from which any applicable policy or examination period shall commence.*

Verification of the date of policy delivery could not be established in the file noted.

**6 Violations – Insurance Company Law, Section 408-A(e)(2)(iii) (40 P.S. §625-8)**

*The following applies if no illustration is used by a producer in the sale of a life insurance policy or if a screen illustration is displayed. If the policy is issued, a basic illustration conforming to the policy as issued shall be sent with the policy and signed by the policy owner no later than the time the policy is delivered. A copy shall be provided to the policy owner at the time the policy is delivered and to the insurer.*

The 6 files noted did not contain the signed certification and acknowledgement of the delivery of an illustration at the time of policy delivery.

**G. Individual Variable Life Policies Issued**

The Company identified a universe of 3 variable life policies issued during the experience period. All 3 files were requested, received and reviewed. The files were reviewed to determine compliance to issuance, underwriting, and replacement statutes and regulations. No violations were noted.

**H. Individual Whole Life Policies Issued**

The Company identified a universe of 4 whole life policies issued during the experience period. All 4 policy files were requested, received and reviewed. The 4 files were reviewed to determine compliance to issuance, underwriting, and replacement statutes and regulations. The following violations were noted:

### **3 Violations – Title 31, Pennsylvania Code, Section 83.3 Disclosure Statement**

*(a) Required written disclosure. A life insurance agent, broker or insurer soliciting the type of business to which this subchapter applies shall provide a prospective purchaser with a written disclosure statement clearly labeled as such. An acceptable disclosure statement is attached as Appendix A.*

The 3 files noted did not contain evidence that a written disclosure was provided.

### **1 Violation -Title 31, Pennsylvania Code, Section 83.3(a)(4)(i)**

*A disclosure statement shall describe the name of the agent or broker, home address or agency address and the home or agency telephone number of the insurance agent or broker making the solicitation.*

The agent's telephone number and/or address were absent from the disclosure statement.

## **I. Individual Fixed Annuity Contracts Issued as Replacements**

The Company identified a universe of 2 fixed annuity contracts issued as replacements during the experience period. The 2 replacement files were requested, received and reviewed. The annuity files were reviewed to determine compliance to issuance, underwriting, and replacement statutes and regulations. The following violations were noted:

### **1 Violation - Title 31, Pennsylvania Code, Section 81.6(a)(2)(ii)**

*An insurer that uses an agent or broker in a life insurance or annuity sale shall, if replacement is involved: Send to each existing insurer a written communication advising of the replacement or proposed replacement and the identification*

*information obtained under subparagraph (I) and in the case of life insurance, the disclosure statement as required by §83.3 (relating to disclosure statement) or ledger statement containing comparable policy data on the proposed life insurance. This written communication shall be made within 5 working days of the date the application is received in the replacing insurer's home or regional office, or the date the proposed policy or contract is issued, whichever is sooner.*

The replacement letter to the replaced company was late in the file noted.

**1 Violation – Insurance Company Law, Section 410E(a)(2) (40 P.S. §510d)**

*Individual fixed dollar annuity contracts which are offered as replacements for an existing annuity contract or life insurance policy with the same insurer or insurer group shall not be entered into in the Commonwealth of Pennsylvania unless they shall have prominently printed on the first page of such contract or attached thereto a notice stating in substance that the contract holder shall be permitted to return the contract within at least forty-five (45) days of its delivery.*

The contract did not contain the required 45 day "free look" statement.

## **J. Individual Term Life Policies Issued as Replacements**

The Company identified a universe of 248 individual term life policies issued as replacements during the experience period. A random sample of 25 life replacement files was requested, received and reviewed to determine compliance to issuance, underwriting, and replacement statutes and regulations. The following violations were noted:

### **2 Violations - Title 31, Pennsylvania Code, Section 81.6(a)(2)(ii)**

*An insurer that uses an agent or broker in a life insurance or annuity sale shall, if replacement is involved: Send to each existing insurer a written communication advising of the replacement or proposed replacement and the identification information obtained under subparagraph (I) and in the case of life insurance, the disclosure statement as required by § 83.3 (relating to disclosure statement) or ledger statement containing comparable policy data on the proposed life insurance. This written communication shall be made within 5 working days of the date the application is received in the replacing insurer's home or regional office, or the date the proposed policy or contract is issued, whichever is sooner.*

The replacement letter to the replaced company was late or not provided in the 2 files noted.

## **K. Individual Universal Life Policies Issued as Replacements**

The Company identified a universe of 11 life policies issued as replacements during the experience period. All 11 individual universal life policies issued as replacements were requested, received and reviewed. The life replacement files were reviewed to determine compliance to issuance, underwriting, and replacement statutes and regulations. The following violations were noted:

### **1 Violation - Title 31, Pennsylvania Code, Section 81.6(a)(2)(ii)**

*An insurer that uses an agent or broker in a life insurance or annuity sale shall, if replacement is involved: Send to each existing insurer a written communication advising of the replacement or proposed replacement and the identification information obtained under subparagraph (I) and in the case of life insurance, the disclosure statement as required by § 83.3 (relating to disclosure statement) or ledger statement containing comparable policy data on the proposed life insurance. This written communication shall be made within 5 working days of the date the application is received in the replacing insurer's home or regional office, or the date the proposed policy or contract is issued, whichever is sooner.*

The replacement letter to the replaced company was not documented in the file noted.

### **5 Violations - Title 31, Pennsylvania Code, Section 83.3(a)(4)(i)**

*A disclosure statement shall describe the name of the agent or broker, home address or agency address and the home or agency telephone number of the insurance agent or broker making the solicitation.*

The agent's telephone number and/or address were absent from the disclosure statements in the 5 files noted.

## **L. Individual Whole Life Policies Issued as Replacements**

The Company identified a universe of 5 life policies issued as replacements during the experience period. All 5 individual whole life policies issued as replacements were requested, received and reviewed. The 5 life replacement files were reviewed to determine compliance to issuance, underwriting, and replacement statutes and regulations. The following violations were noted:

### **1 Violation - Insurance Company Law, Section 404-A (40 P.S. §625-4)**

*When the individual policy or annuity is delivered to the policyholder by the producer by hand, a delivery receipt shall be used. This receipt must be in at least a duplicate set and state the date the policy or annuity was received by the policyholder. The receipt date shall be the date on which the policyholder and producer sign the delivery receipt, and such date shall commence any applicable policy or annuity examination period. Copies of the delivery receipt must be provided to the policyholder on the date of policy or annuity delivery and to the issuing insurer. When the individual policy or annuity is delivered by a means other than by hand delivery by the producer, the insurer shall establish appropriate means of verifying delivery by the producer of the policy or annuity and of establishing the date from which any applicable policy or examination period shall commence.*

Verification of policy delivery could not be established in the file noted.

## **M. Individual Universal Life Conversions**

The Company identified a universe of 109 life conversion policies issued during the experience period. A random sampling of 25 individual universe life conversion files was requested, received and reviewed. Of the 25 files reviewed, file number 22 was signed and certified in the state of Florida; therefore, this file was not reviewed. The files were reviewed to determine compliance to issuance and underwriting statutes and regulations. The following violations were noted:

### **4 Violations– Insurance Company Law, Section 408-A(e)(1)(ii) (40 P.S. §625-8)**

*If the policy is issued other than as applied for, a revised basic illustration conforming to the policy as issued shall be mailed or delivered with the policy. The revised illustration shall conform to the requirements for basic illustrations contained in this act and shall be labeled “Revised Illustration.” The statement required by subsection (c)(4) shall be signed and dated by the policy owner and producer no later than the time the policy is delivered. A copy shall be provided to the policy owner no later than the time the policy is delivered and to the insurer as soon as practical after the policy is delivered. The files listed contained a revised illustration but the illustration was not labeled as “Revised Illustration”.*

A signed certification and acknowledgement of the delivery of the “Revised Illustration” was not provided in the 4 files noted.

## **IX. INTERNAL AUDIT & COMPLIANCE PROCEDURES**

The Company was requested to provide copies of their internal audit and compliance procedures. The audits and procedures were reviewed to ensure compliance with Insurance Company Law, Section 405-A (40 P.S. §625-5). Section 405-A provides for the establishment and maintenance of internal audit and compliance procedures which provides for the evaluation of compliance with all statutes and regulations dealing with sales methods, advertising, and filing and approval requirements for life insurance and annuities. The procedures shall also provide for the following:

- (1) Periodic reviews of consumer complaints in order to determine patterns of improper practices.
- (2) Regular reporting to senior officers and the board of directors or an appropriate committee thereof with respect to any significant findings.
- (3) The establishment of lines of communication, control and responsibility over the dissemination of advertising and promotional materials, including illustrations and illustration explanations, with the requirement that such materials shall not be used without the approval by company employees whose compensation, other than generally applicable company bonus or incentive plans, is not directly linked to marketing or sales.
- (4) The laws requires that each insurer shall make available for the Department's inspection upon request its internal audit and compliance procedures which are instituted as required by this section.

The Company provided the following:

1. 2007 IMSA (Insurance Marketplace Standards Association) Independent Assessment Report on the following:

A. Financial Markets Group (TCM)

The submitted report indicated that the Company met IMSA standards.

B. Long Term Care Division

The submitted report indicated that the Company met IMSA standards.

C. Financial Partners Division

The submitted report indicated that the Company met IMSA standards.

2. Underwriting Audit Program

No violations were noted.

## X. CLAIMS

The claims review consisted of a review of the Company's claim manuals and a review of the claim files. The Company was requested to provide copies of all procedural guidelines including all manuals, memorandums, directives and any correspondence or instructions used for processing claims during the experience period. The Company provided a claim processing manual for Life claims and a claim processing manual for Health claims.

The claim manuals and procedures were reviewed for any inconsistencies, which could be considered discriminatory, specifically prohibited by statute or regulation, or unusual in nature. No violations were noted.

The claim file review consisted of 12 areas:

- A. Disability Claims Paid
- B. Fixed Annuity Claims Paid
- C. Long Term Care Claims Paid
- D. Term Life Claims Paid
- E. Universal Life Claims Paid
- F. Variable Annuity Claims Paid
- G. Whole Life Claims Paid
- H. Fixed Annuity Claims Pending
- I. Term Life Claims Pending
- J. Universal Life Claims Pending
- K. Variable Annuity Claims Pending
- L. Long Term Care Claims Denied

All claim files sampled were reviewed for compliance with requirements of the Unfair Insurance Practices Act, No. 205 (40 P.S. §1171) and Title 31, Pennsylvania Code, Chapter 146, Unfair Claims Settlement Practices.

### **A. Disability Claims Paid**

The Company was requested to provide a list of claims received during the experience period. The Company identified a universe of 123 disability claims paid. The 123 claims included a number of ongoing disability claims on the same individual. Of the 123 claims listed, 1 claim was identified as the initial disability claim for the individual. A random sample of 25 claims was requested, received and reviewed. The claim files were reviewed for compliance with Title 31, Pennsylvania Code, Chapter 146. No violations were noted.

### **B. Fixed Annuity Claims Paid**

The Company was requested to provide a list of claims received during the experience period. The Company identified a universe of 14 fixed annuity claims paid. All 14 claims were requested, received and reviewed. The claim files were reviewed for compliance with Title 31, Pennsylvania Code, Chapter 146. The following violations were noted:

#### **3 Violations - Title 31, Pennsylvania Code, Section 146.5**

*Every insurer, upon receiving notification of a claim, shall within ten working days, acknowledge the receipt of such notice unless payment is made within such period of time. If an acknowledgement is made by means other than writing, an appropriate notation of such acknowledgment shall be made in the claim file of the insurer and dated.*

The Company failed to acknowledge the 3 claims noted within 10 working days.

### **11 Violations - Title 31, Pennsylvania Code, Section 146.6**

*Every insurer shall complete investigation of a claim within 30 days after notification of a claim, unless the investigation cannot reasonably be completed within the time. If the investigation cannot be completed within 30 days, and every 45 days thereafter, the insurer shall provide the claimant with a reasonable written explanation for the delay and state when a decision on the claim may be expected.*

The Company failed to provide a timely status letter for the 11 claims noted.

### **C. Long Term Care Claims Paid**

The Company was requested to provide a list of claims received during the experience period. The Company identified a universe of 1,010 long term care claims paid. A random sample of 50 claims was requested, received and reviewed. Of the 50 claim files reviewed all 50 were submitted by the insured. The claim files were reviewed for compliance with Title 31, Pennsylvania Code, Chapter 146. The following violation was noted:

### **1 Violation - Title 31, Pennsylvania Code, Section 146.7**

*Within 15 working days after receipt by the insurer of properly executed proofs of loss, the first-party claimant shall be advised of the acceptance or denial of the claim by the insurer.*

The Company failed to provide notice of acceptance or denial within 15 working days for the claim noted.

#### **D. Term Life Claims Paid**

The Company was requested to provide a list of claims received during the experience period. The Company identified 80 term life claims paid. A random sample of 25 term life claims was requested, received and reviewed. The claim files were reviewed for compliance with Title 31, Pennsylvania Code, Chapter 146 and Insurance Company Law, Section 411B, Payment of Interest (40 P.S. §511b). The following violations were noted:

##### **7 Violations - Title 31, Pennsylvania Code, Section 146.6**

*Every insurer shall complete investigation of a claim within 30 days after notification of a claim, unless the investigation cannot reasonably be completed within the time. If the investigation cannot be completed within 30 days, and every 45 days thereafter, the insurer shall provide the claimant with a reasonable written explanation for the delay and state when a decision on the claim may be expected.*

The Company failed to provide a timely status letter for the 7 claims noted.

#### **E. Universal Life Claims Paid**

The Company was requested to provide a list of claims received during the experience period. The Company identified 94 universal life claims paid. A random sample of 25 claim files was requested, received and reviewed. The claim files were reviewed for compliance with Title 31, Pennsylvania Code, Chapter 146 and Insurance Company Law, Section 411B, Payment of Interest (40 P.S. §511b). The following violations were noted:

**7 Violations - Title 31, Pennsylvania Code, Section 146.6**

*Every insurer shall complete investigation of a claim within 30 days after notification of a claim, unless the investigation cannot reasonably be completed within the time. If the investigation cannot be completed within 30 days, and every 45 days thereafter, the insurer shall provide the claimant with a reasonable written explanation for the delay and state when a decision on the claim may be expected.*

The Company failed to provide a timely status letter for the 7 claims noted.

**2 Violations-Title 31, Pennsylvania Code, Section 146.7**

*Within 15 working days after receipt by the insurer of properly executed proofs of loss, the first- party claimant shall be advised of the acceptance or denial of the claim by the insurer.*

The Company failed to provide notice of acceptance or denial within 15 working days for the 2 claims noted.

## **F. Variable Annuity Claims Paid**

The Company was requested to provide a list of claims received during the experience period. The Company identified a universe of 57 variable annuity claims paid. A random sample of 15 claims was requested, received and reviewed. The claim files were reviewed for compliance with Title 31, Pennsylvania Code, Chapter 146. The following violations were noted:

### **2 Violations - Title 31, Pennsylvania Code, Section 146.5**

*Every insurer, upon receiving notification of a claim, shall within ten working days, acknowledge the receipt of such notice unless payment is made within such period of time. If an acknowledgement is made by means other than writing, an appropriate notation of such acknowledgment shall be made in the claim file of the insurer and dated.*

The Company failed to acknowledge the 2 claims noted within 10 working days.

### **7 Violations - Title 31, Pennsylvania Code, Section 146.6**

*Every insurer shall complete investigation of a claim within 30 days after notification of a claim, unless the investigation cannot reasonably be completed within the time. If the investigation cannot be completed within 30 days, and every 45 days thereafter, the insurer shall provide the claimant with a reasonable written explanation for the delay and state when a decision on the claim may be expected.*

The Company failed to provide a timely status letter for the 7 claims noted.

## **G. Whole Life Claims Paid**

The Company was requested to provide a list of claims received during the experience period. The Company identified 20 whole life claims paid received. A random sample of 10 claims was requested, received and reviewed. The claim files were reviewed for compliance with Title 31, Pennsylvania Code, Chapter 146 and Insurance Company Law, Section 411B, Payment of Interest (40 P.S. §511b). The following violations were noted:

### **6 Violations - Title 31, Pennsylvania Code, Section 146.6**

*Every insurer shall complete investigation of a claim within 30 days after notification of a claim, unless the investigation cannot reasonably be completed within the time. If the investigation cannot be completed within 30 days, and every 45 days thereafter, the insurer shall provide the claimant with a reasonable written explanation for the delay and state when a decision on the claim may be expected.*

The Company failed to provide a timely status letter within 30 days for the 6 claims noted.

## **H. Fixed Annuity Claims Pending**

The Company was requested to provide a list of claims received during the experience period. The Company identified a universe of 1 fixed annuity claim pending. The file was requested, received and reviewed. The claim file was reviewed for compliance with Title 31, Pennsylvania Code, Chapter 146. The annuity claim was subsequently paid. The following violation was noted:

### **1 Violation - Title 31, Pennsylvania Code, Section 146.5**

*Every insurer, upon receiving notification of a claim, shall within ten working days, acknowledge the receipt of such notice unless payment is made within such period of time. If an acknowledgement is made by means other than writing, an appropriate notation of such acknowledgment shall be made in the claim file of the insurer and dated.*

The Company failed to acknowledge the claim noted within 10 working days.

## **I. Term Life Claims Pending**

The Company was requested to provide a list of claims received during the experience period. The Company identified 19 term life claims pending received. All 19 term life claims pending were requested, received and reviewed. The claim files were reviewed for compliance with Title 31, Pennsylvania Code, Chapter 146 and Insurance Company Law, Section 411B, Payment of Interest (40 P.S. §511b). Of the 19 pended claims, 7 claims have been paid, 6 claims were processed as 1<sup>st</sup> to die, 5 are still pending and one was sent to unclaimed property to be escheated. The following violations were noted:

**1 Violation - Title 31, Pennsylvania Code, Section 146.5**

*Every insurer, upon receiving notification of a claim, shall within ten working days, acknowledge the receipt of such notice unless payment is made within such period of time. If an acknowledgement is made by means other than writing, an appropriate notation of such acknowledgment shall be made in the claim file of the insurer and dated.*

The Company's acknowledgement was missing in the file noted.

**10 Violations - Title 31, Pennsylvania Code, Section 146.6**

*Every insurer shall complete investigation of a claim within 30 days after notification of a claim, unless the investigation cannot reasonably be completed within the time. If the investigation cannot be completed within 30 days, and every 45 days thereafter, the insurer shall provide the claimant with a reasonable written explanation for the delay and state when a decision on the claim may be expected.*

The Company failed to provide a timely status letter within 30 days for the 10 claims noted.

**J. Universal Life Claims Pending**

The Company was requested to provide a list of claims received during the experience period. The Company identified 7 universal life claims pending received. All 7 universal life claims pending were requested, received and reviewed. The claim files were reviewed for compliance with Title 31, Pennsylvania Code, Chapter 146 and Insurance Company Law, Section 411B, Payment of Interest (40 P.S. §511b). Of the 7 pended claims, 6 claims were processed as 1<sup>st</sup> to die and the other claim was subsequently paid. The following violations were noted:

#### **4 Violations - Title 31, Pennsylvania Code, Section 146.6**

*Every insurer shall complete investigation of a claim within 30 days after notification of a claim, unless the investigation cannot reasonably be completed within the time. If the investigation cannot be completed within 30 days, and every 45 days thereafter, the insurer shall provide the claimant with a reasonable written explanation for the delay and state when a decision on the claim may be expected.*

The Company failed to provide a timely status letter for the 4 claims noted.

#### **K. Variable Annuity Claims Pending**

The Company was requested to provide a list of claims received during the experience period. The Company identified a universe of 6 variable annuity claims pending. All 6 variable annuity claims pending were requested, received and reviewed. The claim files were reviewed for compliance with Title 31, Pennsylvania Code, Chapter 146. Of the 6 pended claims, 4 claims have been paid. For the remaining 2 claims, the beneficiary elected to continue the policy in their name. The following violations were noted:

#### **6 Violations - Title 31, Pennsylvania Code, Section 146.6**

*Every insurer shall complete investigation of a claim within 30 days after notification of a claim, unless the investigation cannot reasonably be completed within the time. If the investigation cannot be completed within 30 days, and every 45 days thereafter, the insurer shall provide the claimant with a reasonable written explanation for the delay and state when a decision on the claim may be expected.*

The Company failed to provide a timely status letter for the 6 claims noted.

## **L. Long Term Care Claims Denied**

The Company was requested to provide a list of claims denied during the experience period. The Company identified a universe of 6 long term care claims denied. All 6 claims were requested, received and reviewed. The claim files were reviewed to ensure the Company claims adjudication process was adhering to the provisions of the policy contract. No violations were noted.

## **XI. RECOMMENDATIONS**

The recommendations made below identify corrective measures the Department finds necessary as a result of the number of some violations, or the nature and severity of other violations, noted in the Report.

1. The Company must review internal control procedures to ensure compliance with requirements of Title 31, Pennsylvania Code, Chapter 146, Unfair Claims Settlement Practices.
2. The Company must review internal control procedures to ensure compliance with forms filing and approval requirements of Section 354 of the Insurance Company Law of 1921 (40 P.S. §477b).
3. The Company must implement procedures to ensure compliance with the fraud statement notice requirements of Title 18, Pennsylvania Consolidated Statutes Section 4117(k).
4. The Company must review Licensing procedures to ensure compliance with Section 671-A of the Insurance Department Act of 1921 (40 P.S. §310.71).
5. The Company must review internal control procedures to ensure compliance with Section 410E of the Insurance Company Law of 1921 (40 P.S. §510d) pertaining to the “Free Look” provision requirements for annuity and pure endowment contracts.
6. The Company must review and revise internal control procedures to ensure compliance with the replacement requirements of Title 31, Pennsylvania Code, Section 81.
7. The Company must implement procedures to ensure compliance with the policy delivery receipt requirements of Section 404-A of the Insurance Company Law of 1921 (40 P.S. §625-4).
8. The Company must review internal control procedures to ensure compliance with disclosure requirements of Title 31, Pennsylvania Code, Chapter 83.
9. The Company must review internal control procedures to ensure compliance with illustration certification and delivery requirements of Section 408-A of the Insurance Company Law of 1921 (40 P.S. §625-8).

## **XII. COMPANY RESPONSE**

May 5, 2009

**VIA FEDERAL EXPRESS**

Mr. Daniel A. Stemcosky  
Market Conduct Division Chief  
Pennsylvania Insurance Department  
1321 Strawberry Square  
Harrisburg, PA 17120

Re: Transamerica Occidental Life Insurance Company  
(n/k/a Transamerica Life Insurance Company)  
Examination Warranty Number: 06-M27-043

Dear Mr. Stemcosky:

Please find enclosed the Transamerica Life Insurance Company response to the Report of Examination of Transamerica Occidental Life Insurance Company.

The response has been prepared in the same format as the Report of Examination.

Thank you for the opportunity to provide the response. I look forward to working with you to conclude the examination.

Very truly yours,



Mary J. Tresnak  
Associate General Counsel  
Vice President - Compliance

Enclosure

**RESPONSE OF  
TRANSAMERICA OCCIDENTAL LIFE INSURANCE COMPANY  
(n/k/a TRANSAMERICA LIFE INSURANCE COMPANY)**

**To**

**Report of Examination**

**Prepared by the Pennsylvania Insurance Department**

**Examination Warrant Number: 06-M27-043**

## **I. Introduction**

Transamerica Life Insurance Company (hereinafter “the Company”) does not have any comments regarding this section of the Report of Examination.

## **II. Scope of Examination**

The Company does not have any comments regarding this section of the Report of Examination.

## **III. Company History and Licensing**

The Company does not have any comments regarding this section of the Report of Examination.

## **IV. Advertising**

The Company does not have any comments regarding this section of the Report of Examination.

## **V. Forms**

In response to the allegation that the Company violated Pennsylvania Insurance Company Law, Section 354, the Company concurs that it could not locate a copy of the Department’s approval of form 1-006 11-159 that was filed with and approved by the Department in 1959. Please note that the Company discontinued using Form 1-006 11-159 in 2005. Please note that the scope of the examination is July 1, 2007 through June 30, 2008. The Company erroneously included the form on the list provided to the examiners. The Company respectfully requests that the allegation be removed from the Report of Examination as it is outside the scope of the examination.

In response to the allegation that the Company violated Pennsylvania Consolidated Statutes, Section 4117(k), the Company concurs that it accepted two applications which did not contain the required fraud notice. With regard to policy form APA 40-3307, a New Hampshire application was inadvertently used. With regard to policy form MPS 1-101, the form was inadvertently used and accepted by the Company instead of using filed form MPS 1-2701. A review of the records indicates the errors were a result of human mistake.

While the Company strives to be error free, occasionally a human error does occur. The Company respectfully submits that the two alleged violations are not a general business practice and is not reflective of its normal practices. In light of the allegations, the Company reinforced its forms verification procedures with New Business Department personnel.

## **VI. Producer Licensing**

In response to the two alleged violations of Insurance Department Act, 147, Section 671-A, the Company concurs that it inadvertently failed to file an appointment request with the state of Pennsylvania for one producer and submit appointment fees for another. These two alleged violations result in a 2% error ratio which is within the 10% error ratio set forth in the NAIC Market Conduct Examiners Handbook (2000). The Company respectfully submits that the two alleged violations do not constitute a general business practice. In light of the allegations, the Company took additional steps to eliminate errors that occur in its appointment processing. In the first quarter of 2009, a quality check review process was implemented.

## **VII. Consumer Complaints**

The Company concurs that in one instance it did not provide a reply to the complainant within 10 working days as required by Title 31, Pennsylvania Code, Section 146.5(c). This is not consistent with the Company's established complaint handling procedures and is not reflective of its normal practices. Appropriate training and communication with Company staff took place which emphasized compliance with Company procedures and the requirements of Title 31, Pennsylvania Code, Section 146.5(c).

## **VIII. Underwriting**

### **A. Underwriting Guidelines**

The Company does not have any comments regarding this section of the Report of Examination.

### **B. Group Universal Life**

The Company does not have any comments regarding this section of the Report of Examination.

### **C. Group Certificates Issued**

The Company does not have any comments regarding this section of the Report of Examination.

### **D. Individual Fixed Annuity Contracts**

Regarding the alleged violation of Insurance Company Law, Section 410(E)(a)(2), the Company concurs that in one instance it did not provide a 45 day "free look" statement on or with the contract for an internal replacement. The Division implemented a process to ensure that the 45 day "free look" statement is

provided on or with the contract as required by Insurance Company Law, Section 410(E)(a)(2) (40 P.S. §510d).

**E. Individual Term Life Policies**

Regarding the alleged violation of Title 31, Pennsylvania Code, Section 81.6(a)(1), the Company concurs that it accepted two applications which did not contain the producers' signed acknowledgements as to whether the producers knew a replacement may or may not be involved. A review of the records indicates that the 2 alleged violations occurred as a result of human error. The two alleged violations result in a 4% error ratio which is below the 10% error ratio set forth in the NAIC Market Conduct Examiners Handbook (2000). The Company respectfully submits that the alleged violations are not consistent with the Company's established replacement handling procedures and do not constitute a general business practice. The Company reinforced its replacement procedures with the New Business Department.

With regard to the alleged violation of Insurance Company Law, Section 404-A, the Company concurs that the date of delivery for the three policy files noted could not be determined. A review of the records indicates that the three alleged violations occurred as a result of human error. The three alleged violations result in a 6% error ratio which is below the 10% error ratio set forth in the NAIC Market Conduct Examiners Handbook (2000). The Company respectfully submits that the alleged violations do not reflect its general business practices. The Company reinforced its requirement for obtaining a signed delivery receipt with every policy with both Customer Service Department and its producers.

**F. Individual Universal Life Policies Issued**

With regard to the alleged violation of Title 31, Pennsylvania Code, Section 83.3(a)(4)(i), the Company concurs that the required disclosure statements did not contain the producers' telephone numbers and/or addresses in thirteen instances. The Company reinforced the requirement for including the producer's telephone number and address on the required disclosure statement with both the New Business Department and its producers.

In response to the alleged violation of Insurance Company Law, Section 404-A, the Company concurs that the delivery date of the policy could not be determined in one instance. A review of the records indicates the violation was a result of human error. The Company reminded the New Business Department staff and its producers of the requirement to obtain signed illustrations at the time of policy delivery.

In response to the alleged violations of Insurance Company Law, Section 408-A(e)(2)(iii), the Company concurs that the 6 files noted did not contain the signed certification and acknowledgement of the delivery of an illustration at the time of

the policy delivery. The Company reminded the New Business Department staff and its producers of the requirement to obtain signed illustrations at the time of policy delivery.

**G. Individual Variable Life Policies Issued**

The Company does not have any comments regarding this section of the Report of Examination.

**H. Individual Whole Life Policies Issued**

With regard to the alleged violation of Title 31, Pennsylvania Code, Section 83.3, the Company concurs that 3 files did not contain evidence that written disclosures were provided. The Company is developing procedures to ensure compliance with Title 31, Pennsylvania Code, Section 83.3.

With regard to the alleged violation of Title 31, Pennsylvania Code, Section 83.3(a)(4)(i), the Company concurs that in one instance the agent's telephone number and/or address were absent from the disclosure statement. The Company is developing procedures to ensure compliance with Title 31, Pennsylvania Code, Section 83.3.

**I. Individual Fixed Annuity Contracts Issued as Replacements**

With regard to the allegation that in one instance the Company violated Title 31, Pennsylvania Code, Section 81.6(a)(2)(ii), the Company concurs that the replacement letter to the existing carrier was sent one day late. A single violation does not constitute a general business practice. TCM (annuity division) staff were reminded of the requirements of Title 31, Pennsylvania Code, Section 81.6(a)(2)(ii). In addition, the correct procedures are maintained on Talisma, a TCM internal training knowledge management tool, which can be accessed by the staff.

With regard to the allegation that in one instance the Company violated Insurance Company Law, Section 410(E)(a)(2) (40 P.S. §510d) by failing to provide a 45 day "free look" statement for an internal replacement, on or with the contract the Company concurs. TCM (annuity division) implemented a process to ensure that the 45 day "free look" statement is provided on or with the contract as required by Insurance Company Law, Section 410(E)(a)(2) (40 P.S. §510d).

**J. Individual Term Life Policies Issued as Replacements**

With regard to the allegation that in two instances the Company violated Title 31, Pennsylvania Code, Section 81.6(a)(2)(ii) concurs that the replacement letter sent to the existing carrier was late or was not sent. The two allegations result in an 8% error ratio which is below the 10% error ratio set forth in the NAIC Market

Conduct Examiners Handbook (2000). The Company respectfully submits that the alleged violations do not reflect a general business practice. The Company reinforced its replacement procedures with the New Business Department.

**K. Individual Universal Life Policies Issued as Replacements**

With regard to the allegation that the Company violated Title 31, Pennsylvania Code, Section 81.6(a)(2)(ii), the Company concurs that in one instance the replacement letter to the existing company was not documented. The Company respectfully submits that this single violation does not reflect a general business practice. While the Company strives to prevent errors, occasionally human error does occur. The Company reinforced its replacement procedures with the New Business Department.

With regard to the allegation that the Company violated Title 31, Pennsylvania Code, Section 83.3(a) (4)(i), the Company concurs that in 5 instances the agents' telephone numbers and/or addresses were absent from the disclosure statement. The Company reinforced the requirement that a producer's telephone number and address are required on the disclosure statement with both the New Business Department and its producers.

**L. Individual Whole Life Policies Issued as Replacements**

With regard to the allegation that the Company violated Insurance Company Law, Section 404-A, the Company concurs that in one instance the verification of policy delivery could not be established. The Company respectfully submits that one alleged violation does not reflect a general business practice. The Company reinforced the requirement for obtaining a signed delivery receipt with every policy with both the Customer Service Department and its producers.

**M. Individual Universal Life Conversions**

With regard the alleged violation of Insurance Company Law, Section 408-A(e)(1)(ii), the Company concurs that in four instances it was unable to provide a signed certification and acknowledgement of the delivery of the "Revised Illustration" The Company reinforced the requirements regarding "Revised Illustrations" with both the Customer Service Department and its producers.

**IX. Internal Audit & Compliance Procedures**

The Company respectfully requests that the reference contained on Page 29 to "AEGON Financial Partners Division" be deleted and replaced with "Financial Partners Division" as this is the correct name of the division.

## **X. Claims**

### **A. Disability Claims Paid**

The Company does not have any comments regarding this section of the Report of Examination.

### **B. Fixed Annuity Claims Paid**

With regard to the allegation that the Company was in violation of Title 31, Pennsylvania Code, Section 146.5, the Company concurs that in 3 instances it failed to acknowledge receipt of a claim within 10 working days. The Company reinforced the requirements of Title 31, Pennsylvania Code Section 146.5 through training and communication with TCM (annuity division) claims staff.

With regard to the allegation that the Company was in violation of Title 31, Pennsylvania Code, Section 146.6, the Company concurs that in eleven instances it failed to provide a timely status letter. TCM (annuity division) amended its claims process and procedures, including internal controls, to ensure that status letters are sent in compliance with the requirements of Title 31, Pennsylvania Code, Section 146.6.

### **C. Long Term Care Claims Paid**

The Company's Long Term Care Division concurs with the single allegation that the Company failed to provide a notice of acceptance or denial of the claim within 15 working days. The one allegation results in a 2% error ratio which is below the 10% error ratio set forth in the NAIC Market Conduct Examiners Handbook (2000). In addition, the Company respectfully submits that a single alleged violation does not reflect a general business practice. The Company implemented several changes to improve its handling and monitoring of claims notices. The Long Term Care Division Claims Department is migrating from a paper based environment to an image based workflow environment. As a result, the current process includes a systematic batch process that automates the creation of the claims notice based on appropriate mail and system dates. The current process is monitored on a daily basis through management production reports. Additionally at the close of a claim, a quality review is performed which includes a review of the claim notice process.

Based on the examination recommendations, the Long Term Care Division undertook a review of its internal controls related to claims notices. It identified the following internal controls currently in place; production reporting; interdepartmental management reviews of production activity; established internal service level commitments that are at least as stringent as statutory requirements; and system activity reports.

**D. Term Life Claims Paid**

With regard to the alleged violation of Title 31, Pennsylvania Code, Section 146.6, the Company concurs that it failed to provide timely status letters in seven instances. The Company reminded the Claims Department staff of the requirements of Title 31, Pennsylvania Code, Section 146.6. In addition, the Company added an automated reminder on its claim system for the claim examiners to send status letters.

**E. Universal Life Claims Paid**

With regard to the alleged violation of Title 31, Pennsylvania Code, Section 146.6, the Company concurs that it failed to send timely status letters in seven instances. The Company reminded the Claims Department staff of the requirements of Title 31, Pennsylvania Code, Section 146.6. In addition, the Company added an automated reminder on its claim system for the claim examiners to send status letters. Lastly, the Company implemented the standards for claims status letters required by Section 146.6 on “second to die” policies.

With regard to the alleged violation of Title 31, Pennsylvania Code, Section 146.7, the Company concurs that in 2 instances it failed to provide a notice of acceptance or denial within 15 working days. The Company performed additional training for claims examiners.

**F. Variable Annuity Claims Paid**

The Company’s annuity division, TCM, concurs that in 2 instances it failed to acknowledge a claim within 10 working days as required by Title 31, Pennsylvania Code, Section 146.5. TCM’s procedures require that claims are acknowledged within 7 to 10 working days. The Company reinforced the requirements of Title 31, Pennsylvania Code Section 146.5 through training and communication with TCM (annuity division) claims staff.

TCM concurs that in 7 instances it failed to provide a timely status letter as required by Title 31, Pennsylvania Code, Section 146.6. TCM (annuity division) amended its claims process and procedures, including internal controls, to ensure that status letters are sent in compliance with the requirements of Title 31, Pennsylvania Code, Section 146.6.

**G. Whole Life Claims Paid**

With regard to the allegation that the Company was in violation of Title 31, Pennsylvania Code, Section 146.6, the Company concurs that in six instances it failed to provide a timely status letters. The Company reminded the Claims Department staff of the requirements of Title 31, Pennsylvania Code, Section

146.6. In addition, the Company added an automated reminder on its claim system for the claim examiners to send status letters.

**H. Fixed Annuity Claims Pending**

The Company's annuity division, TCM, concurs that in one instance it failed to acknowledge a claim within 10 working days as required by Title 31, Pennsylvania Code, Section 146.5. TCM's procedures require that claims are acknowledged within 7 to 10 working days. The Company reinforced the requirements of Title 31, Pennsylvania Code Section 146.5 through training and communication with TCM (annuity division) claims staff.

**I. Term Life Claims Pending**

With regard to the allegation that the Company was in violation of Title 31, Pennsylvania Code, Section 146.5, the Company concurs that in one instance it failed to acknowledge a claim. A review of the records indicates the violation was a result of human error. The Company reinforced the acknowledgment requirement with the Claims staff.

With regard to the allegation that the Company was in violation of Title 31, Pennsylvania Code, Section 146.6, the Company concurs that in ten instances it failed to provide a timely status letter. The Company reminded the Claims Department staff of the requirements of Title 31, Pennsylvania Code, Section 146.6. In addition, the Company added an automated reminder on its claim system for the claim examiners to send status letters.

**J. Universal Life Claims Pending**

With regard to the allegation that the Company was in violation of Title 31, Pennsylvania Code, Section 146.6, the Company concurs that in four instances it failed to provide a timely status letter. The Company reminded the Claims Department staff of the requirements of Title 31, Pennsylvania Code, Section 146.6. In addition, the Company added an automated reminder on its claim system for the claim examiners to send status letters. Lastly, the Company has implemented the same standards for claims status letter required by Section 146.6 on "second to die" policies.

**K. Variable Annuity Claims Pending**

TCM concurs that in six instances it failed to provide a timely status letter as required by Title 31, Pennsylvania Code, Section 146.6. TCM (annuity division) amended its claims process and procedures, including internal controls, to ensure that status letters are sent in compliance with the requirements of Title 31, Pennsylvania Code, Section 146.6.

## **L. Long Term Care Claims Denied**

The Company does not have any comments regarding this section of the Report of Examination

## **XI. Recommendations**

1. The Department's allegations regarding Title 31, Pennsylvania Code, Chapter 146 arose from three of the Company's operating divisions. Each division provided additional training and/or reminders of the Pennsylvania requirements to their respective Claims Department staff. One division implemented programming changes to its claims administration system to automatically generate reminders to claim staff.
2. The Department's allegations regarding Section 354 of the Insurance Company Law of 1921 (40 P.S. §477b) involved a single form that the Company's records indicate was filed with and approved by the Department in 1959. The form was discontinued in 2005 prior to the commencement of the examination.
3. All of the Company's Pennsylvania applications and claim forms contain the fraud notice set forth in Title 18, Pennsylvania Consolidated Statutes, Section 4117(k). The Department's allegations regarding Title 18, Pennsylvania Consolidated Statutes Section 4117 (k) involved two applications for other jurisdictions that were erroneously processed. The division reminded their respective New Business Department staff of the form verification procedures.
4. The Department's allegations regarding Section 671-A, of the Insurance Department Act of 1921 (40 P.S. §310.71) involved 2 producer records out of a random sample of 100 records resulting in an error ratio of 2%. The Company has systems and procedures in place to prevent insurance producers from acting on behalf of or as a representative of the Company unless appointed. In the first quarter of 2009, a quality check review process was implemented.
5. The Department's allegations regarding Section 410E of the Insurance Company Law of 1921 (40 P.S. §510d) involved a single fixed annuity contract administered by one operating division of the Company. The division implemented a process to ensure that the 45 day "free look" statement is provided on or with the annuity contract as required. The Company respectfully requests that the recommendation regarding pure endowment contracts be deleted as the Report of Examination does not contain any allegations involving pure endowment contracts.
6. The Department's allegations regarding Title 31, Pennsylvania Code, Section 81 involved six policy files from a total sample of 140 policy files (from two divisions) resulting in an error rate of 4.3%. Each division notified their respective New

Business Department staff of the requirements for processing replacements in the Commonwealth of Pennsylvania.

7. The Department's allegations regarding Section 404-A, of the Insurance Company Law of 1921 (40 P.S. §625-4) involved 5 policy files out of 123 individual life policy files reviewed resulting in an error ratio of approximately 4%. The Company reminded its Customer Service Department and its producers of the requirement to obtain a signed delivery receipt for each policy.
8. The Department's allegations regarding Title 31, Pennsylvania Code, Chapter 83 have been addressed by the operating division. The division reminded its New Business Department staff and its producers of the requirement to obtain a producer telephone numbers and addresses on the required disclosure.
9. The Department's allegations regarding Section 408-A, of the Insurance Company Law of 1921 (40 P.S. §625-8) have been addressed by the operating division. The division reminded its New Business Department staff and its producers of the requirement to obtain a signed illustration at the time of delivery.