



**COMMONWEALTH OF PENNSYLVANIA  
INSURANCE DEPARTMENT**

MARKET CONDUCT  
EXAMINATION REPORT

OF

**AMERICO FINANCIAL LIFE AND  
ANNUITY INSURANCE COMPANY**  
KANSAS CITY, MO

As of: November 10, 2011  
Issued: December 1, 2011

**BUREAU OF MARKET ACTIONS  
LIFE AND HEALTH DIVISION**

**AMERICO FINANCIAL & ANNUITY INSURANCE COMPANY**

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BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

ORDER

AND NOW, this 27<sup>th</sup> day of April, 2011, 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.



  
Michael F. Consedine  
Insurance Commissioner



## CONSENT ORDER

AND NOW, this 1<sup>st</sup> day of December, 2011, 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 Americo Financial Life and Annuity Insurance Company, and maintains its address at 300 West 11<sup>th</sup> Street, Kansas City, MO 64105.

- (b) A market conduct examination of Respondent was conducted by the Insurance Department covering the period from January 1, 2009 to December 31, 2009.
- (c) On November 10, 2011, the Insurance Department issued a Market Conduct Examination Report to Respondent.
- (d) A response to the Examination Report was provided by Respondent on November 17, 2011.
- (e) After consideration of the company's response, the Insurance Department has modified the Examination Report as attached.
- (f) 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 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;

(iii) Section 406-A of the Insurance Company Law, No. 284 (40 P.S. § 625-6),

Establishment of Internal Audit and Compliance Procedures:

(a) Every insurer shall institute and maintain internal audit and compliance procedures which provide 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. These procedures shall also provide for the following:

- (1) Periodic reviews of consumer complaints in order to identify 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 line of communication, control and responsibility over the dissemination of advertising and promotional materials,

including illustrations and illustration explanations, with the requirements 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 and sales.

- (b) Each insurer shall make available for department inspection upon request its internal audit and compliance procedures which are instituted as required by this section.
  
- (iv) 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;
  
- (v) Section 5(a)(7)(ii) of Act 205 (40 P.S. § 1171.5), (a) “Unfair Methods of Competition” and “Unfair or Deceptive Acts or Practices” in the business of insurance means: (7) Unfairly discriminating by means of:
  - (ii) Making or permitting any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy, fees or rates charged for any policy or contract of insurance or in the benefits payable there under, or in any of the terms or conditions of such contract, or in any manner whatever;

(vi) Sections 5(a)(10)(ii), (iii) and (v) of Act 205 (40 P.S. §1171.5(a)(10)(ii), (iii) and (v)), Unfair Methods of Competition and Unfair or Deceptive Acts or Practices in the business of insurance means any of the following acts, if committed or performed with such frequency as to indicate a business practice, shall constitute unfair claim settlement or compromise practices:

(ii) Failing to acknowledge and act promptly upon written or oral communications with respect to claims arising under insurance policies.

(iii) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies.

. . .

(v) Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed and communicated to the company or its representative;

(vii) Title 31, Pennsylvania Code, Section 81.4(b)(1), which states that if replacement is involved, the agent or broker shall present to the applicant, not later than at the time of taking the application, a Notice Regarding Replacement of Life Insurance and Annuities;

(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 81.6(c), which requires the replacing insurer to maintain evidence of the Notice Regarding Replacement of Life Insurance and Annuities;
- (x) Title 31, Pennsylvania Code, Sections 83.3(a)(1), (2), (3), (4), (5), (6) and (7), which requires a disclosure statement to be a document which shall describe the purpose and importance of the disclosure and describe the significant elements of the policy and riders being offered;
- (xi) 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;

(xii) Title 31, Pennsylvania Code, Section 83.55, which states: (a) The Surrender Comparison Index Disclosure shall be given as a separate document upon delivery of the policy or earlier if requested by the life insurance applicant. If requested earlier, the index disclosure shall be provided as soon as reasonably possible; and (b) A disclosure that is minimally satisfactory to the Insurance Department is set forth in Appendix B. If the Appendix B disclosure will be used, a letter to that effect, prior to use, is adequate notification to the Department for review prior to use;

(xiii) Title 31, Pennsylvania Code, Sections 83.55a and 83.55b, which (a) require the agent to submit to the insurer a statement, signed by him, certifying that the surrender comparison index disclosure was given upon delivery of the policy or earlier at the request of the life insurance applicant; and (b) the insurer shall maintain the agent's certification of surrender comparison index disclosure delivery in its appropriate files for at least 3 years or until the conclusion of the next succeeding regular examination by the insurance department of its domicile, whichever is later. The absence of the agent's certification from the files of the insurer shall constitute prima facie evidence that no surrender comparison index disclosure was provided to the prospective purchaser of life insurance;

- (xiv) Title 31, Pennsylvania Code, Section 146.5, which states 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. 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;
  
- (xv) 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;
  
- (xvi) 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
  
- (xvii) 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) Respondent’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) Respondent’s violations of Sections 404-A and 406-A of the Insurance Company Law, No. 284 (40 P.S. §§625-4 and 625-6) 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.

(d) Respondent's violations of Section 354 of the Insurance Company Law (40 P.S. §477b) are punishable by the following:

- (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.

(e) Respondent's violations of Sections 5(a)(7)(ii) and 5(a)(10)(ii), (iii) and (v) of the Unfair Insurance Practices Act, No. 205 (40 P.S. §§ 1171.5) are punishable by the following, 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.

- (f) In addition to any penalties imposed by the Commissioner for Respondent'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).
- (g) Respondent'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);

(h) Respondent'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.

(i) Respondent'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), as stated above.

#### 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 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 Thirty-Five Thousand Dollars (\$35,000.00) to the Commonwealth of Pennsylvania in settlement of all violations contained in the Report.

(d) Payment of this matter shall be made by check payable to the Commonwealth of Pennsylvania. Payment should be directed to Sharon L. Fraser, Bureau of Market Actions, 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: AMERICO FINANCIAL LIFE AND  
ANNUITY INSURANCE COMPANY,  
Respondent

  
\_\_\_\_\_  
President / Vice President

  
\_\_\_\_\_  
Secretary / Treasurer

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

## **I. INTRODUCTION**

The Market Conduct Examination was conducted on Americo Financial & Annuity Insurance Company; hereafter referred to as “Company,” at the Company’s office located in Kansas City, MO February 28, 2011, through August 19, 2011. 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.

Yonise A. Roberts Paige  
Market Conduct Division Chief

Lonnie L. Suggs  
Market Conduct Examiner

**Verification**

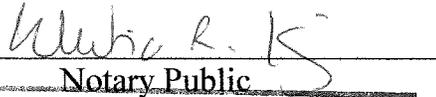
Having been duly sworn, I hereby verify that the statements made in the within document are true and correct to the best of my knowledge, information and belief. I understand that false statements made herein are subject to the penalties of 18 Pa. C.S. §4903 (relating to false swearing).



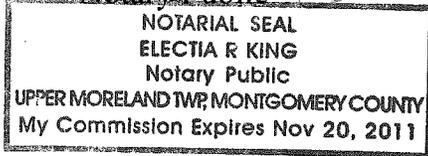
Lonnie L. Suggs  
Examiner-in- Charge

Sworn to and Subscribed Before me

This 2<sup>nd</sup> Day of October , 2011



Notary Public



## **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 January 1, 2009, through December 31, 2009, 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, Forms, Underwriting Practices and Procedures (1035 exchanges, surrenders and replacements), Claim Handling Practices and Procedures and Consumer Complaints.

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**

Americo Financial Life and Annuity Insurance Company (the Company) was incorporated July 1, 1946 and commenced business on July 25, 1946. At that time the Company was known as The College Life Insurance Company of America.

The Company was originally incorporated in the state of Indiana. The Company was redomesticated to the state of Texas in 1995. The current name was adopted in 2001.

The Americo group of companies acquired the Company on March 29, 1988. Operations continued in the Company's Indianapolis, Indiana location for a short period before being transferred to Americo's location in Kansas City, Missouri.

Americo Financial Life and Annuity Insurance Company is a stock company and is licensed in 48 states and the District of Columbia, Puerto Rico, the Cayman Islands and the U.S. Virgin Islands.

The Company markets through independent agents and independent marketing organizations. Products offered include traditional whole life, universal life, interest sensitive whole life, individual term and annuities.

As of the Annual Statement for the year 2009, Schedule T for Pennsylvania, the Americo Financial Life and Annuity Insurance Company reported direct premium for group and ordinary life insurance and annuities in the amount of \$8,693,693.00; and direct premium for accident and health in the amount of \$540.00.

#### **IV. ADVERTISING**

The Department, in exercising its discretionary authority requested, received and reviewed the Company's Advertising Certificate of Compliance. The certification was reviewed to ensure compliance with Title 31, Pennsylvania Code, Section 51.5. Section 51.5 provides that "A company required to file an annual statement which is now or which hereafter becomes subject to this chapter shall file with the Department with its Annual Statement a Certificate of Compliance executed by an authorized officer of the company wherein it is stated that to the best of his knowledge, information and belief the advertisements which were disseminated by the company during the preceding statement year complied or were made to comply in all respects with the provisions of the insurance laws and regulations of this Commonwealth." No violations were noted.

## V. 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 157 active producers and 583 terminated producers. A random sample of 25 producers each 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.

### **6 Violation – 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 producers as active; however, the Department records did not indicate their appointment.

<b>Last Name</b>	<b>First Name</b>	<b>Frequency</b>
Rupert	Thomas	1
Garrett	Dorothy	1
Heaverly	Bernard F.	2
Costabile	Richard A.	1
Arno	Andrew A.	1
Kootchick	Harold	1

**4 Violations –Insurance Department Act, No. 147, Section 641.1-A (40 P.S. §310.41a)**

- (a) Any insurance entity or licensee accepting applications or orders for insurance or securing any insurance business that was sold, solicited or negotiated by any person acting without an insurance producer license shall be subject to civil penalty of no more than \$5000 per violation in accordance with this act. This section shall not prohibit an insurer from accepting an insurance application directly from a consumer or prohibit the payment or receipt of referral fees in accordance with this act.
- (b) A person that violates this section commits a misdemeanor of the third degree.

The following individuals were listed as producers for the Company; however, the Department records did not identify the 4 individuals as holding a Pennsylvania insurance license during the experience period.

<b>Last Name</b>	<b>First Name</b>
Heybrock	Jeffrey
Romo	Miguel
Whitney	Catherine
Lilly	James

**Department Concern:**

The Department received and validated that non-licensed and/or non-appointed producers were paid commissions per the Company’s records.

## VI. 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. No violations were noted.

### **7 Violations – 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. Application forms not shown on the approved list of forms were found to have been used by the Company in the 7 noted files.

<b>Plan Type</b>	<b>Form No.</b>	<b>Frequency</b>
Traditional Whole Life	Rev11/06/2008	2
Traditional Whole Life	Rev 03/09/2009 Amgio	2
Traditional Whole Life	Rev 02/09/2009	1
Traditional Whole Life	Rev 08/19/2009	2

**7 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 required fraud statement was not found on the 7 application forms noted.

<b>Plan Type</b>	<b>Form No.</b>	<b>Frequency</b>
Traditional Whole Life	Rev11/06/2008	2
Traditional Whole Life	Rev 03/09/2009 Amgio	2
Traditional Whole Life	Rev 02/09/2009	1
Traditional Whole Life	Rev 08/19/2009	2

## **VII. UNDERWRITING**

The Underwriting review consisted of 22 general segments.

- A. Underwriting Guidelines
- B. Group Term Life Certificates Issued
- C. Individual Annuity Contracts Issued
- D. Individual Term Life Insurance Policies Issued (Mortgage)
- E. Individual Term Life Insurance Policies Issued
- F. Individual Universal Life Insurance Policies Issued
- G. Individual Traditional Whole Life Insurance Policies Issued
- H. Individual Annuities Contracts Issued as Replacements
- I. Individual Term Life Insurance Policies Issued as Replacements
- J. Individual Universal Life Insurance Policies Issued as Replacements
- K. Individual Whole Life Insurance Policies Issued as Replacements
- L. Individual Disability Insurance Policy Rescissions
- M. Individual Term Life Insurance Policy Rescissions
- N. Individual Universal Life Insurance Policy Rescissions
- O. Individual Waiver of Insurance Premium Rider Rescissions
- P. Individual Term Life Insurance Policy Conversions to Whole Life Policies
- Q. Individual Accidental Death Insurance Policy Declinations
- R. Individual Disability Insurance Policy Declinations
- S. Individual Term Life Insurance Policy Declinations
- T. Individual Universal Life Insurance Policy Declinations
- U. Individual Waiver of Insurance Premium Rider Declinations
- V. Individual Whole Life Insurance Policy Declinations

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 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.

The following Manuals and Guidelines were reviewed:

1. Swiss Re
2. General Re
3. ING Re
4. Field Underwriting Guideline 2009 edition:
  - Getting Your Application Placed
  - Underwriting Requirements
  - Underwriting Resources
  - Build Charts
  - Home Mortgage Series Underwriting
  - General Life Underwriting
  - Preferred Underwriting
  - Lifetime Legacy Underwriting
  - Ultra Protector Series Guidelines
  - General Underwriting Information
  - Critical Illness Rider Guidelines
  - Disability Illness Rider Guidelines
  - Disability Income Rider Impairment Guide
  - Disability Income Rider Occupational Guide
  - Single Impairment Guide
  - Combination Impairment Guide
  - Prescription Drug Guide

## **B. Group Term Life Insurance Certificates Issued**

The Company identified a universe of 20 group term life insurance certificates issued during the experience period. All 20 certificates issued were requested, received and reviewed. The files were reviewed to ensure compliance with Title 18, Pennsylvania Consolidated Statutes, Section 4117(k). No violations were noted.

## **C. Individual Annuity Contracts Issued**

The Company identified a universe of 58 individual annuity contracts issued during the experience period. All 58 individual annuity contracts issued were requested, received and reviewed. Annuity contracts were reviewed to determine compliance with issuance, and replacement statutes and regulations. No violations were noted.

## **D. Individual Term Life Insurance Policies Issued (Mortgage)**

The Company identified a universe of 812 individual term mortgage life insurance policies issued during the experience period. A random sample of 100 individual term mortgage life insurance policies issued, were 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:

### **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 untimely in the noted file.

**3 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 agents name, telephone number and/or address were absent from the disclosure statement in the 3 noted files.

**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 noted file.

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

The Company identified a universe of 91 individual term life insurance policies issued during the experience period. A random sample of 50 individual term life insurance policies issued were 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 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 agents telephone number and/or address were absent from the disclosure statement in the 2 noted files

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

The Company identified a universe of 8 universal life insurance policies issued during the experience period. All 8 universal life insurance policies issued were 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 83.3 (a)(1)(2)(3)(4)(5)(6)(7)**

A disclosure statement shall be a document which shall describe the purpose and importance of the disclosure and describe the significant elements of the policy and riders being offered. The disclosure statement was incomplete in the 2 noted files.

**2 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 agents telephone number and/or address were absent from the disclosure statement in the 2 noted files.

**8 Violations – Title 31, Pennsylvania Code, Section 83.55**

a) The Surrender Comparison Index Disclosure shall be given as a separate document upon delivery of the policy or earlier if requested by the life insurance applicant. If requested earlier, the index disclosure shall be provided as soon as reasonably possible.

b) A disclosure that is minimally satisfactory to the Insurance Department is set forth in Appendix B. If the Appendix B disclosure will be used, a letter to that effect, prior to use, is adequate notification to the Department for review prior to use. The required Surrender Comparison Index Disclosure was not evident in the 8 noted files.

**8 Violations–Titles 31, Pennsylvania Code, Sections 83.55a and 83.55b**

a) The agent shall submit to the insurer a statement, signed by him, certifying that the surrender comparison index disclosure was given upon delivery of the policy or earlier at the request of the life insurance applicant.

b) The insurer shall maintain the agent’s certification of surrender comparison index disclosure delivery in its appropriate files for at least 3 years or until the conclusion of the next succeeding regular examination by the insurance department of its domicile, whichever is later. The absence of the agent's certification from the appropriate files of the insurer shall constitute prima facie evidence that no surrender comparison index disclosure was provided to the prospective purchaser of life insurance.

The agent delivered the following policies. The agent’s certification of the surrender comparison index disclosure delivery was not evident in the 8 noted files.

## **G. Individual Traditional Whole Life Insurance Policies Issued**

The Company identified a universe of 320 traditional whole life insurance policies issued during the experience period. A random sampling of 50 traditional whole life insurance policy files 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:

### **25 Violations - Title 31, Pennsylvania Code, Section 83.3 (a)(1)(2)(3)(4)(5)(6)(7)**

A disclosure statement shall be a document which shall describe the purpose and importance of the disclosure and describe the significant elements of the policy and riders being offered. The disclosure statements were incomplete or inaccurate in the 25 noted files.

### **3 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 agents telephone number and/or address were absent from the disclosure statement in the 3 noted files.

### **49 Violations – Title 31, Pennsylvania Code, Section 83.55**

(a) The Surrender Comparison Index Disclosure shall be given as a separate document upon delivery of the policy or earlier if requested by the life insurance applicant. If requested earlier, the index disclosure shall be provided as soon as reasonably possible.

(b) A disclosure that is minimally satisfactory to the Insurance Department is set forth in Appendix B. If the Appendix B disclosure will be used, a letter to that effect, prior to use, is adequate notification to the Department for review prior to use. The Cost

Surrender Comparison Index Disclosure Statement was not evident in the 49 noted files.

**49 Violations—Title 31, Pennsylvania Code, Sections 83.55a and 83.55b**

a) The agent shall submit to the insurer a statement, signed by him, certifying that the surrender comparison index disclosure was given upon delivery of the policy or earlier at the request of the life insurance applicant.

b) The insurer shall maintain the agent's certification of surrender comparison index disclosure delivery in its appropriate files for at least 3 years or until the conclusion of the next succeeding regular examination by the insurance department of its domicile, whichever is later. The absence of the agent's certification from the appropriate files of the insurer shall constitute prima facie evidence that no surrender comparison index disclosure was provided to the prospective purchaser of life insurance.

The agent delivered the following policies. The agent's certification of the surrender comparison index disclosure delivery was not evident in the 49 noted files.

**H. Individual Annuity Contract Issued as Replacement Policies**

The Company identified a universe of 20 individual annuity contracts issued as replacement policies during the experience period. All 20 individual annuity contracts issued as replacement policies files were requested, received, and reviewed. The annuity replacement files were reviewed to determine compliance to issuance, underwriting, and replacement statutes and regulations. The following violations were noted:

**5 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 external replaced Company was untimely in the 5 noted files.

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

The Company identified a universe of 14 term life policies issued as replacements during the experience period. All 14 term life policies issued as replacement were requested, received and reviewed. The term life insurance replacement policy 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 81.4(b)(1)**

If replacement is involved, the agent or broker shall: present to the applicant, not later than at the time of taking the application, a Notice Regarding Replacement of Life Insurance and Annuities. The replacement form was not evident in the noted file.

**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 external replaced company was untimely in the noted file.

**1 Violation - Title 31, Pennsylvania Code, Section 81.6(c)**

The replacing insurer shall maintain evidence of the Notice Regarding Replacement of Life Insurance and Annuities. A copy of the required notice of replacement was not evident in the noted file.

**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 noted file.

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

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

### **5 Violations – Title 31, Pennsylvania Code, Section 83.55**

(a) The Surrender Comparison Index Disclosure shall be given as a separate document upon delivery of the policy or earlier if requested by the life insurance applicant. If requested earlier, the index disclosure shall be provided as soon as reasonably possible.

(b) A disclosure that is minimally satisfactory to the Insurance Department is set forth in Appendix B. If the Appendix B disclosure will be used, a letter to that effect, prior to use, is adequate notification to the Department for review prior to use. The required Surrender Comparison Index Disclosure was not evident in the 5 noted files.

### **5 Violations–Title 31, Pennsylvania Code, Sections 83.55a and 83.55b**

a) The agent shall submit to the insurer a statement, signed by him, certifying that the surrender comparison index disclosure was given upon delivery of the policy or earlier at the request of the life insurance applicant.

b) The insurer shall maintain the agent's certification of surrender comparison index disclosure delivery in its appropriate files for at least 3 years or until the conclusion of

the next succeeding regular examination by the insurance department of its domicile, whichever is later. The absence of the agent's certification from the appropriate files of the insurer shall constitute prima facie evidence that no surrender comparison index disclosure was provided to the prospective purchaser of life insurance. The required agent's certification of the surrender comparison index disclosure delivery was not evident in the 5 noted files.

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

The Company identified a universe of 15 whole life insurance policies issued as replacement coverage during the experience period. All 15 whole life insurance replacement policy files were requested, received and reviewed. The whole life insurance replacement policy 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 81.4(b)(1)**

If replacement is involved, the agent or broker shall: present to the applicant, not later than at the time of taking the application, a Notice Regarding Replacement of Life Insurance and Annuities. The replacement form post dated the application date in the noted file.

#### **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 untimely in the noted file.

**1 Violation -Title 31, Pennsylvania Code, Section 83.3(a)(1)(2)(3)(4)(5)(6)(7)**

A disclosure statement shall be a document which shall describe the purpose and importance of the disclosure and describe the significant elements of the policy and riders being offered. The disclosure statement was incomplete in the noted file.

**15 Violations – Title 31, Pennsylvania Code, Section 83.55**

(a) The Surrender Comparison Index Disclosure shall be given as a separate document upon delivery of the policy or earlier if requested by the life insurance applicant. If requested earlier, the index disclosure shall be provided as soon as reasonably possible.

(b) A disclosure that is minimally satisfactory to the Insurance Department is set forth in Appendix B. If the Appendix B disclosure will be used, a letter to that effect, prior to use, is adequate notification to the Department for review prior to use. The required surrender comparison index disclosure delivery was not evident in the 15 noted files.

**15 Violations –Title 31, Pennsylvania Code, Sections 83.55a and 83.55b**

a) The agent shall submit to the insurer a statement, signed by him, certifying that the surrender comparison index disclosure was given upon delivery of the policy or earlier at the request of the life insurance applicant.

b) The insurer shall maintain the agent's certification of surrender comparison index disclosure delivery in its appropriate files for at least 3 years or until the conclusion of

the next succeeding regular examination by the insurance department of its domicile, whichever is later. The absence of the agent's certification from the appropriate files of the insurer shall constitute prima facie evidence that no surrender comparison index disclosure was provided to the prospective purchaser of life insurance. The required agent's certification of the surrender comparison index disclosure delivery was not evident in the 15 noted files.

**1 Violation– Insurance Company Law, Section 406-A (40 P.S. §625-6)**

No alteration of any written application for a life insurance policy or annuity shall be made by any person other than the applicant without the applicant's written consent. The file noted contained an alterations without evident of the applicant's written consent.

**L. Individual Disability Insurance Policy Rescissions**

The Company was requested to provide a list of all policies rescinded during the experience period. The Company identified 4 disability insurance policies rescinded during the period. A rescinded policy is a policy that was issued and the company terminates the contract and returns all premium paid from the policy effective date to the insured. All 4 rescinded disability insurance policy files were requested, received and reviewed. The rescinded disability insurance policy files were reviewed to ensure compliance with contract provisions, termination laws and regulations, proper return of premium and a valid reason for rescission. No violations were noted.

### **M. Individual Term Life Insurance Policy Rescissions**

The Company was requested to provide a list of all policies rescinded during the experience period. The Company identified 5 term life insurance policies rescinded during the period. A rescinded policy is a policy that was issued and the company terminates the contract and returns all premium paid from the policy effective date to the insured. All 5 rescinded term life policies were requested, received and reviewed. The rescinded term life insurance policy files were reviewed to ensure compliance with contract provisions, termination laws and regulations, proper return of premium and a valid reason for rescission. No violations were noted.

### **N. Individual Universal Life Insurance Policy Rescissions**

The Company was requested to provide a list of all policies rescinded during the experience period. The Company identified 1 universal life insurance policy rescinded during the period. A rescinded policy is a policy that was issued and the company terminates the contract and returns all premium paid from the policy effective date to the insured. The rescinded universal life policy file was requested, received and reviewed. The rescinded universal life insurance policy file was reviewed to ensure compliance with contract provisions, termination laws and regulations, proper return of premium and a valid reason for rescission. No violations were noted.

### **O. Individual Waiver of Insurance Premium Rider Rescissions**

The Company was requested to provide a list of all rescissions during the experience period. The Company identified 1 waiver of premium rider rescinded during the

period. A rescinded rider is an endorsement to a policy that was issued and the company terminates the rider and returns all premium paid from the rider effective date to the insured. The rescinded waiver of premium policy file was requested, received and reviewed. The waiver of premium rider file was reviewed to ensure compliance with contract provisions, termination laws and regulations, proper return of premium and a valid reason for rescission. No violations were noted.

### **P. Individual Term Life Insurance Conversions to Whole Life Policies**

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

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

When the producer delivers the individual policy or annuity to the policyholder 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 or proof of mailing could not be established in the 4 noted files.

### **Q. Individual Accidental Death Insurance Policy Declinations**

The Company was requested to provide a list of all policies declined during the experience period. The Company identified 1 individual accidental death insurance policy declined during the period. The declined individual accidental death insurance policy file was requested, received, and reviewed. The declined accidental death insurance policy file was reviewed to ensure declinations were not the result of any discriminatory underwriting practice and the proper return of any unearned premium. No violations were noted.

### **R. Individual Disability Insurance Policy Declinations**

The Company was requested to provide a list of all policies declined during the experience period. The Company identified 30 individual disability insurance policies declined during the period. All 30 declined individual disability insurance policy files were requested, received, and reviewed. The declined disability insurance policy files were reviewed to ensure the declinations were not the result of any discriminatory underwriting practice and that there was proper return of any unearned premium. No violations were noted.

### **S. Individual Term Life Insurance Policy Declinations**

The Company was requested to provide a list of all policies declined during the experience period. The Company identified 109 individual term life insurance policies declined during the period. All 109 declined individual term life insurance policy files were requested, received, and reviewed. The declined term life insurance policy files were reviewed to ensure declinations were not the result of any discriminatory underwriting practice and the proper return of any unearned premium. No violations were noted.

### **T. Individual Universal Life Insurance Policy Declinations**

The Company was requested to provide a list of all policies declined during the experience period. The Company identified 2 universal life insurance policies declined during the period. Both declined universal life insurance policy files were requested, received, and reviewed. The declined universal life insurance policy files were reviewed to ensure declinations were not the result of any discriminatory underwriting practice and the proper return of any unearned premium. No violations were noted.

### **U. Individual Waiver of Insurance Premium Rider Declinations**

The Company was requested to provide a list of all declinations during the experience period. The Company identified 3 individual waiver of premium insurance riders declined during the period. All 3 declined waiver of premium insurance riders were requested, received, and reviewed. The declined waiver of premium rider files was

reviewed to ensure declinations were not the result of any discriminatory underwriting practice and for the proper return of any unearned premium. No violations were noted.

#### **V. Individual Whole Life Insurance Policy Declinations**

The Company was requested to provide a list of all policies declined during the experience period. The Company identified 53 whole life insurance policies declined during the period. All 53 declined whole life insurance policy files were requested, received, and reviewed. The declined whole life insurance policy files were reviewed to ensure declinations were not the result of any discriminatory underwriting practice and the proper return of any unearned premium. No violations were noted.

## **VIII. CLAIMS**

The claims review consisted of a review of the Company's claims 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 the following claims manual material:

### 1. Claims Manual

- Americo Claims Guidelines
- Overview of the Claims Examination Process
- Claims Investigation
- Contestable Claims Guidelines
- Suspend the policy
- Unfair Claims Practices
- Accidental Death Benefit Claim
- Homicide Claims
- Disappearance Claims
- No policy found
- Adverse Claimants
- Paying a Death Claim
- Foreign Death Processing Guidelines
- Foreign Death Claim Payment Process
- Disability Notification Process
- Disability Claims Overview
- Disability Claim Payment
- Unclaimed Fund Procedures
- Reinsurance
- Reporting Suspected Fraud
- Privacy Procedures
- Claims Anti – Money Laundering Guidelines
- Pennsylvania Guidelines

### 2. Customer Service Claims Register Guide

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 8 areas:

A.	Annuity Claims
B.	Term Life Insurance Claims Denied
C.	Term Life Insurance Claims Paid
D.	Universal Life Insurance Claims
E.	Whole Life Insurance Claims
F.	Whole Life Insurance Claims (Liberty)
G.	Waiver of Insurance Premium Disability Claims
H.	Waiver of Insurance Premium Unemployment Claims

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. Annuity Claims**

The Company was requested to provide a list of all annuity claims received during the experience period. The Company identified a universe of 20 annuity claims. All 20 annuity claim files were requested, received and reviewed. The claim files were reviewed for compliance with Title 31, Pennsylvania Code, Chapter 146. No violations were noted.

## **B. Term Life Insurance Claims Denied**

The Company was requested to provide a list of all claims denied during the experience period. The Company identified a universe of 5 term life insurance claims denied. All 5 term life insurance claim files denied 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. Of the five (5) term life insurance claim files, three (3) files were identified as rescissions and two (2) files were identified as denials. No violations were noted.

## **C. Term Life Insurance Claims Paid**

The Company was requested to provide a list of all claims received during the experience period. The Company identified a universe of 8 term life insurance claims received. All 8 term life insurance claims 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). The following violations were noted:

### **2 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. Verification of a timely status letter could not be established in the 2 noted files.

**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 insurer shall advise the first-party claimant of the acceptance or denial of the claim. Verification of acceptance or denial within 15 working days could not be established in the noted file.

**2 Violations – Act 205, Section 5 (40 P.S. §1171.5)(a)(10)(iii)(v)**

(a) “Unfair Methods of Competition” and “Unfair or Deceptive Acts or Practices” in the business of insurance means:

(10) Any of the following acts if committed or performed with such frequency as to indicate a business practice shall constitute unfair claim settlement or compromise practices:

(iii) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies.

(v) Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed and communicated to the company or its representative.

The acts listed as part of the “Unfair Methods of Competition” and/or “Unfair or Deceptive Acts or Practices”, was found to apply a total of 3 times in the 2 noted files.

## **D. Universe Life Insurance Claims**

The Company was requested to provide a list of claims received during the experience period. The Company identified 5 universal life insurance claims received during the period. All 5 universal life insurance claim files 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). No violations were noted.

## **E. Whole Life Insurance Claims**

The Company was requested to provide a list of claims received during the experience period. The Company identified 48 whole life insurance claims received. All 48 whole life insurance claim files 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). The following violations were noted:

### **2 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. Verification of a timely status letter could not be established in the 2 noted files.

## **F. Whole Life Insurance Claims (Liberty)**

The Company was requested to provide a list of claims received during the experience period. The Company identified 114 whole life insurance claims received. All 114 whole life insurance claims 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). The following violations were noted:

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

#### **Failure to acknowledge pertinent communications**

- (a) Every insurer, upon receiving notification of a claim, shall, within 10 working days, acknowledge the receipt of the notice unless payment is made within the period of time. If an acknowledgment is made by means other than writing, an appropriate notation of the acknowledgment shall be made in the claim file of the insurer and dated. Notification given to an agent of an insurer shall be notification to the insurer, dating from the time the insurer receives notice.
- (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 or other pertinent communications from a claimant who reasonably suggests that a response is expected.
- (d) Every insurer, upon receiving notification of claim, shall provide within 10 working days necessary claim forms, instructions and reasonable assistance so that first-party claimants can comply with the policy conditions and reasonable requirements of the insurer. Compliance with this subsection within 10 working days of notification of a claim shall constitute compliance with subsection (a).

Verification the company acknowledged the claim within 10 working days could not be established in the noted claim file.

**1 Violation - 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. Verification of a timely status letter could not be established in the noted file.

**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 insurer shall advise the first-party claimant of the acceptance or denial of the claim. Verification of acceptance or denial within 15 working days could not be established in the noted file.

**G. Waiver of Insurance Premium Disability Claims**

The Company was requested to provide a list of all claims received during the experience period. The Company identified a universe of 8 waiver of premium disability claim files during the experience period. All 8 waiver of premium disability claim files were requested, received and reviewed. The claim files were reviewed for compliance with Title 31, Pennsylvania Code, Chapter 146. The following violations were 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 insurer shall advise the first-party claimant of the acceptance or denial of the claim. Verification of acceptance or denial within 15 working days could not be established in the noted file.

**1 Violation – Act 205, Section 5 (40 P.S. §1171.5 (a)(7)(ii))**

(a) “Unfair Methods of Competition” and “Unfair or Deceptive Acts or Practices” in the business of insurance means: (7) Unfairly discriminating by means of:

(ii) "Unfair Methods of Competition" and "Unfair or Deceptive Acts or Practices" in the business of insurance means: Making or permitting any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy, fees or rates charged for any policy or contract of insurance or in the benefits payable there under, or in any of the terms or conditions of such contract, or in any manner whatever. The Company failed to waive and refund the premium upon achieving the required 181 days of continued disability in the noted file.

**1 Violation – Act 205, Section 5 (40 P.S. §1171.5 (a)(10)(v))**

(a) “Unfair Methods of Competition” and “Unfair or Deceptive Acts or Practices” in the business of insurance means:

(10) Any of the following acts if committed or performed with such frequency as to indicate a business practice shall constitute unfair claim settlement or compromise practices:

(v) Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed and communicated to the company or its representative. The Company failed to waive and refund the premium upon achieving the required 181 days of continued disability in the noted file.

## **H. Waiver of Insurance Premium Unemployment Claims**

The Company was requested to provide a list of all claims received during the experience period. The Company identified a universe of 13 waiver of insurance premium unemployment claims. All 13 waiver of insurance premium unemployment claims were requested, received and reviewed. The files were reviewed for compliance with Title 31, Pennsylvania Code, Chapter 146. No violations were noted.

## **IX. CONSUMER COMPLAINTS**

The Company was requested to identify all consumer complaints received during the experience period and provide copies of consumer complaint logs for 2005, 2006, 2007, 2008 and 2009. The Company identified 10 consumer complaints received during the experience period. All 10 complaint files were requested, received, and reviewed. The company also 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, PA Code, Section 146.5(b) and 146.5(c), Unfair Claims Settlement Practices. No violations were noted.

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

The Company was requested to provide copies of their internal audit and compliance procedures utilized during the experience period. 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. 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 and revise internal control procedures to ensure compliance with the replacement requirements of Title 31, Pennsylvania Code, Chapter 81.
2. The Company must review internal control procedures to ensure compliance with disclosure requirements of Title 31, Pennsylvania Code, Chapter 83.
3. The Company must review and revise Licensing procedures to ensure compliance with Sections 641.1-A and Section 671-A of the Insurance Department Act of 1921 (40 P.S. §§310.41a and 310.71).
4. 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).
5. The Company must review internal control procedures to ensure compliance with application alteration requirements of Section 406-A of the Insurance Company Law of 1921 (40 P.S. §625-6).
6. The Company must review and revise internal control procedures to ensure compliance with requirements of Title 31, Pennsylvania Code, Chapter 146, Unfair Claims Settlement Practices.
7. The Company must implement procedures to ensure compliance with the fraud statement notice requirements of Title 18, Pennsylvania Consolidated Statutes, Section 4117(k).
8. The Company must implement procedures to ensure compliance with the requirements of Insurance Department Act of 1921 “Unfair Methods of Competition” and “Unfair or Deceptive Acts or Practices” in the business of insurance – Act 205, Section 5 (40 P.S. §1171.5)
9. The Company must implement procedures to ensure compliance with Insurance Company Law, Section 354 (40 P.S. §477b)

## **XII. COMPANY RESPONSE**

November 10, 2011

Yonise Roberts Paige, Chief  
Pennsylvania Insurance Department  
Life, Accident and Health Division  
Market Actions Bureau  
1227 Strawberry Square  
Harrisburg, Pennsylvania 17120

Re: Americo Financial Life and Annuity Insurance Company  
Market Conduct Examination Report ("Report")  
Examination Warrant Number: 11-M11-064

Dear Ms. Paige:

Americo Financial Life and Annuity Insurance Company ("AFLAIC") accepts the above referenced report covering the examination period of January 1, 2009 through December 31, 2009. Please note, however, that subsequent to the issuance of the Report, one violation was removed in Section VII, K, Individual Whole Life Policies Issued as Replacements, Title 31, Pennsylvania Code, Section 81.6 (a)(2)(ii).

Below is a summary of our remediation plan to each of the recommendations outlined in the report. AFLAIC is committed to full compliance with the Commonwealth's requirements.

**1. The Company must review and revise internal control procedures to ensure compliance with the replacement requirements of Title 31, Pennsylvania Code, Chapter 81.**

The Company's investigation revealed that replacement procedures were in place, but were inadvertently overlooked in a few instances. Additional training has been provided to New Business associates to ensure compliance with Pennsylvania replacement requirements. This training will be repeated quarterly.

Twice weekly control reporting has also been implemented to monitor compliance with replacement regulations. The control report will validate the appropriate replacement form has been received and notification has been forwarded to the existing insurer.

To further strengthen our control process, new reports and control functions are planned for implementation in early 2012.

2. **The Company must review internal control procedures to ensure compliance with disclosure requirements of Title 31, Pennsylvania Code, Chapter 83.**

We have determined that the Company had procedures in place that required completion of this disclosure. However, AFLAIC will be taking steps to address gaps in compliance with complete and accurate completion of the disclosure.

A communication and training piece will be sent to all Pennsylvania agents outlining the requirements and instructions on how to properly complete this form. Detailed instructions will also be available on AFLAIC's agent website. AFLAIC's insurance software will be updated to require that agents input all contact information before the form can be printed.

New procedures are being written that will require New Business associates to carefully review each disclosure form for completeness and accuracy. New Business associates will be trained on these procedures and training repeated on a quarterly basis.

3. **The Company must review and revise Licensing procedures to ensure compliance with Sections 641.1-A and Section 671-A of the Insurance Department Act of 1921 (40 P.S. §§310.41a and 310.71).**

Our investigation revealed that licensing and contracting procedures were in place, but found the violations were a result of human error. An audit of our current appointment, appointment termination, and renewal processes has identified opportunities for improvement in our processes. As a result, procedures have been modified and new control reporting has been implemented as follows:

**Weekly Reports:** New Appointments and Appointment Termination - A report is run weekly to identify any agents who were recently terminated or appointed in the Commonwealth. That report is used to validate whether an appointment or appointment termination transaction was processed. If an appointment or appointment termination is needed, one will be requested at that time. The results of the review will be documented for audit reviews.

**Appointment Renewal:** Appointment Reconciliation - During the pre-term period a listing is pulled that includes all agents who are shown to be active with the Commonwealth. A report is then run using records of all agents who show an active license record. That information is reconciled against the list from PBD. That information is then used to determine whether an appointment or appointment termination request needs to be submitted to ensure we are in compliance. The results of the review will be documented for audit reviews.

**NIPR Alerts:** License Reconciliation - All active agents in our system will be uploaded to the NIPR Database on a weekly basis. This will allow us to receive daily automated e-mails from NIPR of any agents whose license status has changed. This information will be electronically validated against our database to determine the appropriate action to take. This process will allow us to maintain accurate license and appointment information on our active sales force. The results of the review will be documented for audit reviews.

**Internal Audit Review:** A monthly audit will be completed by management to review and validate a sampling of the results from each of the above License and Appointment processes. The results of the review will be documented, gaps addressed, procedures updated, staff communicated to, and sign-off provided.

4. **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).**

Our investigation revealed that policy delivery receipt procedures were in place to meet Pennsylvania requirements, but found the violations were a result of inadvertent human error.

Additional training has been provided to New Business associates to ensure compliance with Pennsylvania policy delivery requirements. This training will be repeated quarterly. In addition, we will be sending a communication to all licensed Pennsylvania agents reminding them of the importance of the delivery receipt and how to properly deliver the policy.

5. **The Company must review internal control procedures to ensure compliance with application alteration requirements of Section 406-A of the Insurance Company Law of 1921 (40 P.S. §625-6).**

The Company has procedures that require associates to review all applications for changes or alterations and require the change be initialed. This violation was the result of an oversight. Additional training will be provided to New Business associates to strengthen compliance with AFLAIC procedures.

6. **The Company must review and revise internal control procedures to ensure compliance with requirements of Title 31, Pennsylvania Code, Chapter 146, Unfair Claims Settlement Practices.**

Our investigation revealed that claims procedures were in place to meet Pennsylvania requirements and found the violations were a result of inadvertent human error. Additional training has been provided to Claims associates to ensure compliance with Pennsylvania claims requirements. This training will be repeated quarterly.

Liberty has been contacted and counseled regarding the violations. We have requested and received their remediation response. Liberty has claims procedures in place that meet Pennsylvania requirements and will provide additional training with associates regarding claims processes.

7. **The Company must implement procedures to ensure compliance with the fraud statement notice requirements of Title 18, Pennsylvania Consolidated Statutes, Section 4117(k).**

AFLAIC company practice does not allow form changes without management and filing approval. This was an isolated incident outside of the scope of company policies and procedures. We have tightened our control processing and additional associate training has been provided.

8. **The Company must implement procedures to ensure compliance with the requirements of Insurance Department Act of 1921 “Unfair Methods of Competition” and “Unfair or Deceptive Acts or Practices” in the business of insurance – Act 205, Section 5 (40 P.S. §1171.5)**

AFLAIC acknowledges claims violations due to human processing error. We have provided additional associate training. We have also reviewed our procedures and confirmed they are in line with Pennsylvania requirements.

AFLAIC would like to note that because of the small sampling size and the categorization method used during the exam, even a single oversight resulted in a high percentage of errors. For example, in the “Waiver of Insurance Premium Disability Claims” Section there were 8 claims reviewed. Out of those 8 claims reviewed, 1 was noted as a violation. Because the percentage is greater than 7%, it was identified as an unfair claim practice, even though it was a single violation.

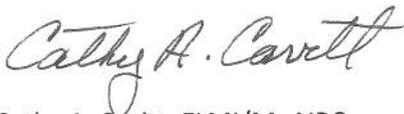
Since all claims are processed identically at AFLAIC, we believe that considering the entire claims sample population is a more appropriate way to determine a percentage. Using this methodology, there were 221 total claims and 9 violations on a total of 7 policies, which is a 4% error rate.

9. **The Company must implement procedures to ensure compliance with Insurance Company Law, Section 354 (40 P.S. §477b)**

As stated in #7 above, these violations were a result of an isolated incident. Controls have been tightened and additional associate training has been provided.

We appreciate the opportunity to respond to the recommendations. AFLAIC values our relationship with the Pennsylvania Department of Insurance and our consumers in the Commonwealth. We strive to maintain the highest standard of compliance with insurance statutes and regulations.

Sincerely,



Cathy A. Cavitt, FLMI/M, AIRC  
Vice- President, Compliance  
Americo Life, Inc.