



**COMMONWEALTH OF PENNSYLVANIA  
INSURANCE DEPARTMENT**

MARKET CONDUCT  
EXAMINATION REPORT

OF

**PENN MUTUAL LIFE INSURANCE  
COMPANY**

**PENN INSURANCE AND ANNUITY  
COMPANY**

Horsham, PA

As of: May 18, 2015  
Issued: July 28, 2015

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

**Verification**

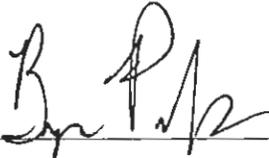
Having been duly sworn, I hereby verify that the statements made in the within document are true and correct to the best of my knowledge, information and belief. I understand that false statements made herein are subject to the penalties of 18 Pa. C.S. §4903 (relating to false swearing).



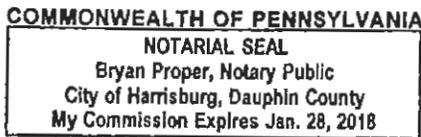
\_\_\_\_\_  
Gary L. Boose LUTC, MCM, Examiner-In-Charge

Sworn to and Subscribed Before me

This 28th Day of April, 2015



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



**PENN MUTUAL LIFE INSURANCE COMPANY**  
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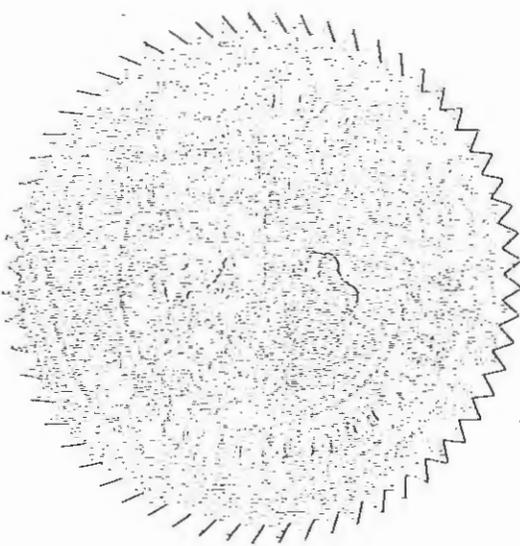
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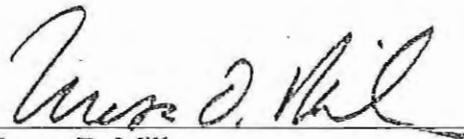
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BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

ORDER

AND NOW, this 21<sup>st</sup> day of JAN., 2015, 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 Arthur F. McNulty, 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.





Teresa D. Miller  
Acting Insurance Commissioner

BEFORE THE INSURANCE COMMISSIONER  
OF THE  
COMMONWEALTH OF PENNSYLVANIA

IN RE:	:	VIOLATIONS:
	:	
PENN MUTUAL LIFE	:	40 P.S. §§323.3 and 323.4(b)
INSURANCE COMPANY	:	
PENN INSURANCE AND	:	40 P.S. §310.71(c)
ANNUITY COMPANY	:	
600 Dresher Road	:	40 P.S. §§477b, 625-4, 625-6
Horsham, PA 19044	:	625-8(c)(4)(ii), 625-8(e)(1)(i),
	:	625-8(e)(1)(ii), 625-8(e)(3)(ii),
	:	627-3(b), 510d(a)(2) and 510d(a)(3)
	:	
	:	31 Pa Code §§81.4(b)(1), 81.5(b)
	:	81.6(a)(1), 81.6(a)(2)(ii), 81.6(c)
	:	83.3, 83.4(a) and 83.55(a)
	:	
	:	
Respondent.	:	Docket No. MC15-07-003

CONSENT ORDER

AND NOW, this 22<sup>th</sup> day of July, 2015, 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. Respondents hereby admit and acknowledge that they have received proper notice of their rights to a formal administrative hearing pursuant to the Administrative Agency Law, 2 Pa.C.S. § 101, et seq., or other applicable law.

2. Respondents hereby waive all rights to a formal administrative hearing in this matter, and agree 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.

3. Respondents neither admit nor deny the Findings of Fact or Conclusions of Law contained herein. No acts by Respondents are alleged to be violations of Pennsylvania law in the referenced provisions were the result of any conscious policy to evade the requirements of Pennsylvania law.

FINDINGS OF FACT

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

- (a) Respondents are Penn Mutual Life Insurance Company and Penn Insurance and Annuity Company, and maintain their address at 600 Dresher Road, Horsham, PA 19044.
- (b) A market conduct examination of Respondents was conducted by the Insurance Department covering the period from January 1, 2012 to December 31, 2013.

- (c) On May 18, 2015, the Insurance Department issued Market Conduct Examination Reports to Respondents.
  
- (d) A response to the Examination Reports was provided by Respondents on June 15, 2015.
  
- (e) The Examination Reports note violations of the following:
  - (i) 40 P.S. §323.3(a), which requires every company subject to examination to keep all books, records, accounts, papers, documents and any computer or other recordings relating to its property, assets, business and affairs in such manner and for such time periods as the Department may require in order that its representatives may readily ascertain whether the company has complied with the laws of this Commonwealth;
  
  - (ii) 40 P.S. §323.4(b), which requires every company or person from whom information is sought, its officers, directors and agents must provide to the examiners appointed under subsection (a) timely, convenient and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents and any or all computer or other recordings relating to the property, assets, business and affairs of the company being examined. The officers, directors, employees and agents of the company or person

must facilitate such examination and aid in such examination so far as it is in their power to do so;

- (iii) 40 P.S. §310.71(c), which requires an insurer that appoints an insurance producer shall file with the Department a notice of appointment. This notice shall state for which companies within the insurer's holding company a group the appointment is made.
- (iv) 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) 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;

- (vi) 40 P.S. §625-6, which prohibits alterations of any written application for a life insurance policy or annuity to be made by any person other than the applicant without the applicant's written consent;
- (vii) 40 P.S. §625-8(c)(4)(ii), which requires a statement to be signed and dated by the producer reading as follows: "I certify that this illustration has been presented to the applicant or the policy owner and that I have explained that any nonguaranteed elements illustrated are subject to change. I have made no statements that are inconsistent with the illustration."
- (viii) 40 P.S. §625-8(e)(1)(i), which states if the policy is applied for as illustrated, a copy of that illustration, signed in accordance with this section, shall be submitted to the insurer no later than the time the application is sent to the insurer. A copy shall also be provided to the applicant no later than the time the application is signed by the applicant;
- (ix) 40 P.S. §625-8(e)(1)(ii), 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;

- (x) 40 P.S. §625-8(e)(3)(ii), which states that 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 no later than the time the policy is delivered and to the insured as soon as practical after the policy is delivered.
  
- (xi) 40 P.S. §627-3(b), which states that prior to the execution of a purchase or exchange of an annuity resulting from a recommendation, an insurer shall make reasonable efforts to obtain information from the consumer concerning all of the following: Consumer's financial status, tax status, investment objectives and other information used or considered to be reasonable in making recommendations to the consumer.
  
- (xii) 40 P.S. §510d(a)(2), which states that 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.

(xiii) 40 P.S. §510d(a)(3), which states individual fixed dollar life insurance policies or endowment insurance policies which are offered as replacements for an existing life insurance policy or annuity contract with an insurer or insurer group other than the one which issued the original policy or contract shall not be delivered in the Commonwealth of Pennsylvania unless they shall have prominently printed on the first page of such policy or attached thereto a notice stating in substance that the policyholder shall be permitted to return the policy within at least twenty (20) days of its delivery;

(xiv) 31 Pa. Code §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;

(xv) 31 Pa. Code §81.5(b), which requires the insurer, as part of a completed application for life insurance or annuity, to complete a statement signed by

the applicant regarding whether the proposed insurance or annuity will replace existing life insurance or annuity;

(xvi) 31 Pa. Code §81.6(a)(1), which states that an insurer using 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;

(xvii) 31 Pa. Code §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 (1) 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;

- (xviii) 31 Pa. Code §81.6(c), which requires the replacing insurer to maintain evidence of the Notice Regarding Replacement of Life Insurance and Annuities;
- (xix) 31 Pa. Code §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;
- (xx) 31 Pa. Code §83.4(a), which requires the agent to submit to the insurer with, or as a part of the application for life insurance, a statement, signed by him, certifying that the written disclosure statement was given no later than the time that the application was signed by the applicant;
- (xxi) 31 Pa. Code §83.55(a), which requires 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;

## CONCLUSIONS OF LAW

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

- (a) Respondents are subject to the jurisdiction of the Pennsylvania Insurance Department.
  
- (b) Respondents' violations of Section 40 P.S. §310.71(c) are punishable by the following, under (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) Respondents' violations of Sections 40 P.S. §§477b, 625-4, 625-6, 625-8(c)(4)(ii), 625-8(e)(1)(i), 625-8(e)(1)(ii), 625-(e)(3)(ii), 627-3(b), 510(d)(a)(2) and 510(d)(a)(3) 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 31 Pa. Code §81 are punishable under 31 Pa. Code §81.8(b) and (c), which states that 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 40 P.S. §§1171.1 to 1171.15;
  
- (e) Respondents' violations of 31 Pa. Code, Chapter 83 are punishable under 31 Pa. Code §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.

ORDER

6. In accord with the above Findings of Fact and Conclusions of Law, the Insurance Department orders and Respondent consents to the following:
- (a) Respondents shall cease and desist from engaging in the activities described herein in the Findings of Fact and Conclusions of Law.
  - (b) Respondents 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) Respondents shall comply with all recommendations contained in the attached Report.
  - (d) Respondents shall pay Thirty Thousand Dollars (\$30,000) to the Commonwealth of Pennsylvania in settlement of all violations contained in the Report.
  - (e) Payment of this matter shall be made by check payable to the Pennsylvania Insurance Department. Payment should be directed to April Phelps,

Bureau of Market Actions, 1311 Strawberry Square, Harrisburg, Pennsylvania 17120. Payment must be made no later than thirty (30) days after the date of this Order.

- (f) To determine Respondents' compliance with the full and timely implementation of all recommendations ("Recommendations") in the Examination Reports, issued May 18, 2015, Respondents shall develop a corrective action plan to address the recommendations. Additionally, the Respondents shall perform a self-audit of all issues addressed in the "Recommendations" sections of both Examination Reports. The self-audit shall be conducted six (6) months from the date of this order and be for the period of the three (3) preceding months, allowing for a three (3) month implementation process.

7. 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.

8. 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.

9. 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.

10. Respondents hereby expressly waive any relevant statute of limitations and application of the doctrine of laches for purposes of any enforcement of this Order.

11. 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.

12. This Order shall be final upon execution by the Insurance Department. Only the Insurance Commissioner or a duly authorized delegate 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.

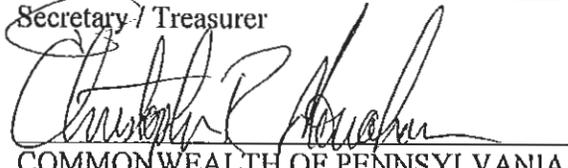
BY: PENN MUTUAL LIFE INSURANCE  
COMPANY AND PENN INSURANCE AND  
ANNUITY COMPANY, Respondents



President / Vice President



Secretary / Treasurer



COMMONWEALTH OF PENNSYLVANIA

Christopher R. Monahan

Acting Deputy Insurance Commissioner

## I. INTRODUCTION

The Market Conduct Examination was conducted on Penn Mutual Life Insurance Company; hereafter referred to as "Company," at the Company's office located in Horsham, Pennsylvania for the weeks of October 14, 2014, through November 14, 2014, and December 8, 2014, through December 12, 2014. We continued the examination at the Department until May 20, 2015. The 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.

Deborah Lee  
Pennsylvania Insurance Department  
Market Conduct Division Chief

Gary L. Boose, LUTC, MCM  
Pennsylvania Insurance Department  
Market Conduct Examiner  
Examiner in Charge

Lonnie L. Suggs, MCM  
INS Services  
Contract Examiner

## **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, 2012, through December 31, 2013, unless otherwise noted. The purpose of the examination was to ensure compliance with Pennsylvania insurance laws and regulations.

The examination focused on the market conduct activities in areas such as: Forms, Producer Licensing, Appointments and terminations, Consumer Complaints, Underwriting Practices and Procedures including surrenders and replacements, life and annuity products of cash value, and Data Integrity, which included a review of the Market Conduct Annual Statement (MCAS) submissions. The examination was called on Penn Mutual Life Insurance Company (Company) as a result of recent market and complaint analyses.

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 category of 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

Penn Mutual Life Insurance Company was incorporated in Pennsylvania on February 24, 1847, and commenced business on May 25, 1847. The Company is licensed in all states and the District of Columbia.

The Company maintains a broad product line of variable and fixed-rate life insurance and annuity products. The Company works closely with five affiliates described below. Penn Insurance and Annuity Company, a subsidiary company, was formed in 1980, and is licensed to do business in 48 states and the District of Columbia. Janney Montgomery Scott LLC is a full service regional securities broker/dealer. Hornor, Townsend & Kent, Inc. is a wholly owned broker/dealer subsidiary of Penn Mutual. Independence Capital Management, Inc. is a wholly owned investment advisory subsidiary of Penn Mutual. Leap is a leading provider of innovative financial systems for financial professionals.

As of their December, 2013, annual statement for Pennsylvania, Penn Mutual Life Insurance Company reported direct premium for life insurance and annuities in the amount of \$1,640,033,844; and direct premium for accident and health in the amount of \$12,357,450.

#### **IV. COMPANY OPERATIONS AND MANAGEMENT**

This area was not included in the scope of the review.

## 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 – 40 P.S. §477b**

It shall be unlawful for any insurance company, doing business in the Commonwealth of Pennsylvania, to issue, sell, or dispose of any policy, contract, or certificate, covering life insurance, or use application, riders, or endorsements, in connection therewith, until the forms have been submitted to, and formally approved by, the Insurance Commissioner. The noted files either did not contain their respective approval citations or were not provided by the Company. The noted form was not found to be compliant.

<b>Form Number</b>	<b>Description</b>
N PM0479(CT)05/12	Replacement Form

## VI. PRODUCER LICENSING, APPOINTMENT AND TERMINATION

### **A. Producer Licensing – Active**

The Company was requested to provide a list of all producers active during the experience period. The Company provided a list of 1,281 (duplicates removed equaled 970) active producers. 100 Active producers were selected for review. The sample list was compared to departmental records of producers to verify licensing, appointments and termination. In addition, a comparison was made on the producers identified on applications reviewed in the policy issued sections of the exam. No violations were noted.

### **B. Producer Licensing – Terminated**

The Company was requested to provide a list of all producers terminated during the experience period. The Company provided a list of 136 (duplicates removed equaled 57) terminated producers. 25 terminated producers were selected for review. The sample list was compared to departmental records of producers to verify licensing, appointments and termination. In addition, a comparison was made on the producers identified on applications reviewed in the policy issued sections of the exam. The following violations were noted:

#### **1 Violation – 40 P. S. § 310.71(a)(b)(c)(d)(e)(f)**

(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 \$15.00 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’s reported termination date is different from the Department’s date of termination.

<b>Producer Last</b>	<b>Producer First</b>	<b>HOME CITY</b>
GONZALEZ	JESUS	DOYLESTOWN

**1 Violation – 40 P. S. § 310.71a Termination of Appointments**

(a) Termination. - An insurer which terminates an appointment pursuant to section 671-A(d) shall notify the Department in writing on a form approved by the department, or through an electronic process approved by the department, within 30 days following the effective date of the termination.

(b) Reason for termination. – If the reason for the termination was a violation of this act or if the insurer had knowledge that the licensee was found to have engaged in any activity prohibited by this act, the insurer shall inform the department in the notification. The following producer was listed as terminated by the Company but not reported as terminated to the Department during the experience period. Department records indicate an active status through the experience period.

<b>Producer Last</b>	<b>Producer First</b>	<b>HOME CITY</b>
RHOADES	DANIEL	PITTSBURGH

## VII. CONSUMER COMPLAINTS

The Company was requested to identify all consumer complaints received during the experience period January 1, 2012 through December 31, 2013 and to provide copies of consumer complaint logs/registers for calendar years 2010, 2011 and 2012. The Company identified a universe of 24 consumer complaints received during 2010, 2011 and the experience period. Of the 24 complaints identified 16 were forwarded from the Department. All 24 complaint files were requested, received, and reviewed. The Company also provided complaint registers 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 register.

The complaint files and the 2 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.

## VIII. UNDERWRITING

The Underwriting review is comprised of individual and group underwriting areas and consists of 23 general segments.

	<b>Underwriting</b>
<b>A.</b>	<b>Underwriting Guidelines</b>
	<b>Annuity Applications</b>
<b>B.</b>	<b>Fixed Annuity Applications Flexible</b>
<b>C.</b>	<b>Variable Annuity Applications</b>
	<b>Annuity Replacements</b>
<b>D.</b>	<b>Fixed Annuity Replacements</b>
<b>E.</b>	<b>Variable Annuity Replacements</b>
	<b>Annuity Full Surrenders and Terminations</b>
<b>F.</b>	<b>Fixed Annuity Full Surrenders and Terminations</b>
<b>G.</b>	<b>Variable Annuity Full Surrenders and Terminations</b>
	<b>Annuity Partial Surrenders and Terminations</b>
<b>H.</b>	<b>Fixed Annuity Partial Surrenders and Terminations</b>
<b>I.</b>	<b>Variable Annuity Partial Surrenders and Terminations</b>
	<b>LIFE</b>
	<b>Life Applications</b>
<b>J.</b>	<b>Term Life Applications</b>
<b>K.</b>	<b>Universal Life Applications</b>
<b>L.</b>	<b>Variable Universal Life Applications</b>
<b>M.</b>	<b>Whole Life Applications</b>
	<b>Life Applications as Replacements</b>
<b>N.</b>	<b>Term Life Applications as Replacements</b>

<b>O.</b>	<b>Universal Life Applications as Replacements</b>
<b>P.</b>	<b>Variable Universal Life Applications as Replacements</b>
<b>Q.</b>	<b>Whole Life Applications as Replacements</b>
	<b>Life Full Surrenders and Terminations</b>
<b>R.</b>	<b>Term Life Full Surrenders and Terminations</b>
<b>S.</b>	<b>Universal Life Full Surrenders and Terminations</b>
<b>T.</b>	<b>Variable Universal Life Full Surrenders and Terminations</b>
<b>U.</b>	<b>Whole Life Full Surrenders and Terminations</b>
	<b>Life Partial Surrenders and Terminations</b>
<b>V.</b>	<b>Variable Universal Life Partial Surrenders and Terminations</b>
<b>W.</b>	<b>Whole Life Partial Surrenders and Terminations</b>
<b>X.</b>	<b>Universal Life Partial Surrenders and Terminations</b>

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, which could be considered discriminatory in nature, or specifically prohibited by statute or regulation. No violations were noted.

The following Guidelines were reviewed:

- ANB (Annuity New Business) Incoming Replacement Procedures.
- Hornor Townsend and Kent WSP (Written Supervisory Procedures).
- Life New Business Incoming Replacement Procedure.
- Materials (Replacements).
- PCS (Producer Client Services) Annuity Outgoing Replacement Procedures.
- Penn Mutual Life Production Guide Market Conduct.
- Swiss Re Life Guide.

## ANNUITY

### **B. Fixed Annuity Applications Flexible**

The Company identified a universe of 14 fixed flexible annuity applications received during the experience period. All 14 fixed flexible annuity application files was requested, received and reviewed. Annuity contracts were reviewed to determine compliance with issuance, and replacement statutes and regulations. The following violations were noted:

#### **3 Violations – 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 annuity contract delivery could not be established in the 3 noted files.

### **C. Variable Annuity Applications**

The Company was requested to provide all annuity applications for the experience period. The Company identified a universe of 1,156 variable annuity applications received. A sample of 50 variable annuity applications was requested, received and reviewed. Annuity contracts were reviewed to determine compliance with issuance, and replacement statutes and regulations. The following violations were noted:

#### **4 Violations – 40 P. S. §§ 323.3(a)**

(a) Every Company or person subject to examination in accordance with this act must keep all books, records, accounts, papers, documents and any or all computer or other recordings relating to its property, assets, business and affairs in such manner and for such time periods as the department, at its discretion, may require in order that its authorized representatives may readily ascertain whether the Company or person has complied with the laws of this Commonwealth. The noted 4 files were missing pertinent documents or data:

#### **1 Violation – 31, Pennsylvania Code § 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 noted replacement form was not signed and dated.

### **1 Violation – 31, Pennsylvania Code § 81.5**

The insurer shall require as part of a completed application for life insurance or annuity a statement signed by the applicant as to whether the proposed insurance or annuity will replace existing life insurance or annuity. The applicant's replacement question was not answered in the noted application.

### **2 Violations – 31, Pennsylvania Code § 81.6(a)(1)**

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

(1) 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 producer's replacement question was not found and answered in the 2 noted applications.

### **1 Violation – 40 P. S. §§ 510d (b)(2)**

Individual variable 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 noted contract file did not contain the required 45-day "free look" statement.

## **D. Fixed Annuity Replacements**

The Company was requested to provide all annuity contracts replaced during the experience period. The Company identified a universe of 25 fixed annuity replacements issued. All 25 fixed annuity replacements were requested, received and reviewed.

Annuity contracts were reviewed to determine compliance with issuance, and replacement statutes and regulations. The following violations were noted:

**2 Violations – 31, Pennsylvania Code § 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 2 replacement letters to the replaced Company were not timely.

**13 Violations – 40 P.S. § 510c (a)(3)**

Individual fixed dollar life insurance policies or endowment insurance policies which are offered as replacements for an existing life insurance policy or annuity contract with an insurer or insurer group other than the one which issued the original policy or contract shall not be delivered in the Commonwealth of Pennsylvania unless they shall have prominently printed on the first page of such policy or attached thereto a notice stating in substance that the policyholder shall be permitted to return the policy within at least twenty (20) days of its delivery. The noted 13 policy files did not contain the required 20 day "free look" statement.

**3 Violations – 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 annuity contract delivery requirements could not be established in the 3 noted files.

### **E. Variable Annuity Replacements**

The Company was requested to provide all variable annuity replacement applications during the experience period. The Company identified a universe of 339 variable annuity replacement applications during the period. A random sampling of 50 replacement files was 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:

#### **9 Violations – 31, Pennsylvania Code § 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. In the following files, the replacement form was dated after the application date or the replacement notice requirements were not completed in the 9 noted files.

#### **26 Violations – 31, Pennsylvania Code § 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 producer's replacement question was not found in the 26 noted applications.

**26 Violations – 31, Pennsylvania Code § 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 letters to the replaced Company were not timely as there was no evidence of any replacement letters provided in the 26 noted files.

**10 Violations – 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. The date the annuity contract was delivered to the contract holder could not be verified in the 10 noted files.

## **F. Fixed Annuity Full Surrenders and Terminations**

The Company was requested to provide a list of all fixed annuity contracts surrendered and terminated fully and terminated during the experience period. The Company provided a list of 59 fixed annuity contracts fully surrender and terminated contracts. All 59 fixed annuity contracts fully surrendered and terminated were requested, received and reviewed. The policy files were reviewed to determine compliance to issuance, underwriting, and replacement statutes and regulations. No violations were noted.

## **G. Variable Annuity Full Surrenders and Terminations**

The Company was requested to provide a list of all annuity contracts fully surrendered and terminated during the experience period. The Company provided a list of all variable annuity contracts fully surrendered and terminated. The Company identified a universe of 577 variable annuity contracts fully surrendered and terminated during the period. A random sample of 50 variable annuity contract files fully surrendered and terminated were requested, received and reviewed. The contract files were reviewed to ensure compliance with contract provisions, laws and regulations of this Commonwealth. The following violations were noted:

### **1 Violation – 40 P.S. 627-3 Duties of insurers and insurance producers; procedures**

(a) General duties.— In making a recommendation to a consumer for the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or the insurer where no insurance producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to the consumer's investments and other insurance products and as to the consumer's financial situation and needs.

(b) Consumer information.— Prior to the execution of a purchase or exchange of an annuity resulting from a recommendation, an insurance producer, or an insurer where no insurance producer is involved, shall make reasonable efforts to obtain information concerning all of the following:

- (1) The consumer's financial status.
- (2) The consumer's tax status.
- (3) The consumer's investment objectives.
- (4) Other information used or considered to be reasonable by the insurance producer, or the insurer where no insurance producer is involved, in making recommendations to the consumer.

As a result of the market conduct examination for the period 2012 and 2013, the files were requested to include all documents. The Suitability Questionnaire was missing from the noted file.

#### **H. Fixed Annuity Partial Surrenders and Terminations**

The Company was requested to provide a list of all annuities surrendered and terminated during the experience period. The Company provided a list of 80 fixed annuities partially surrendered and terminated contract files. A random sample of 40 fixed annuities partially surrendered and termination contract files were requested, received and reviewed. The contract files were reviewed to determine compliance to issuance, underwriting, and replacement statutes and regulations. No violations were noted.

#### **I. Variable Annuity Partial Surrenders and Terminations**

The Company was requested to provide a list of all variable annuity partial surrendered and terminations during the experience period. The Company identified a universe of

478 variable annuity contracts partial surrendered and terminations during the period. A random sample of 25 variable annuity partial surrendered and termination contract files were requested, received and reviewed. The contract files were reviewed to ensure compliance with contract provisions, laws and regulations of this Commonwealth. Two applications were signed by the contract holder outside Pennsylvania. The following violations were noted:

**1 Violation – 31, Pennsylvania Code § 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 agent (producer) did not sign and date the replacement notice.

**2 Violations – 31, Pennsylvania Code § 81.6(a)(1)**

An insurer that uses an agent or broker in a life insurance or annuity sale shall: (1) 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 agent's (producer's) replacement question was not answered in the 2 noted applications.

**3 Violations – 31, Pennsylvania Code § 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 3 noted files.

#### **9 Violations – 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 annuity contract delivery requirements could not be established in the 9 noted files.

## **LIFE**

### **J. Term Life Applications**

The Company was requested to provide a list of all life insurance applications received during the experience period. The Company identified a universe of 1,151 term life insurance applications received during the experience period. A random sample of 25 term life application files was requested, received and reviewed. The application files were reviewed to determine compliance to issuance, underwriting, and replacement statutes and regulations. The following violations were noted:

#### **6 Violations – 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 6 noted files.

#### **4 Violations – 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 4 noted files contained alterations on the application without the applicants consent.

### **K. Universal Life Applications**

The Company was requested to provide a list of all universal life insurance applications received during the experience period. The Company identified a universe of 1,045 universal life insurance applications received. A random sampling of 25 universal life application files was requested, received and reviewed. The application files were reviewed to determine compliance to issuance, underwriting, and replacement statutes and regulations. The following violations were noted:

**1 Violation – 31, Pennsylvania Code § 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 later than 5 working days in the 1 noted file.

**2 Violations – 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 2 noted files.

**5 Violations – 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 noted 5 files contained alterations without the applicants consent.

**1 Violation – 40 P.S. § 625-8 (e)(1)(i)**

The following applies if a basic illustration is used by a producer in the sale of a life insurance policy. If the policy is applied for as illustrated, a copy of that illustration, signed in accordance with this section, shall be submitted to the insurer no later than the time the policy application is sent to the insurer. A copy shall also be provided to the applicant no later than the time the application is signed by the applicant. The producer's certification and applicant's acknowledgement of the illustration used was not signed.

**2 Violations – 40 P.S. § 625-8 (e)(2)(iii)**

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

**2 Violations – 40 P.S. § 625-8 (e)(3)(ii)**

The following applies if an illustration is used by a producer in the sale of a life insurance policy but the policy applied for is other than as illustrated. 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 no later than the time the policy is delivered and to the insured as

soon as practical after the policy is delivered. The 2 noted files did not contain a signed acknowledgment of the delivery of the illustration at the time of policy delivery.

#### **L. Variable Universal Life Applications**

The Company was requested to provide a list of all life insurance applications received during the experience period. The Company identified a universe of 33 variable universal life insurance applications received during the experience period. A random sampling 10 variable universal life application files were requested, received and reviewed. The files were reviewed to determine compliance to issuance, underwriting, and replacement statutes and regulations. The following violations were noted:

##### **1 Violation – 40 P.S. § 625-8 (c)(4)(ii)**

A statement to be signed and dated by the producer reading as follows: “I certify that this illustration has been presented to the applicant or the policy owner and that I have explained that any nonguaranteed elements illustrated are subject to change. I have made no statements that are inconsistent with the illustration.” The writing producer did not sign the certification.

#### **M. Whole Life Applications**

The Company was requested to provide all life insurance applications received during the experience period. The Company identified a universe of 948 whole life insurance applications received. A random sample of 25 term life application files was requested, received and reviewed. The application files were reviewed to determine compliance to issuance, underwriting, and replacement statutes and regulations. The following violations were noted:

**1 Violation – 31, Pennsylvania Code § 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 noted file.

**1 Violation – 31, Pennsylvania Code § 81.6(c)**

The replacing insurer shall maintain evidence of the Notice Regarding Replacement of Life Insurance and Annuities. The noted file did not contain a copy of the required notice of replacement.

**3 Violations – 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 3 noted files contained alterations without the applicants consent.

**1 Violation – 40 P.S. §625-8 (e)(1)(ii)**

The following applies if a basic illustration is used by a producer in the sale of a life insurance policy. 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 noted file did not contain the signed certification and acknowledgement of the delivery of an illustration.

### **N. Term Life Applications as Replacements**

The Company was requested to provide all issued applications replaced during the experience period. The Company identified a universe of 159 term life insurance applications received as replacements. A random sampling of 25 term life insurance applications received as replacement files was requested, received and reviewed. The application files were reviewed to determine compliance to issuance, underwriting, and replacement statutes and regulations. The following violations were noted:

#### **3 Violations – 31, Pennsylvania Code § 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 dated after the application date in the 3 noted files or it was not provided.

#### **1 Violation – 31, Pennsylvania Code § 81.5**

The insurer shall require as part of a completed application for life insurance or annuity a statement signed by the applicant as to whether the proposed insurance or annuity will replace existing life insurance or annuity. The applicant's replacement question was not answered in the noted application.

### **1 Violation – 31, Pennsylvania Code § 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 made within 5 working days.

### **2 Violations – 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 2 noted files contained alterations without the applicants consent.

## **O. Universal Life Applications as Replacements**

The Company was requested to provide a life insurance policies issued as replacements during the experience period. The Company identified a universe of 339 universal life insurance applications received as replacements during the experience period. A random sampling of 100 universal life applications received as replacement files was requested, received and reviewed. During the review, a subsequent sample was determined as we only sampled transactions from the experience period. The new sample size was 25 policy files. The universal life insurance application files received as replacement were reviewed to determine compliance to issuance, underwriting, and replacement statutes and regulations. The following violations were noted:

**1 Violation – 31, Pennsylvania Code § 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 timely in the noted file.

**1 Violation – 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.

#### **4 Violations – 40 P.S. § 625-8 (e)(1)(ii)**

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 4 noted files did not contain the signed certification and acknowledgement of the delivery of an illustration.

#### **P. Variable Universal Life Applications as Replacements**

The Company was requested to provide all applications received during the experience period. The Company identified a universe of 6 variable universal life insurance applications as replacement received during the experience period. All 6 variable universal life insurance applications as replacement were requested, received and reviewed. The files were reviewed to determine compliance to issuance, underwriting, and replacement statutes and regulations. The following violations were noted:

#### **2 Violations – 31, Pennsylvania Code § 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 2 noted files.

### **Q. Whole Life Applications as Replacements**

The Company was requested to provide all life applications that were issued as replacements during the experience period. The Company identified a universe of 111 whole life insurance policies issued as replacements. A random sampling of 30 were requested, received and reviewed. The files were reviewed to determine compliance to issuance, underwriting, and replacement statutes and regulations. The following violations were noted:

#### **4 Violations – 31, Pennsylvania Code § 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 dated after the application date in the 4 noted files.

#### **4 Violations – 31, Pennsylvania Code § 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 4 noted files or was late by the number of days indicated.

**1 Violation – 31, Pennsylvania Code § 83.3**

(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 noted file did not contain a disclosure form.

**5 Violations – 31, Pennsylvania Code § 83.4a and 83.4b**

(a) The agent shall submit to the insurer with or as a part of the application for life insurance a statement, signed by him, certifying that the written disclosure statement was given no later than the time that the application was signed by the applicant.

(b) The insurer shall maintain the agent's certification of disclosure statement delivery in its appropriate files for at least three years. The absence of the agent's certification from the appropriate files of the insurer shall constitute prima facie evidence that no disclosure statement was provided to the prospective purchaser of life insurance. The 5 noted files did not contain a copy of the required agent's certification of disclosure.

**5 Violations – 31, Pennsylvania Code § 83.55(a)**

(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.

The producer delivered the following policies. The agent's certification of the surrender comparison index disclosure delivery was not evident in the 5 noted files.

**2 Violations – 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 2 noted files.

**2 Violations – 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 2 noted files contained alterations without the applicants consent.

**13 Violations – 40 P.S. §625-8 (e)(1)(ii)**

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 13 noted files listed did not contain a revised illustration.

### **R. Term Life Full Surrenders and Terminations**

The Company was requested to provide a list of all term life insurance policies surrenders and terminations during the experience period. The Company identified 503 term life insurance policies surrenders and terminations. A random sample of 25 term life insurance policies full surrendered and terminate were requested, received and reviewed. The policy files were reviewed to determine compliance to issuance, underwriting, and replacement statutes and regulations. No violations were noted.

### **S. Universal Life Full Surrenders and Terminations**

The Company was requested to provide a list of all policy surrenders and terminations during the experience period. The Company identified 481 universal life full policy surrenders and terminations during the period. A random sample of 25 universal life full policy surrenders and terminations were requested, received and reviewed. The policy files were reviewed to determine compliance to issuance, underwriting, and replacement statutes and regulations. No violations were noted.

### **T. Variable Universal Life Full Surrenders and Terminations**

The Company was requested to provide a list of all life policies surrendered and terminated during the experience period. The Company identified a universe of 317 variable universal life insurance policies surrendered and terminated. A random sample of 50 variable universal life insurance policy files surrendered and terminated were requested, received and reviewed. The policies were reviewed to ensure compliance with

contract provisions, termination laws and regulations, and proper return of any unearned premium. No violations were noted.

#### **U. Whole Life Full Surrenders and Terminations**

The Company was requested to provide a list of all life insurance policies surrendered and terminations during the experience period. The Company identified a universe of 856 whole life insurance policies full surrenders and terminations during the period. A random sample of 50 whole life insurance policies full surrenders and terminations were requested, received and reviewed. The policy files were reviewed to determine compliance to issuance, underwriting, and replacement statutes and regulations. No violations were noted.

#### **V. Variable Universal Life Partial Surrenders and Terminations**

The Company was requested to provide a list of all policies surrendered during the experience period. The Company identified a universe of 40 variable universal life insurance policies partially surrendered and terminated during the period. A random sample of 20 variable universal life insurance policies partially surrendered and terminated files were requested, received and reviewed. During the review, a subsequent sample was determined as we only sampled transactions from the experience period. The new sample size was 3 policy files. The files were reviewed to ensure compliance with contract provisions, termination laws and regulations, and proper return of any unearned premium. No violations were noted.

### **W. Whole Life Partial Surrenders and Terminations**

The Company was requested to provide a list of all whole life insurance policies partially surrendered and terminated during the experience period. The Company identified one whole life insurance policy partially surrendered during the period. The one whole life insurance policy partially surrendered was requested, received and reviewed. The policy file was reviewed to determine compliance to issuance, underwriting, and replacement statutes and regulations. No violations were noted.

### **X. Universal Life Partial Surrenders and Terminations**

The Company was requested to provide a list of all life insurance policies surrendered during the experience period. The Company identified 43 universal life insurance policies partial surrendered and terminations during the period. All 43 universal life insurance partial surrenders and termination policy files were requested, received and reviewed. During the review, a subsequent sample was determined as we only sampled transactions from the experience period. The new sample size was 10 policy files. The policy files were reviewed to determine compliance to issuance, underwriting, and replacement statutes and regulations. No violations were noted.

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

This area was not included in the scope of the review.

## **X. MCAS REPORTING**

In Pennsylvania, insurers are required annually to submit a Market Conduct Annual Statement (MCAS) to the National Association of Insurance Commissioners (NAIC). The MCAS data is submitted in compliance with Pennsylvania Insurance Department Act, Section 903(a) [40 P.S. §323.3] which states in part, “Every company or person subject to examination in accordance with this act must keep all books, records, accounts, papers, documents and any or all computer or other recordings relating to its property, assets, business and affairs in such manner and for such time periods as the department, in its discretion, may require in order that its authorized representatives may readily verify the financial condition of the company or person and ascertain whether the company or person has complied with the laws of this Commonwealth.” The MCAS Data is submitted, protected and analyzed under the referenced Pennsylvania examination law as a means to validate the continued solvency of an insurer.

The Market Conduct Data Integrity Examination was conducted pursuant to the authority granted by Section 904 [40 P.S. §323.4] of the Insurance Department Act and covered the Market Conduct Annual Statement (MCAS) reporting for 2012 and 2013. The review included the evaluation of the Company’s activities surrounding the accuracy and completeness of the mandatory filing of data for the MCAS report, which is used by regulators to collect claims, and underwriting data.

All companies that submit an MCAS filing must attest to the completeness and accuracy of their submission. The attestation is required once per filing period and applies to all submissions for a specific company code. No submissions will be accepted until an attestation is completed for the Company.

The Examination included review of the Company’s 2012 and 2013 MCAS Life and MCAS Annuity submissions in conjunction with the Company’s procedures and source

data used in compiling those submissions. In addition, the Company was requested to provide procedures for data extraction and the report generation process to support the creation of the MCAS report. The review of the MCAS information was twofold; first to determine the information technology (IT) and data integrity controls in place along with policies and procedures, to ensure the validity of the MCAS data submission; and second, to determine if the 2012 and 2013 MCAS data reported was accurate and complete.

A sample selection of the following sections was reviewed during the course of the examination.

2012 Life Report (MCAS)

1. Number of replacement policies issued during the period
2. Number of policies surrendered during the period

2013 Life Report (MCAS)

1. Number of replacement policies issued during the period
2. Number of policies surrendered during the period

2012 Annuity Report (MCAS)

1. Number of replacement contracts issued during the period
2. Number of contracts surrendered during the period

2013 Annuity Report (MCAS)

1. Number of replacement contracts issued during the period
2. Number of contracts surrendered during the period

MCAS Policies and Procedures; Data Extraction and Report Generation

The Interrogatories for Life and Health Reports of A and B:

LINE	INTERROGATORIES
01	Individual Life Cash Value - Does the company have data to report for this product type?
02	Individual Life Non-Cash Value - Does the Company have data to report for this product type?
03	Is there a reason that the reported Individual Life Cash Value Information may identify the Company as an outlier or be substantially different from previously reported data (such as assuming blocks of business; shifting market strategies; underwriting changes, etc.)?
04	If yes, explain:

05	Is there a reason that the reported Individual Life Non-Cash Value information may identify the company as an outlier or be substantially different from previously reported data (such as assuming blocks of business; shifting market strategies; underwriting changes, etc.)?
06	If yes, explain:
07	Additional state specific Individual Life Cash Value comments (optional):
08	Additional state specific Individual Life Non-Cash Value comments (optional):
09	Number of replacement policies issued during the period.
10	Number of internal replacements issued during the period.
11	Number of external replacements issued during the period.
12	Number of policies replaced where age of insured at replacement was < 65.
13	Number of policies replaced where age of insured at replacement was age 65 and over.
14	Number of policies surrendered under 2 years from policy issue.
15	Number of policies surrendered between 2 years and 5 years from policy issue.
16	Number of policies surrendered between 6 years and 10 years from policy issue.
17	Number of policies surrendered during the period.
18	Number of new policies issued during the period where age of insured at issue was < 65.
19	Number of new policies issued during the period where age of insured at issue was age 65 and over.
20	Number of new policies issued during the period.
21	Number of policies applied for during the period.
22	Number of free looks during the period.
23	Number of policies in force at the end of the period.
24	Dollar amount of direct written premium during the period.
25	Face amount of insurance issued during the period.
26	Face amount of insurance in force at the end of the period.
27	Number of complaints received directly from consumers.
28	Number of death claims closed with payment, during the period, within 60 days from the Date of due proof of loss (include only claims where the final decision was payment in full.)
29	Number of death claims closed with payment, during the period, beyond 60 days from the date of due proof of loss (include only claims where the final decision was payment in full.)
30	Number of death claims denied, resisted or compromised during the period.
31	Number of death claims received during the period.

The Interrogatories for Life (Annuity) Reports of C and D:

LINE	INTERROGATORIES
1	Individual Fixed Annuities - Does the company have data to report for this product type?
2	Individual Variable Annuities – Does the Company have data to report for this product type?
3	Is there a reason that the reported Individual Fixed Annuities information may identify the Company as an outlier or be substantially different from previously reported data (such as assuming blocks of business; shifting market strategies; underwriting changes, etc.)?
4	If yes, explain:
5	Is there a reason that the reported Individual Variable Annuities information may identify the company as an outlier or be substantially different from previously reported data (such as assuming blocks of business; shifting market strategies; underwriting changes, etc.)?
6	If yes, explain:
7	Additional state specific Individual Fixed Annuities comments (optional):
8	Additional state specific Individual Variable Annuities comments (optional):
9	Number of replacement contracts issued during the period.
10	Number of internal replacement contracts issued during the period.
11	Number of external replacement contracts issued during the period.

12	Number of contracts replaced where age of annuitant at replacement was < 65
13	Number of contracts replaced where age of annuitant at replacement was 65 to 80.
14	Number of contracts replaced where age of annuitant at replacement was > 80
15	Number of new immediate contracts issued during the period.
16	Number of new deferred contracts issued during the period where age of annuitant was < 65.
17	Number of new deferred contracts issued during the period where age of annuitant was 65 to 80.
18	Number of new deferred contracts issued during the period where age of annuitant was > 80.
19	Number of new deferred contracts issued during the period.
20	Number of contracts surrendered under 2 years from policy issue.
21	Number of contracts surrendered between 2 years and 5 years from policy issue.
22	Number of contracts surrendered between 6 years and 10 years from policy issue.
23	Number of contracts surrendered during the period.
24	Number of contracts applied for during the period.
25	Number of free looks during the period.
26	Number of contracts in force at the end of the period.
27	Dollar amount of annuity considerations during the period.
28	Number of complaints received directly from consumers.

**Summary of MCAS Findings:**

- A. 2012 Life: 0 Violations
- B. 2013 Life: 1 Violations
- C. 2012 Annuity: 0 Violations
- D. 2013 Annuity: 1 Violation
- E. Policies and Procedures - Data Extraction and Report Generation: 1 Violation

## **A. 2012 MCAS Life Report**

**MCAS Definition – Cash Value Product** – A life insurance policy that generates a cash value element. Term policies with cash value are considered cash value products.

**MCAS Definition – Non-Cash Value Product** – A life insurance policy that does not contain a cash value element. Do not include life insurance covering only Accidental Death and Dismemberment (AD&D).

### **NUMBER OF REPLACEMENT POLICIES ISSUED**

#### **DURING THE PERIOD – LINE #9**

**MCAS Definition – Replacement Policy** – A policy and/or annuity contract application that is received by your Company and is intended to replace an existing policy and/or annuity contract. This would include both external and internal replacements.

No violation was noted.

### **NUMBER OF POLICIES SURRENDERED**

#### **DURING THE PERIOD – LINE #17**

**MCAS Definition – Surrender Policy/Contract** – A life insurance policy or annuity contract terminated at the request of the policy owner. It does not include life insurance policies or annuity contracts not taken or cancelled during the free look period.

No violation was noted.

## B. 2013 MCAS Life Report

### NUMBER OF REPLACEMENT POLICIES ISSUED DURING THE PERIOD – LINE #9

**MCAS Definition – Replacement Policy** – A policy and/or annuity contract application received by your Company that is intended to replace an existing policy and/or annuity contract according to each states definition of a replacement. This would include both external and internal replacements according to each state’s replacement law. Include: loan purchases, if the original policy is surrendered, surrenders, if a replacement policy is issued in conjunction with the surrender and 1035 exchanges. Do not include; policy conversions or exchanges of a group policy for an individual policy.

No violation was noted.

### NUMBER OF POLICIES SURRENDERED DURING THE PERIOD – LINE #17

**MCAS Definition – Surrender Policy/Contract** – A life insurance policy or annuity contract terminated at the request of the policy owner. It does not include life insurance policies or annuity contracts not taken or cancelled during the free look period.

The Company was requested to provide a complete data set for MCAS Life Surrendered Report line #17. On the NAIC 2013 MCAS Life Report the Company reported 684 individual cash value and 0 non-cash value policies surrendered during the period. A total of 960 individual life surrendered policy files were reported to the Department, *a variance of 276*. A random sample of 10 individual life surrendered files were requested, received and reviewed to ensure that the MCAS data was inclusive and accurate of all the policies applicable to this line item. The data and files were reviewed to ensure compliance with the Commonwealth of Pennsylvania’s Statutes and Regulations. The

2013 MCAS Life Surrender file count does not match the market file count. The following violation was noted.

**1 Violation – Failure to exercise sufficient due diligence to ensure compliance with 40 P.S. §323.4(b).** The Company provided an inaccurate response on line #17 of the 2013 MCAS Life Report submission regarding the number of policies surrendered during the period. The number of life policies surrendered reported on the NAIC 2013 MCAS report is inaccurate.

**C. 2012 MCAS Annuity Report**

**NUMBER OF REPLACEMENT CONTRACTS  
ISSUED DURING THE PERIOD – LINE 9**

No violation was noted.

**NUMBER OF CONTRACTS SURRENDERED  
LINE #21 – 23**

No violation was noted.

## D. 2013 MCAS Annuity Report

### NUMBER OF REPLACEMENT CONTRACTS ISSUED DURING THE PERIOD – LINE 9

**MCAS Definition – Replacement Policy** – A policy and/or annuity contract application received by your Company that is intended to replace an existing policy and/or annuity contract according to each states definition of a replacement. This may include both external and internal replacements according to each state’s replacement law. Includes loan purchases, if the original is surrendered, surrenders, if a replacement policy is issued in conjunction with the surrender and 1035 exchanges. Do not include policy conversions or exchanges of a group policy for an individual policy.

The Company was requested to provide a complete data set for MCAS Annuity Report line #9. On the NAIC 2013 MCAS Annuity Report the Company reported 20 individual fixed and 153 variable replacement contracts issued a total of 173. The Company provided a universe of 181 replacement annuity contracts for MCAS Annuity Report line #9 for the Market Conduct portion of the exam. To ensure that the MCAS data was inclusive and accurate of all the contracts applicable to this line item a comparison of the records revealed a variance of 8. A request for clarification of the discrepancy was requested to reconcile the records. The company responded and provided an Excel spreadsheet for the 2 year MCAS 2012/2013 reporting period identifying 377 records. Records provided to the market conduct examination for the same 2 year period totaled 364 records *a variance of 13*. The company was requested to provide detailed explanation for the file discrepancy. The company indicated that two replacement files were outside the scope. The remaining 15 files the company reported that “for the most recent 2 year study, applications were extracted based on the owners resident state = PA (not the application state/issue state which is most often used for state audits) and 2 replacement were only reported for issued cases”. The file count does not match the market conduct file count, and the 17 files that were requested, 18 files were received and

reviewed. A comparison was made of the replacement contracts provided in the Market Conduct portion of the exam for the same period of the exam 2013 to ensure that the MCAS data was inclusive and accurate of all the policies applicable to this line item.

**1 Violation – Failure to exercise sufficient due diligence to ensure compliance with 40 P.S. §323.4(b).** The Company provided an inaccurate response on line #9 of the 2013 MCAS Annuity Report submission regarding the number of replacement contracts issued during the period. The number of replacement contracts reported on the NAIC 2013 MCAS report is inaccurate.

**NUMBER OF CONTRACTS SURRENDERED**

**LINE #21 – 23**

No violation was noted.

### **E. Policies and Procedures; Data Extraction and Report Generation (MCAS)**

The examination included review of the Company's 2012, 2013 MCAS IT, and data integrity controls, source documents and its general MCAS policies and procedures to determine if the Company had policies and procedures in place to ensure its compliance with the MCAS reporting requirements. The following violation was noted:

**1 Violation – Failure to exercise sufficient due diligence to ensure compliance with: 40 P.S. §323.4(b).** The Company's informal policies and procedures related to the MCAS reporting process during the examination period did not provide the Department with the ability to ensure the accuracy of the data reported in the 2012 and 2013 MCAS submissions.

## 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 procedures to ensure all books, records, accounts, papers, documents and any or all computer or other recordings relating to the property, assets, business and affairs of the Company are maintained in such manner and for such period of time to ensure compliance with 40 P.S. §§ 323.3(a).
2. The Company must review and revise procedures to ensure compliance with 40 P.S. §§ 323.4(b).
3. The Company must review and revise Licensing procedures to ensure compliance with 40 P. S. § 310.71a Termination of Appointments.
4. The Company must review and revise procedures to ensure compliance with 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.
5. The Company must review and revise procedures to ensure compliance with the policy delivery receipt requirements of 40 P.S. § 625-4.
6. The Company must review and revise procedures to ensure compliance with 40 P.S. § 625-6, prohibits alteration of any written application for a life insurance policy or annuity without the applicant's written consent.

7. The Company must review and revise procedures to ensure compliance with Illustration requirements of 40 P.S. § 625-8.
8. The Company must review and revise procedures to ensure compliance with the “free look” requirements of 40 P.S. § 510c.
9. The Company must review and revise procedures to ensure compliance with the replacement requirements of 31, Pennsylvania Code § 81.
10. The Company must review and revise procedures to ensure compliance with the disclosure requirements of 31, Pennsylvania Code § 83.

**XII. COMPANY RESPONSE**

**The Pennsylvania Insurance Department**  
**Market Conduct Examination**  
**For the Period January 1, 2012 to December 31, 2013**

In response to the recommendations submitted by The Commonwealth of Pennsylvania Insurance Department (“the Insurance Department”) resulting from the Market Conduct Examination of The Penn Mutual Life Insurance Company (“the Company”), the Company has reviewed and strengthened its procedures, or has established and begun to carry out a plan to provide additional training to reinforce its procedures, in satisfaction of the Insurance Department’s recommendations. Specific responses to the recommendations are as follows:

**1. Insurance Department Recommendation**

The Company must review and revise procedures to ensure all books, records, accounts, papers, documents and any or all computer or other recordings relating to the property, assets, business and affairs of the Company are maintained in such manner and for such period of time to ensure compliance with 40 P.S. §§ 323.3(a).

**Penn Mutual Response:**

The Company has reviewed its procedures and conducted additional training to reinforce the importance of reviewing all documentation submitted with an application. This includes review of policy documents for completeness, proper dates and signatures. Furthermore, the Company is in the process of implementing up front imaging technology to its business processes to improve capabilities for retaining and retrieving its books and records.

**2. Insurance Department Recommendation**

The Company must review and revised procedures to ensure compliance with 40 P.S. §§ 323.4(b)

**Penn Mutual Response:**

The Company formally documented the processes and procedures surrounding the completion of the MCAS. Those documents were completed, and provided to the examiners in November 2014 during the on-site examination of the company.

**3. Insurance Department Recommendation**

The Company must review and revise Licensing procedures to ensure compliance with 40 P.S. §310.71a) Termination of Appointments.

**Penn Mutual Response:**

The Company has reviewed its procedures and enhanced the process for the termination of appointments. The Company will verify active appointments on the state website and follow up the next day to ensure that all inactive appointments have been properly terminated.

#### **4. Insurance Department Recommendation**

The Company must review and revise procedures to ensure compliance with 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.

#### **Penn Mutual Response:**

The Company has reviewed its procedures and notes that the incident giving rise to this recommendation was an isolated one, and the associates have received training to ensure compliance with this regulation.

#### **5. Insurance Department Recommendation**

The Company review and revise procedures to ensure compliance with the policy delivery receipt requirements 40 P.S. §625-4.

#### **Penn Mutual Response:**

The Company has reviewed its procedures and provided additional training to its associates to reinforce the process of obtaining signed policy receipts by improving the monitoring, at periodic intervals, to better control delivery receipt requirements for completeness, inclusion in the application file and proper document retention. For documents not signed the Company is enhancing its procedure to send the documents for delivery via overnight mail and making three attempts at delivery. Such attempts will be properly documented in the home office file.

#### **6. Insurance Department Recommendation**

The Company must review and revise procedures to ensure compliance with 40 P.S. § 625-6, which prohibits alteration of any written application for a life insurance policy or annuity without the applicant's written consent.

#### **Penn Mutual Response:**

The Company has reviewed its procedures and conducted training to reinforce the importance of reviewing all documentation submitted with the application. Training was conducted with associates to reinforce the importance of accepting only authorized applicant information. Applications are reviewed for any alterations and if identified, it is determined if proper approval has been documented by the applicant. If alternations are not initialed, an amendment identifying the change will be produced and included with the policy. If the alteration cannot be amended, the application will be returned to obtain the applicant's authorization for the change.

#### **7. Insurance Department Recommendation**

The Company must review and revise procedures to ensure compliance with illustration requirements of 40 P.S. §625-8.

**Penn Mutual Response:**

The Company requires that a signed illustration, matching the application, must be submitted for all life applications (other than variable life). In the event the application and illustration do not match, the applicant acknowledges this on the application along with the understanding that they will receive a revised illustration that matches the policy being issued. The owner must return a signed copy of the revised illustration. In the event the signed copy is not received within 60 days, a duplicate copy is sent directly to the policy owner along with a postage paid envelope.

**8. Insurance Department Recommendation**

The Company must review and revise procedures to ensure compliance with “free look” requirements of 40 P.S. § 510c.

**Penn Mutual Response:**

The Company has reviewed its policy and procedures to ensure compliance with the “free look” requirements. This was remediated during the on-site examination and it should be noted that the Company does follow the “20 day free look” provision for processing in accordance with the regulation.

**9. Insurance Department Recommendation**

The Company must review and revise procedures to ensure compliance with the replacement requirements of 31, Pennsylvania Code § 81.

**Penn Mutual Response:**

The Company has reviewed its procedures and has conducted training to reinforce the importance of reviewing 1035 and non 1035 exchange replacements. Additionally the Company has enhanced its procedure and updated its Letter of Authorization (LOA) for its annuity line of business. The updated letter will also serve as a Notice of Replacement. All associates have been trained on this new process.

**10. Insurance Department Recommendation**

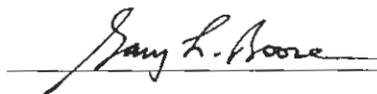
The Company must review and revise procedures to ensure compliance with the disclosure requirements of Title 31, Pennsylvania Code, Chapter § 83.

**Penn Mutual Response:**

The Company has reviewed its procedures and has conducted training to reinforce that applications are accompanied by a signed illustration or revised-illustrations. For documents not signed the Company is enhancing its procedure to send the documents for delivery via overnight mail making three attempts that will be properly documented in the home office file.

## Verification

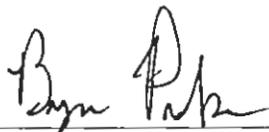
Having been duly sworn, I hereby verify that the statements made in the within document are true and correct to the best of my knowledge, information and belief. I understand that false statements made herein are subject to the penalties of 18 Pa. C.S. §4903 (relating to false swearing).



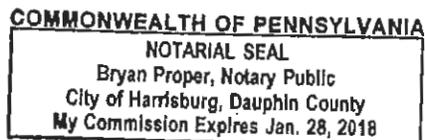
Gary L. Boose LUTC, MCM, Examiner-In-Charge

Sworn to and Subscribed Before me

This 28<sup>th</sup> Day of April, 2015



Notary Public



**PENN INSURANCE AND ANNUITY COMPANY**  
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## I. INTRODUCTION

The Market Conduct Examination was conducted on Penn Insurance and Annuity Company; hereafter referred to as "Company," at the Company's office located in Horsham, Pennsylvania for the weeks of December 8, 2014, through December 12, 2014, and in the Department Offices January 19, 2015, through May 7, 2015. The 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.

Deborah Lee  
Pennsylvania Insurance Department  
Market Conduct Division Chief

Gary L. Boose, LUTC, MCM  
Pennsylvania Insurance Department  
Market Conduct Examiner  
Examiner in Charge

Lonnie L. Suggs, MCM  
INS Services  
Contract Examiner

## 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, 2012, through December 31, 2013, unless otherwise noted. The purpose of the examination was to ensure compliance with Pennsylvania insurance laws and regulations.

The examination focused on the market conduct activities in areas such as: Forms, Producer Licensing, Appointments and terminations, Consumer Complaints, Underwriting Practices and Procedures including surrenders and replacements, life and annuity products of cash value, and Data Integrity, which included a review of the Market Conduct Annual Statement (MCAS) submissions. The examination was called on Penn Insurance and Annuity Company (Company) as a result of recent market and complaint analyses.

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 category of 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

The Penn Insurance and Annuity Company (“the Company”) commenced business on April 9, 1981, and was incorporated in the State of Delaware on July 3, 1980. The Company was licensed to do business in the Commonwealth of Pennsylvania on October 26, 1981. The Company is a wholly owned subsidiary of the Penn Mutual Life Insurance Company (Penn Mutual) and was organized for the purpose of developing and selling nonparticipating products. The Company is licensed to do business in 48 states and the District of Columbia.

Presently, the Company offers indexed universal life products for sale, and also receives renewal premiums on existing blocks of universal life policies. There is also a block of business that includes both immediate annuity and deferred annuity policies. The Company also has a significant amount of universal life assumed reinsurance from Penn Mutual. The Company markets its business through Penn Mutual Company’s distribution systems and Penn Mutual services its in-force business.

On December 18, 2013, the Company formed PIA Reinsurance Company of Delaware I (“PIA Re I”), a wholly-owned special purpose financial reinsurance company organized under the insurance laws of the State of Delaware. On December 31, 2013, the Company entered in a 100% coinsurance with funds withheld reinsurance agreement with PIA Re I to reinsure a certain in-force block of no-lapse index universal life contracts.

As of their 2013, annual statement for Pennsylvania, Penn Insurance and Annuity Company reported direct premium for life insurance and annuities in the amount of \$17,728.579.

#### **IV. COMPANY OPERATIONS AND MANAGEMENT**

This area was not included in the scope of the review.

## 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 of January 1, 2012 through December 31, 2013. 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.

## VI. PRODUCER LICENSING, APPOINTMENT AND TERMINATION

### **A. Producer Licensing – Active**

The Company was requested to provide a list of all producers that were active during the experience period. The Company provided a list of 156 active Insurance Group (INS) Business Unit producers. All active producers from the Insurance Group (INS) Business Unit were selected received and reviewed. The records were compared to departmental records of producers to verify appointments, terminations and licensing. In addition, a comparison was made on the producers identified on applications reviewed in the policy issued sections of the exam. The following violations were noted:

#### **5 Violations – 40 P.S. §310.71(a)**

- (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 \$15.00 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 listed the following producers as active and appointed. However, Sircon for States records do not:

<b>Last</b>	<b>First</b>
Shamsi	Saima
Beynon	William
Ewell	Travis
Indelicato	Accursio
Consiglio	Eric

### **B. Producer Licensing -- Terminated**

The Company was requested to provide a list of all producers terminated during the experience period. The Company provided a list of 11 terminated producers. All terminated producers were compared to departmental records to verify licensing, appointments and terminations. In addition, a comparison was made on the producers identified on applications reviewed in the policy issued sections of the exam. No violations were noted.

## VII. CONSUMER COMPLAINTS

The Company was requested to identify all consumer complaints received during the experience period of January 1, 2012 through December 31, 2013 and to provide copies of consumer complaint logs/registers for calendar years 2010, 2011 and 2012. The Company identified a universe of 3 consumer complaints received during 2010, 2011 and the experience period. Of the 3 complaints identified 1 was forwarded from the Department. All 3 complaint files were requested, received, and reviewed. The Company also provided complaint registers 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 register.

The complaint files and the 2 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.

## **VIII. UNDERWRITING**

The Underwriting review is comprised of individual and group underwriting areas and consists of 11 general segments.

- A. Underwriting Guidelines**
- B. Variable Annuity Full Surrenders and Terminations**
- C. Fixed Annuity Full Surrenders and Terminations**
- D. Fixed Annuity Partial Surrenders and Terminations**
- E. Variable Annuity Partial Surrenders and Terminations**
- F. Universal Life Insurance Applications**
- G. Universal Life Applications with Replacements**
- H. Universal Life Full Policy Surrenders and Terminations**
- I. Whole Life Full Surrenders and Terminations**
- J. Universal Life Insurance Partial Surrenders and Terminations**
- K. Whole Life Insurance Partial Surrenders and Terminations**

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 Guidelines were reviewed:

1. ANB (Annuity New Business) Incoming Replacement Procedures.
2. Hornor Townsend and Kent WSP (Written Supervisory Procedures).
3. Life New Business Incoming Replacement Procedure.
4. Materials (Replacements).
5. PCS (Producer Client Services) Annuity Outgoing Replacement Procedures.
6. Penn Mutual Life Production Guide Market Conduct.
7. Swiss Re Life Guide.

## **ANNUITIES**

### **B. Variable Annuity Full Surrenders and Terminations**

The Company was requested to provide a list of all annuity contracts full surrendered and terminated during the experience period. The Company identified 36 variable annuity contracts fully surrender and terminated contracts. All 36 variable annuity contracts fully surrendered and terminated, were requested, received and reviewed. The contract files

were reviewed to determine compliance to issuance, underwriting, and replacement statutes and regulations. No violations were noted.

### **C. Fixed Annuity Full Surrenders and Terminations**

The Company was requested to provide a list of all annuity contracts surrendered and terminated during the experience period. The Company identified one fixed annuity fully surrendered contract file. The file was requested, received and reviewed. The contract file was reviewed to determine compliance to issuance, underwriting, and replacement statutes and regulations. No violations were noted.

### **D. Fixed Annuity Partial Surrenders and Terminations**

The Company was requested to provide a list of all annuity contracts surrendered and terminated during the experience period. The Company identified one fixed annuity fully surrendered contract file. The file was requested, received and reviewed. The contract file was reviewed to determine compliance to issuance, underwriting, and replacement statutes and regulations. No violations were noted.

### **E. Variable Annuity Partial Surrenders and Terminations**

The Company was requested to provide a list of all annuity contracts surrendered and terminated during the experience period. The Company identified a universe of 26 variable annuity contracts partially surrendered and terminated during the period. All 26 variable annuity contract files partially surrendered and terminated were requested, received and reviewed. The contract files were reviewed to ensure compliance with

contract provisions, laws and regulations of this Commonwealth. No violations were noted.

## **LIFE**

### **F. Universal Life Insurance Applications**

The Company was requested to provide a list of all universal life insurance applications received during the experience period. The Company identified a universe of 210 universal life insurance applications received. A random sampling of 40 universal life application files was requested, received and reviewed. The application files were reviewed to determine compliance to issuance, underwriting, and replacement statutes and regulations. The following violations were noted:

#### **1 Violation – 31, Pennsylvania Code § 83.55(a)**

(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. The noted files did not include the Cost Surrender Comparison Index Disclosure.

#### **1 Violation – 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. The verification of the date of policy delivery could not be established in the noted file.

**1 Violation – 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 noted file contained alterations on the application without the applicant's consent and the amendments were not acknowledged by the applicant or the producer.

**G. Universal Life Applications with Replacements**

The Company was requested to provide a list of life insurance policies issued as replacements during the experience period. The Company identified a universe of 59 universal life insurance applications received as replacements during the experience period. A random sampling of 20 universal life applications received as replacement files was requested, received and reviewed. The universal life insurance application files received as replacements were reviewed to determine compliance to issuance, underwriting, and replacement statutes and regulations. The following violations were noted:

**4 Violations – 31, Pennsylvania Code § 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 letters to the replaced company were not provided or not timely in the 4 noted files.

**1 Violation – 31, Pennsylvania Code § 81.6(c)**

The replacing insurer shall maintain evidence of the Notice Regarding Replacement of Life Insurance and Annuities. The noted file did not contain a copy of the required notice of replacement.

**6 Violations – 40 P.S. § 625-8 (e)(1)(i)**

The following applies if a basic illustration is used by a producer in the sale of a life insurance policy. If the policy is applied for as illustrated, a copy of that illustration, signed in accordance with this section, shall be submitted to the insurer no later than the time the policy application is sent to the insurer. A copy shall also be provided to the applicant no later than the time the application is signed by the applicant. The producer's certification and applicant's acknowledgement of the illustration utilized, was signed and dated after the application date in the 6 noted files.

**4 Violations – 40 P.S. §625-8 (e)(1)(ii)**

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 4

noted files did not contain the signed certification and acknowledgement of the delivery of a revised illustration or contained revised illustrations but the illustrations were not labeled as "Revised Illustration(s)."

#### **H. Universal Life Full Policy Surrenders and Terminations**

The Company was requested to provide a list of all policy surrenders and terminations during the experience period. The Company identified 212 universal life full policy surrenders and terminations during the period. A random sample of 30 universal life full policy surrenders and terminations were requested, received and reviewed. The policy files were reviewed to determine compliance to issuance, underwriting, and replacement statutes and regulations. No violations were noted.

#### **I. Whole Life Full Surrenders and Terminations**

The Company was requested to provide a list of all life insurance policies partially surrendered and terminated during the experience period. The Company identified four whole life insurance policies fully surrendered during the period. The four whole life insurance policies were requested, received and reviewed. The policies were reviewed to determine compliance to issuance, underwriting, and replacement statutes and regulations. No violations were noted.

#### **J. Universal Life Insurance Partial Surrenders and Terminations**

The Company was requested to provide a list of all life insurance policies surrendered during the experience period. The Company identified 18 universal life insurance

policies partial surrendered and terminations during the period. A sample of 10 universal life insurance partial surrenders and termination policy files were requested, received and reviewed. The policy files were reviewed to determine compliance to issuance, underwriting, and replacement statutes and regulations. No violations were noted.

#### **K. Whole Life Insurance Partial Surrenders and Terminations**

The Company was requested to provide a list of all life insurance policies surrendered during the experience period. The Company identified 4 whole life insurance policies partial surrendered and terminations during the period. All 4 whole life insurance partial surrenders and termination policy files were requested, received and reviewed. The policy files were reviewed to determine compliance to issuance, underwriting, and replacement statutes and regulations. No violations were noted.

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

This area was not included in the scope of the review.

## X. MCAS REPORTING

In Pennsylvania, insurers are required annually to submit a Market Conduct Annual Statement (MCAS) to the National Association of Insurance Commissioners (NAIC). The MCAS data is submitted in compliance with Pennsylvania Insurance Department Act, Section 903(a) [40 P.S. §323.3] which states in part, “Every company or person subject to examination in accordance with this act must keep all books, records, accounts, papers, documents and any or all computer or other recordings relating to its property, assets, business and affairs in such manner and for such time periods as the department, in its discretion, may require in order that its authorized representatives may readily verify the financial condition of the company or person and ascertain whether the company or person has complied with the laws of this Commonwealth.” The MCAS Data is submitted, protected and analyzed under the referenced Pennsylvania examination law as a means to validate the continued solvency of an insurer.

The Market Conduct Data Integrity Examination was conducted pursuant to the authority granted by Section 904 [40 P.S. §323.4] of the Insurance Department Act and covered the Market Conduct Annual Statement (MCAS) reporting for 2012 and 2013. The review included the evaluation of the Company’s activities surrounding the accuracy and completeness of the mandatory filing of data for the MCAS report, which is used by regulators to collect claims, and underwriting data.

All companies that submit an MCAS filing must attest to the completeness and accuracy of their submission. The attestation is required once per filing period and applies to all submissions for a specific company code. No submissions will be accepted until an attestation is completed for the Company.

The Examination included review of the Company’s 2012 and 2013 MCAS Life and MCAS Annuity submissions in conjunction with the Company’s procedures and source

data used in compiling those submissions. In addition, the Company was requested to provide procedures for data extraction and the report generation process to support the creation of the MCAS report. The review of the MCAS information was twofold; first to determine the information technology (IT) and data integrity controls in place along with policies and procedures, to ensure the validity of the MCAS data submission; and second, to determine if the 2012 and 2013 MCAS data reported was accurate and complete.

A sample selection of the following sections was reviewed during the course of the examination.

A. 2012 Life Report (MCAS)

1. Number of replacement policies issued during the period
2. Number of policies surrendered during the period

B. 2013 Life Report (MCAS)

1. Number of replacement policies issued during the period
2. Number of policies surrendered during the period

C. 2012 Annuity Report (MCAS)

1. Number of replacement contracts issued during the period
2. Number of contracts surrendered during the period

D. 2013 Annuity Report (MCAS)

1. Number of replacement contracts issued during the period
2. Number of contracts surrendered during the period

E. MCAS Policies and Procedures; Data Extraction and Report Generation

The Interrogatories for Life and Health Reports of A and B:

LINE	INTERROGATORIES
01	Individual Life Cash Value - Does the company have data to report for this product type?
02	Individual Life Non-Cash Value - Does the Company have data to report for this product type?
03	Is there a reason that the reported Individual Life Cash Value Information may identify the Company as an outlier or be substantially different from previously reported data (such as assuming blocks of business; shifting market strategies; underwriting changes, etc.)?
04	If yes, explain:

05	Is there a reason that the reported Individual Life Non-Cash Value information may identify the company as an outlier or be substantially different from previously reported data (such as assuming blocks of business; shifting market strategies; underwriting changes, etc.)?
06	If yes, explain:
07	Additional state specific Individual Life Cash Value comments (optional):
08	Additional state specific Individual Life Non-Cash Value comments (optional):
09	Number of replacement policies issued during the period.
10	Number of internal replacements issued during the period.
11	Number of external replacements issued during the period.
12	Number of policies replaced where age of insured at replacement was < 65.
13	Number of policies replaced where age of insured at replacement was age 65 and over.
14	Number of policies surrendered under 2 years from policy issue.
15	Number of policies surrendered between 2 years and 5 years from policy issue.
16	Number of policies surrendered between 6 years and 10 years from policy issue.
17	Number of policies surrendered during the period.
18	Number of new policies issued during the period where age of insured at issue was < 65.
19	Number of new policies issued during the period where age of insured at issue was age 65 and over.
20	Number of new policies issued during the period.
21	Number of policies applied for during the period.
22	Number of free looks during the period.
23	Number of policies in force at the end of the period.
24	Dollar amount of direct written premium during the period.
25	Face amount of insurance issued during the period.
26	Face amount of insurance in force at the end of the period.
27	Number of complaints received directly from consumers.
28	Number of death claims closed with payment, during the period, within 60 days from the Date of due proof of loss (include only claims where the final decision was payment in full.)
29	Number of death claims closed with payment, during the period, beyond 60 days from the date of due proof of loss (include only claims where the final decision was payment in full.)
30	Number of death claims denied, resisted or compromised during the period.
31	Number of death claims received during the period.

The Interrogatories for Life (Annuity) Reports of C and D:

LINE	INTERROGATORIES
1	Individual Fixed Annuities - Does the company have data to report for this product type?
2	Individual Variable Annuities – Does the Company have data to report for this product type?
3	Is there a reason that the reported Individual Fixed Annuities information may identify the Company as an outlier or be substantially different from previously reported data (such as assuming blocks of business; shifting market strategies; underwriting changes, etc.)?
4	If yes, explain:
5	Is there a reason that the reported Individual Variable Annuities information may identify the company as an outlier or be substantially different from previously reported data (such as assuming blocks of business; shifting market strategies; underwriting changes, etc.)?
6	If yes, explain:
7	Additional state specific Individual Fixed Annuities comments (optional):
8	Additional state specific Individual Variable Annuities comments (optional):
9	Number of replacement contracts issued during the period.
10	Number of internal replacement contracts issued during the period.
11	Number of external replacement contracts issued during the period.
12	Number of contracts replaced where age of annuitant at replacement was < 65

13	Number of contracts replaced where age of annuitant at replacement was 65 to 80.
14	Number of contracts replaced where age of annuitant at replacement was > 80
15	Number of new immediate contracts issued during the period.
16	Number of new deferred contracts issued during the period where age of annuitant was < 65.
17	Number of new deferred contracts issued during the period where age of annuitant was 65 to 80.
18	Number of new deferred contracts issued during the period where age of annuitant was > 80.
19	Number of new deferred contracts issued during the period.
20	Number of contracts surrendered under 2 years from policy issue.
21	Number of contracts surrendered between 2 years and 5 years from policy issue.
22	Number of contracts surrendered between 6 years and 10 years from policy issue.
23	Number of contracts surrendered during the period.
24	Number of contracts applied for during the period.
25	Number of free looks during the period.
26	Number of contracts in force at the end of the period.
27	Dollar amount of annuity considerations during the period.
28	Number of complaints received directly from consumers.

## **A. 2012 MCAS Life Report**

The examination review covers the Company's 2012 MCAS Life Report submission, the supporting source documents and selected/reviewed sample files corresponding to the MCAS data call in order to determine completeness and accuracy of the information attested to by the Company in the MCAS Life Report submission. All companies that submit an MCAS filing must attest to the completeness and accuracy of their submission. The attestation is required once per filing period and applies to all submissions for a specific company code. No submissions will be accepted until an attestation is completed for the company. Below are the interrogatories that every Pennsylvania insurer was required to complete for the 2012 MCAS Life Report.

**MCAS Definition – Cash Value Product** – A life insurance policy that generates a cash value element. Term policies with cash value are considered cash value products.

**MCAS Definition – Non-Cash Value Product** – A life insurance policy that does not contain a cash value element. Do not include life insurance covering only Accidental Death and Dismemberment (AD&D).

### **NUMBER OF REPLACEMENT POLICIES ISSUED**

#### **DURING THE PERIOD – LINE #9**

**MCAS Definition – Replacement Policy** – A policy and/or annuity contract application received by your Company that is intended to replace an existing policy and/or annuity contract. This would include both external and internal replacements.

**No violation was noted.**

### **NUMBER OF POLICIES SURRENDERED**

#### **DURING THE PERIOD – LINE #17**

**MCAS Definition – Surrender Policy/Contract** – A life insurance policy or annuity contract terminated at the request of the policy owner. It does not include life insurance policies or annuity contracts not taken or cancelled during the free look period.

The Company was requested to provide a complete data set for MCAS Life Report line #17. The Company's NAIC 2012 MCAS Life Policies Surrendered submission was 116 Life Surrendered policies for the period. The data sets provided to the Department for the market conduct examination contained 119 records a variance of 3 files. A random sample of 6 life policies surrendered were requested, received and reviewed to ensure compliance with the Commonwealth of Pennsylvania's Statutes and Regulations. The following violation was noted:

**1 Violation – Failure to exercise sufficient due diligence to ensure compliance with 40 P.S. §§ 323.4(b).** The Company's response on line #17 of the 2012 MCAS Life Report submission regarding the number of policies surrendered during the period was inaccurate.

## **B. 2013 MCAS Life Report**

The examination review covered the Company's 2013 MCAS Life submission, the supporting source documents and selected/reviewed sample files corresponding to the MCAS data call in order to determine completeness and accuracy of the information attested to by the Company in the MCAS submission. All companies that submit an MCAS filing must attest to the completeness and accuracy of their submission. The attestation is required once per filing period and applies to all submissions for a specific company code. No submissions will be accepted until an attestation is completed for the company. Below are the interrogatories that every Pennsylvania insurer was required to complete for the 2013 MCAS Life Report.

### **NUMBER OF REPLACEMENT POLICIES ISSUED** **DURING THE PERIOD – LINE #9**

**MCAS Definition – Replacement Policy** – A policy and/or annuity contract application received by your Company that is intended to replace an existing policy and/or annuity contract according to each state's definition of a replacement. This would include both external and internal replacements according to each state's replacement law. Include: loan purchases, if the original policy is surrendered, surrenders, if a replacement policy is issued in conjunction with the surrender and 1035 exchanges. Do not include; policy conversions or exchanges of a group policy for an individual policy.

The Company was requested to provide a complete data set for MCAS Life Replacement Policies Issued Report line #9. On the NAIC 2013 MCAS Life Report the Company reported 3 individual cash value and 0 non-cash value replacement policies issued during the period. The data sets provided to the Department for the market conduct examination contained 7 records a variance of 4. The following violation was noted:

**1 Violation – Failure to exercise sufficient due diligence to ensure compliance with 40 P.S. §§ 323.4 (b).** A review of the Company’s response for line #9 of the 2013 MCAS Life Report submission regarding the number of replacement policies issued during the period differed. The violation was noted.

**NUMBER OF POLICIES SURRENDERED**  
**DURING THE PERIOD – LINE #17**

**MCAS Definition – Surrender Policy/Contract** – A life insurance policy or annuity contract terminated at the request of the policy owner. It does not include life insurance policies or annuity contracts not taken or cancelled during the free look period.

The Company was requested to provide a complete data set for MCAS Life Surrendered Report line #17. On the NAIC 2013 MCAS Life Report the Company reported 90 individual cash value and 0 non-cash value policies surrendered during the period. The data sets provided to the Department for the market conduct examination contained 96 records a variance of 6. A random sample of 5 life policies surrendered were requested, received and reviewed to ensure compliance with the Commonwealth of Pennsylvania’s Statutes and Regulations. The following violation was noted.

**1 Violation – Failure to exercise sufficient due diligence to ensure compliance with 40 P.S. §§ 323.4 (b).** The Company provided an inaccurate response on line #17 of the 2013 MCAS Life Report submission regarding the number of policies surrendered during the period. The violation was noted.

### **C. 2012 MCAS Annuity Report**

The examination team reviewed the Company's 2012 MCAS Annuity Report submission, the supporting source documents and selected/reviewed sample files corresponding to the MCAS data call in order to determine completeness and accuracy of the information attested to by the Company in the MCAS submission. All companies that submit an MCAS filing must attest to the completeness and accuracy of their submission. The attestation is required once per filing period and applies to all submissions for a specific company code. No submissions will be accepted until an attestation is completed for the company. Below are the interrogatories that every Pennsylvania insurer was required to complete for the 2012 MCAS Annuity Report.

#### **NUMBER OF REPLACEMENT CONTRACTS** **ISSUED DURING THE PERIOD – LINE 9**

**MCAS Definition – Replacement Policy** – A policy and/or annuity contract application received by your Company that is intended to replace an existing policy and/or annuity contract according to each state's definition of a replacement. This may include both external and internal replacements according to each state's replacement law. Includes loan purchases, if the original is surrendered, surrenders, if a replacement policy is issued in conjunction with the surrender and 1035 exchanges. Do not include policy conversions or exchanges of a group policy for an individual policy.

No violation was noted.

**NUMBER OF CONTRACTS SURRENDERED**

**LINE #21 – 23**

**MCAS Definition – Surrendered Policy/Contract** – A life insurance policy or annuity contract terminated at the request of the policy owner. It does not include life insurance policies or annuity contracts not taken or cancelled during the free look period. For annuities, systematic withdrawals (the withdrawal of a certain amount on a predetermined periodic basis for deferred annuities) and partial withdrawals should not be reported as “surrenders” for this statement.

No violation was noted.

#### **D. 2013 MCAS Annuity Report**

The examination team reviewed the Company's 2013 MCAS Annuity Report submission, the supporting source documents and selected/reviewed sample files corresponding to the MCAS data call in order to determine completeness and accuracy of the information attested to by the Company in the MCAS submission. All companies that submit an MCAS filing must attest to the completeness and accuracy of their submission. The attestation is required once per filing period and applies to all submissions for a specific company code. No submissions will be accepted until an attestation is completed for the company. Below are the interrogatories that every Pennsylvania insurer was required to complete for the 2013 MCAS Annuity Report.

#### **NUMBER OF REPLACEMENT CONTRACTS**

#### **ISSUED DURING THE PERIOD – LINE 9**

**MCAS Definition – Replacement Policy** – A policy and/or annuity contract application received by your Company that is intended to replace an existing policy and/or annuity contract according to each state's definition of a replacement. This may include both external and internal replacements according to each state's replacement law. Includes loan purchases, if the original is surrendered, surrenders, if a replacement policy is issued in conjunction with the surrender and 1035 exchanges. Do not include policy conversions or exchanges of a group policy for an individual policy.

No violation was noted.

**NUMBER OF CONTRACTS SURRENDERED**

**LINE #21 - 23**

**MCAS Definition – Surrendered Policy/Contract** – A life insurance policy or annuity contract terminated at the request of the policy owner. It does not include life insurance policies or annuity contracts not taken or cancelled during the free look period. For annuities, systematic withdrawals (the withdrawal of a certain amount on a predetermined periodic basis for deferred annuities) and partial withdrawals should not be reported as “surrenders” for this statement.

No violation was noted.

### **E. Policies and Procedures; Data Extraction and Report Generation (MCAS)**

The examination included review of the Company's 2012 and 2013 MCAS IT and data integrity controls, source documents and its general MCAS policies and procedures to determine if the Company had policies and procedures in place to ensure its compliance with the MCAS reporting requirements. The following violation was noted:

**1 Violation – Failure to exercise sufficient due diligence to ensure compliance with: 40 P.S. §§ 323.4 (b).** The Company's informal policies and procedures related to the MCAS reporting process during the examination period did not provide the Department with the ability to ensure the accuracy of the data reported in the 2012 and 2013 MCAS submissions. One violation 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 procedures to ensure compliance with 40 P.S. §323.4.
2. The Company must review and revise Licensing procedures to ensure compliance with 40 P.S. § 310.71(a).
3. The Company must review and revise procedures to ensure compliance with the policy delivery receipt requirements of 40 P.S. § 625-4.
4. The Company must review and revise procedures to ensure compliance with 40 P.S. § 625-6, prohibits alteration of any written application for a life insurance policy or annuity without the applicant's written consent.
5. The Company must review and revise procedures to ensure compliance with Illustration requirements of 40 P.S. §625-8.
6. The Company must review and revise procedures to ensure compliance with the replacement requirements of 31, Pennsylvania Code § 81.
7. The Company must review and revise procedures to ensure compliance with the disclosure requirements of 31, Pennsylvania Code § 83.

**XII. COMPANY RESPONSE**

**The Pennsylvania Insurance Department**  
**Market Conduct Examination**  
**For the Period January 1, 2012 to December 31, 2013**

In response to the recommendations submitted by The Commonwealth of Pennsylvania Insurance Department (“the Insurance Department”) resulting from the Market Conduct Examination of The Penn Insurance and Annuity Company (“the Company”), the Company has reviewed and strengthened its procedures, or has established and begun to carry out a plan to provide additional training to reinforce its procedures, in satisfaction of the Insurance Department’s recommendations. Specific responses to the recommendations are as follows:

**1. Insurance Department Recommendation**

The Company must review and revise procedures to ensure compliance with 40 P.S. §§ 323.4(b).

**PIA Response:**

The Company formally documented the processes and procedures surrounding the completion of the MCAS. Those documents were completed, and provided to the examiners in November 2014 during the on-site examination of the company.

**2. Insurance Department Recommendation**

The Company must review and revise Licensing procedures to ensure compliance with 40 P.S. §310.71 (a) Termination of Appointments.

**PIA Response:**

The Company has reviewed its procedures and enhanced the process for the termination of appointments. The Company will verify active appointments on the state website and follow up the next day to ensure that all inactive appointments have been properly terminated.

**3. Insurance Department Recommendation**

The Company review and revise procedures to ensure compliance with the policy delivery receipt requirements 40 P.S. §625-4.

**PIA Response:**

The Company has reviewed its procedures and provided additional training to its associates to reinforce the process of obtaining signed policy receipts by improving the monitoring, at periodic intervals, to better control delivery receipt requirements for completeness, inclusion in the application file and proper document retention. For documents not signed the Company is enhancing its procedure to send the documents for delivery via overnight mail making three attempts which will be properly documented in the home office file.

**4. Insurance Department Recommendation**

The Company must review and revise procedures to ensure compliance with 40 P.S. § 625-6, which prohibits alteration of any written application for a life insurance policy or annuity without the applicant’s written consent.

**PIA Response:**

The Company has reviewed its procedures and conducted training to reinforce the importance of reviewing all documentation submitted with the application. Training was conducted with associates to reinforce the importance of accepting only authorized applicant information. Applications are reviewed for any alterations and if identified, it is determined if proper approval has been documented by the applicant. If alterations are not initialed, an amendment identifying the change will be produced and included with the policy. If the alteration cannot be amended, the application will be returned to obtain the applicant's authorization for the change.

**5. Insurance Department Recommendation**

The Company must review and revise procedures to ensure compliance with illustration requirements of 40 P.S. §625-8.

**PIA Response:**

The Company requires that a signed illustration, matching the application, must be submitted for all life applications (other than variable life). In the event the application and illustration do not match, the applicant acknowledges this on the application along with the understanding that they will receive a re-illustration that matches the policy being issued. Moreover, additional training has been provided to associates to also ensure that "revised" illustrations are stamped accordingly. The owner must return a signed copy of the revised illustration. In the event the signed copy is not received within 60 days, a duplicate copy is sent directly to the policy owner along with a postage paid envelope.

**6. Insurance Department Recommendation**

The Company must review and revise procedures to ensure compliance with the replacement requirements of 31, Pennsylvania Code § 81.

**PIA Response:**

The Company has reviewed its procedures and has conducted additional training to reinforce the importance of reviewing the application to ensure the timely written notification to the existing insurer within 5 business days to ensure compliance with the regulation. Training includes instruction that the state specific replacement forms must be used. Applications received in the new business area without a replacement form or forms that post-date the application will be returned, requiring a new application and an appropriately dated replacement form be obtained.

**7. Insurance Department Recommendation**

The Company must review and revise procedures to ensure compliance with the disclosure requirements of Title 31, Pennsylvania Code, Chapter § 83.

**PIA Response:**

The Company has reviewed its procedures and has conducted training to reinforce that applications are accompanied by a signed illustration or revised illustration. For documents not signed the Company is enhancing its procedure to send the documents for delivery via overnight mail making three attempts, which will be properly documented in the home office file.