



NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES
REPORT ON MARKET CONDUCT EXAMINATION
OF THE
LINCOLN LIFE AND ANNUITY COMPANY OF NEW YORK

CONDITION:

DECEMBER 31, 2007

DATE OF REPORT:

OCTOBER 17, 2008

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EXAMINER:

VINCENT TARGIA

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NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Benjamin M. Lawsky
Superintendent

April 21, 2011

Honorable Benjamin M. Lawsky
Superintendent of Financial Services
New York, New York 10004

Sir:

In accordance with instructions contained in Appointment No. 30312, dated April 2, 2009 and annexed hereto, a market conduct examination has been made into the affairs of Lincoln Life and Annuity Company of New York, (hereinafter referred to as “the Company,” the surviving entity after the merger of Jefferson Pilot LifeAmerica Insurance Company (“JPLA”) and Lincoln Life and Annuity Company of New York (“LLANY”)) at its home office located at 100 Madison Street, Suite 1860, Syracuse, New York 13202.

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

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

1. EXECUTIVE SUMMARY

The material findings, comments, violations and recommendations contained in this report are summarized below.

- The Company violated several sections of Department Regulation No. 60 by failing to: provide a revised Disclosure Statement in situations where the life insurance policy or annuity contract issued differed from the life insurance policy or annuity contract applied for; examine and ascertain that Disclosure Statements used in the sale of the proposed policies or annuity contracts were accurate and met the requirements of the Insurance Law and Department Regulation No. 60; reject the application where the required forms were not received, the forms did not meet the requirements of Department Regulation No. 60, or the forms were not accurate; and furnish the insurer whose coverage was being replaced a copy of any proposal, including the sales material used in the sale of the proposed life insurance policy or annuity contract, and the completed Disclosure Statement within ten days of receipt of the application. The examiner recommends that the Company implement a remediation plan to provide relief to policyholders that did not receive complete, accurate and timely disclosure. The examiner also recommends that the Company develop and implement an audit plan to review, test and monitor compliance with Department Regulation No. 60. The remediation plan should include all affected policyholders and contractholders commencing with the beginning of this examination period through December 31, 2011. (See Section 4A of this report)
- The Company violated Sections 41.3(a) and (b) of Department Regulation No. 143 by failing to include a statement in advertisements for accelerated death benefits disseminated to Company policyholders that receipt of accelerated death benefits may affect eligibility for public assistance programs and the benefits may be taxable. (See Section 4A of this report)
- The Company violated Section 3211(b)(2) of the New York Insurance Law by failing to include on premium notices sent to certain whole life and term life policyholders that unless such payment is made on or before the date when due or within the specified grace period thereafter, the policy shall terminate or lapse except as to the right to any cash surrender value or nonforfeiture benefit. (See Section 4C of this report)

- The Company violated several sections of Department Regulation No. 74 by failing to obtain at the time of sale either a signed basic illustration or a certification from the producer, signed by the applicant, that no illustration conforming to the policy applied for was provided; by failing to include a notice in annual reports to universal life policyholders that the policy's net cash surrender value will not maintain insurance in force until the end of the next reporting period unless further premium payments are made assuming guaranteed interest, mortality, and expense loads; and by disseminating annual reports to universal life policyholders that did not include an inforce illustration or contain the required language concerning the insured's right to request an illustration without charge. (See Section 4C of this report)
- The Company violated several sections of Department Regulation No. 77 by failing to disclose to its variable universal life policyholders that coverage might terminate unless additional premiums are paid; and failing to include the notice that illustrations of benefits, including death benefits, policy values, and cash surrender values are available upon request. (See Section 4C of this report)
- The Company violated Section 2614 of the New York Insurance Law by using a policy application form that made a distinction associated with an applicant's past lawful travel experiences. This is a repeat violation from the prior report on examination. (See Section 4B of this report)
- The Company violated Section 2611(a) of the New York Insurance Law by not obtaining a signed written informed consent from the applicant prior to performing HIV related tests. (See Section 4B of this report)

2. SCOPE OF EXAMINATION

This examination covers the period from January 1, 2005 through December 31, 2007. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2007 but prior to the date of this report (i.e., the completion date of the examination).

The examination comprised a review of market conduct activities and utilized the National Association of Insurance Commissioners' Market Regulation Handbook or such other examination procedures, as deemed appropriate, in such review.

The examiner reviewed the corrective actions taken by the Company with respect to the market conduct violations and recommendations contained in the prior report on examination. The results of the examiner's review are contained in item 5 of this report.

This report on examination is confined to comments on those matters which involve departure from laws, regulations or rules, or which require explanation or description.

3. DESCRIPTION OF COMPANY

A. History

JPLA was incorporated as a stock life insurance company under the laws of New Jersey under the name of Colonial Life Insurance Company of America on October 27, 1897. A certificate of authority dated December 31, 1897 authorized it to commence business and issue policies as a joint stock life insurance company on August 4, 1900. Effective May 18, 1978, the Colonial Life Insurance Company of America was acquired by Chubb Life Insurance Company, a subsidiary of the Chubb Corporation. On March 1, 1996, the Colonial Life Insurance Company of America changed its name to Chubb Colonial Life Insurance Company. Effective May 13, 1997, Chubb Life Insurance Company and its subsidiaries were acquired by Jefferson Pilot Corporation (“JPC”). On May 1, 1998, Chubb Colonial Life Insurance Company changed its name to Jefferson Pilot LifeAmerica Insurance Company.

LLANY was incorporated as a stock life insurance company under the laws of New York on June 6, 1996, was licensed on September 27, 1996 and commenced business on October 1, 1996.

On April 3, 2006, Lincoln National Corporation (“LNC”) acquired 100% of the outstanding shares of JPC at which time JPC merged with and into LNC. On April 2, 2007, LLANY merged with and into JPLA, which had redomesticated from New Jersey to New York. JPLA was the surviving company and was renamed Lincoln Life and Annuity Company of New York.

The Company is a wholly owned subsidiary of The Lincoln National Life Insurance Company (“LNL”), which is an Indiana life insurance company. The ultimate parent of the Company is LNC, a publicly traded financial services firm. The Company, LNL and its affiliate First Penn-Pacific Life Insurance Company (“FPP”) are collectively known as the Lincoln Financial Group (“LFG”).

B. Territory and Plan of Operations

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

The Company is licensed to transact business in 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. In 2007, 96.2% of life premiums and 94.1% of annuity considerations were received from New York.

The Company currently offers life insurance, annuity products, and qualified pension plan products and services to individuals and groups in New York. The Company's portfolio includes term life, universal life and variable universal life insurance in addition to individual and group variable and fixed annuities. During 2007, 24.9% of total premiums and considerations were from life insurance and 73.1% were from annuity business. Policies are written on a non-participating basis.

As indicated previously, LNL and its life insurance affiliates, FPP and the Company (together referred to as LFG), reflect LFG's prominent position in the wealth management and asset accumulation marketplace. LFG's market position is a top-five provider of variable annuities and life insurance and ranks among the industry's leading writers of ordinary life insurance with a focus on term, variable universal life and universal life, and maintains a solid position in the retirement savings sector as a leading provider of both qualified and non-qualified fixed and variable annuities.

The Company's operations are divided into two major segments "Retirement Solutions" and "Lincoln Life." Retirement Solutions offers tax-deferred investment growth and lifetime opportunities through the manufacture of fixed and variable annuities to both the individual and employer-sponsored markets. Lincoln Life focuses on the creation of wealth for its clients through the manufacture of life insurance products. Products offered include both single and survivorship versions of universal life, variable life, and interest-sensitive whole life, and term insurance. The products are written on a non-participating basis and are distributed through Lincoln Financial Distributors ("LFD") and Lincoln Financial Advisors ("LFA").

Distribution channels such as broker-dealers, financial planners, banks and general agents within New York are utilized. During the examination period, the Company's principal lines of business sold were ordinary fixed and variable annuities and universal life with a lapse protection rider.

4. MARKET CONDUCT ACTIVITIES

The examiner reviewed various elements of the Company's market conduct activities affecting policyholders, claimants, and beneficiaries to determine compliance with applicable statutes and regulations and the operating rules of the Company.

A. Advertising and Sales Activities

The examiner reviewed a sample of the Company's advertising files and the sales activities of the agency force including trade practices, solicitation and the replacement of insurance policies.

Advertising

Section 41.3 of Department Regulation No. 143 states, in part:

“In addition to complying with the provisions of Part 219 of this Title (Regulation No. 34-A), any advertisements for accelerated death benefits shall be subject to the following:

- (a) all advertising material shall include a statement that receipt of the accelerated death benefits may affect eligibility for public assistance programs;
- (b) except as otherwise provided in section 41.8 of this Part of policies that accelerate the death benefit pursuant to sections 1113(a)(1)(C) or (D) of the Insurance Law, all advertising material shall include a statement that receipt of the accelerated death benefits may be taxable . . . ”

A review of the advertising materials related to accelerated death benefits revealed that the advertisements failed to contain: 1) a statement that receipt of accelerated death benefits may affect eligibility for public assistance programs and; 2) a statement that receipt of the accelerated death benefits may be taxable.

The Company violated Section 41.3(a) of Department Regulation No. 143 by failing to include a statement in advertisements for accelerated death benefits that receipt of accelerated death benefits may affect eligibility for public assistance programs.

The Company violated Section 41.3(b) of Department Regulation No. 143 by failing to include a statement in advertisements for accelerated death benefits that receipt of accelerated death benefits may be taxable.

Replacements

The examiner reviewed a sample of 168 replacement files which included 124 life insurance policies and 44 annuity contracts.

1. Section 51.6(b) of Department Regulation No. 60 states, in part:

“Where a replacement has occurred or is likely to occur, the insurer replacing the life insurance policy or annuity contract shall . . .

(9) In the event the life insurance policy or annuity contract issued differs from the life insurance policy or annuity contract applied for, ensure that the requirements of this Part are met with respect to the information relating to the life insurance policy or annuity contract as issued, including but not limited to the revised ‘Disclosure Statement,’ any revised or additional sales material used and acknowledgement by the applicant of receipt of such revised material.”

In 35 of the files reviewed (20.8%), a revised Disclosure Statement was warranted because the policy was issued other than as applied for. In these instances, the Company failed to provide the applicant with a revised Disclosure Statement.

The Company violated Section 51.6(b)(9) of Department Regulation No. 60 by failing to provide a revised Disclosure Statement in situations where the life insurance policy or annuity contract applied for differed from the life insurance policy or annuity contract issued.

2. Section 51.6(b) of Department Regulation No. 60 states, in part:

“Where a replacement has occurred or is likely to occur, the insurer replacing the life insurance policy or annuity contract shall . . .

(3) Examine any proposal used, including the sales material used in the sale of the proposed life insurance policy or annuity contract, and the ‘Disclosure Statement’, and ascertain that they are accurate and meet the requirements of the Insurance Law and this Part . . .

(7) Where the required forms are not received with the application, or if the forms do not meet the requirements of this Part or are not accurate, within ten days from the date of receipt of the application either have any deficiencies corrected or reject the application and so notify the applicant of such rejection and the reason therefor. In such cases, the insurer shall maintain any material used in the proposed sale, in accordance with the guidelines of Section 51.6(b)(6) herein . . . ”

In 43 of the files reviewed (25.7%), the Company failed to examine or ascertain that the Disclosure Statement used in the sale of the proposed policy or contract contained errors and did not meet the requirements of Department Regulation No. 60. In addition, the deficiencies were

not identified by the Company and corrected within ten days of receipt of the application and the Company did not reject the application.

Examples of the deficiencies are: in 24 cases the Disclosure Statement was incomplete or had discrepancies in the amounts noted; in 6 cases the replacement forms were dated after the application was taken; and in 5 cases a composite disclosure was required.

The Company violated Section 51.6(b)(3) of Department Regulation No. 60 by failing to examine and ascertain that the Disclosure Statement used in the sale of the proposed policy or annuity contract was accurate and met the requirements of Department Regulation No. 60.

The Company violated Section 51.6(b)(7) of Department Regulation No. 60 by failing to reject the application where the required forms were not received with the application; the forms did not meet the requirements of Department Regulation No. 60 or the forms were not accurate.

3. Section 51.6(b) of Department Regulation No. 60 states, in part:

“Where a replacement has occurred or is likely to occur, the insurer replacing the life insurance policy or annuity contract shall . . .

(4) Within ten days of receipt of the application furnish to the insurer whose coverage is being replaced a copy of any proposal, including the sales material used in the sale of the proposed life insurance policy or annuity contract, and the completed ‘Disclosure Statement’ . . .”

In 23 of the files reviewed (13.7%), the Company took longer than ten days from the date of receipt of the application to furnish the insurer whose coverage was being replaced a copy of the proposal, including sales material used in the sale of the proposed life insurance policy or annuity contract, and the completed Disclosure Statement. In six of the 23 (26.1%) replacement transactions the Company failed to furnish the required information or was unable to locate evidence that it did so.

The Company violated Section 51.6(b)(4) of Department Regulation No. 60 by failing to furnish the insurer whose coverage was being replaced a copy of any proposal, including the sales material used in the sale of the proposed life insurance policy or annuity contract, and the completed Disclosure Statement within ten days of receipt of the application.

The examiner recommends that the Company implement a remediation plan acceptable to the Department to mitigate the deficiencies noted in item 1 above and provide relief to all policyholders and contractholders that did not receive complete, accurate and timely disclosure prior to completing an application to replace their existing life insurance policy and/or annuity

contract. The remediation plan should include all affected policyholders and contractholders commencing with the beginning of this examination period through December 31, 2011.

The examiner also recommends that the Company develop and implement an audit plan designed to review, test and monitor compliance with Department Regulation No. 60. Such plan should be approved by the Company's board of directors and its audit committee. Also, the results of audits performed should be reviewed by the board of directors and the audit committee.

B. Underwriting and Policy Forms

The examiner reviewed a sample of new underwriting files, both issued and declined, and the applicable policy forms.

1. Section 3207(b) of the New York Insurance Law states:

“An insurer may deliver or issue for delivery in this state a policy or policies of life insurance upon the life of a minor under the age of fourteen years and six months, provided that such policy or policies are effectuated by a person or persons having an insurable interest in the life of such minor or by a person or persons upon whom such minor is dependent for support and maintenance and provided further that an insurer shall not knowingly issue such a policy or policies for an amount which, together with the amount of life insurance under any other policy or policies then in force upon the life of such minor, is in excess of the limit of fifty thousand dollars or the limit of fifty per centum or the limit of twenty-five per centum in the case of a minor under the age of four years and six months of the amount of life insurance in force upon the life of the person effectuating the insurance at the date of issue of the policy on the life of such minor, whichever limit is the greater, and any amount of life insurance on the life of such minor not in excess of such limit when issued shall not be deemed to be in excess thereof by reason of any reduction thereafter in the amount of life insurance in force upon the life of the person effectuating the insurance.”

A review was made of policies issued on the lives of minors under the age of four years and six months during the examination period. Out of a sample of 17 such policies issued in New York, 4 of the policies (23.5%) were issued for amounts of insurance in excess of the limits set forth in Section 3207(b) of the New York Insurance Law.

The Company violated Section 3207(b) of the New York Insurance Law by issuing policies on the lives of minors for amounts of life insurance in excess of the limits of such section.

2. Section 2611(a) of the New York Insurance Law states, in part:

“(a) No insurer or its designee shall request or require an individual proposed for insurance coverage to be the subject of an HIV related test without receiving the written informed consent of such individual prior to such testing . . . ”

The examiner reviewed 290 life applications for which the Company’s underwriting guidelines required a blood profile analysis, that included an HIV screen, be given to the applicant. In 78 of the cases (26.9%) the Company failed to obtain a signed written informed consent from the applicant prior to the date that the blood sample was drawn and an analysis performed. Of the 78 cases, 73 were signed late and 5 were not signed at all.

The Company violated Section 2611(a) of the New York Insurance Law by not obtaining a signed written informed consent from the applicant prior to performing HIV related tests.

3. Section 2614 of the New York Insurance Law states:

“No insurer or entity authorized to offer the kinds of insurance specified in paragraph one, two or three of subsection (a) of section one thousand one hundred thirteen of this chapter, nor any agent, officer or employee of such insurer or entity shall make any distinction or otherwise discriminate between persons, reject an applicant, cancel a policy or demand or require a higher rate of premium for reasons associated with an applicant’s or insured’s past lawful travel experiences.”

A review of policies issued during the examination period indicated that the Company used a policy application that asked the following question:

“In the past two years have you traveled outside the U.S.A. or Canada or do you intend to do so in the next two years?”

Section 2614 of the New York Insurance Law was revised in October 2004. In response to this revision the Company revised its policy application in December 2005 (approved by the Department in February 2006) to eliminate the past travel question. A review of 128 policy files indicated that the Company continued to use the policy application that contained the question regarding past travel 56 times (43.7%) through July 2007, approximately 33 months after the revision of Section 2614 of the New York Insurance Law and approximately 19 months after it revised its policy application.

The Company violated Section 2614 of the New York Insurance Law by using a policy application form that made a distinction associated with an applicant's past lawful travel experiences. This is a repeat violation (See item 5H of this report).

4. Section 4221(a) of the New York Insurance Law states, in part:

“In the case of policies issued on or after the operative date of this section as defined in subsection (p) hereof, no policy of life insurance, except as stated in subsection (o) hereof, shall be delivered or issued for delivery in this state unless it shall contain in substance the following provisions, or corresponding provisions which in the opinion of the superintendent are at least as favorable to the defaulting or surrendering policyholder as are minimum requirements hereinafter specified and are essentially in compliance with subsection (n) hereof . . .

(7) That the company shall deliver at issue to each holder of a policy under which additional amounts may be credited pursuant to subsection (b) of section four thousand two hundred thirty-two of this article, or under which cash surrender values and policy loan values are adjusted in accordance with a market-value adjustment formula, a statement containing such information as the superintendent prescribes, and shall mail to each such holder at least once each policy year or within sixty days after the end of a policy year a statement as of a date during such year as to the death benefit, cash surrender value and loan value under the policy (and any amount by which such cash surrender value and loan value were adjusted in accordance with a market-value adjustment formula) on such date as well as such further information as the superintendent requires. The statement shall be addressed to the last post-office address of the policyholder known to the company.”

A review of annual reports mailed to universal life policyholders during the examination period indicated that the Company failed to specify the loan value under the policy.

The Company violated Section 4221(a)(7) of the New York Insurance Law by failing to provide a statement containing the loan value under the policy at least annually to universal life policyholders.

C. Treatment of Policyholders

The examiner reviewed a sample of various types of claims, surrenders, changes and lapses. The examiner also reviewed the various controls involved, checked the accuracy of the computations and traced the accounting data to the books of account.

1. Section 86.4 of Department Regulation No. 95 states, in part:

“(a) Except with respect to automobile insurance, all claim forms for insurance, and all applications for commercial insurance and accident and health insurance, provided to any person residing or located in this State in connection with insurance policies for issuance or issuance for delivery in this State, shall contain the following statement:

‘Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the stated value of the claim for each such violation.’ . . .

(d) Location of warning statements and type size. The warning statements required by subdivisions (a), (b) and (e) of this section shall be placed immediately above the space provided for the signature of the person executing the application or claim form and shall be printed in type which will produce a warning statement of conspicuous size. On claim forms which require execution by a person other than the claimant, or in addition to the claimant, the warning statements required by subdivisions (a), (b) and (e) of this section shall be placed at the top of the first page of the claim form or in the page containing instructions, either in print, by stamp or by attachment and shall be in type size which will produce a warning statement of conspicuous size.

(e) Notwithstanding the provisions of subdivisions (a) and (b) of this section, insurers may use substantially similar warning statements provided such warning statements are submitted to the Insurance Frauds Bureau for prior approval.”

An examination of claim forms provided and utilized by the Company revealed that the fraud warning statement was not placed immediately above the space provided for the signature of the person executing the claim form in 9 of the 18 (50%) forms reviewed.

The Company violated Section 86.4(d) of Department Regulation No. 95 by failing to place the fraud warning statement immediately above the space provided for the signature of the person executing the claim form.

2. Section 54.10 of Department Regulation No. 77 states, in part:

“The application for a variable life insurance policy shall contain . . .

(d) A notice that the following are available upon request: Illustrations of benefits, including death benefits, policy values and cash surrender values. Such illustrations shall be in a form and content acceptable to the superintendent.”

Section 54.11 of Department Regulation No. 77 states, in part:

“Any insurer delivering or issuing for delivery in this State any variable life insurance policies shall mail to each variable life insurance policyholder, at his or her last known address, the following reports:

(a) Within 60 days after each anniversary of the policy, a statement or statements of the cash surrender value, policy value, death benefit, any partial withdrawal or policy loan, any interest charge, and any optional payments allowed pursuant to section 54.6(b)(10) of this Part under the policy, computed as of the policy anniversary date; provided, however, that such statement may be furnished within 30 days after a specified date in each policy year so long as the information contained therein is computed as of a date not more than 60 days prior to the mailing of such notice. This statement shall state that, in accordance with the investment experience of the separate account, the policy values and the variable death benefit may increase or decrease, and shall prominently identify any value described therein which may be recomputed prior to the next statement required by this subdivision. If the policy guarantees that the variable death benefit on the next policy anniversary date will not be less than the variable death benefit specified in such statement, the statement shall be modified to so indicate. For flexible premium policies, the report must contain a reconciliation of the change since the previous report in policy value and cash surrender value, if different, because of payments made (less deductions for expense charges), withdrawals, investment experience, insurance charges and any other charges made against the policy value. If, based upon the billed or other appropriate identified premium, an assumed net investment return of not greater than eight percent per annum, and current mortality charge and expense, the policy value would become exhausted at any duration within the 10 years following the report date, the report shall state such duration and note the assumptions as to premium and other factors upon which it is based, together with a notice that coverage might then terminate, subject to the policy grace period provision, unless additional premiums are paid. The report shall contain the notice specified in section 54.10(d) of this Part. . . .”

The examiner’s review of universal variable life annual statement specimens provided by the Company revealed that the statements did not contain disclosure language required by Section 54.11(a) of Department Regulation No. 77 that coverage may terminate if additional premiums are not paid.

In addition, the statements failed to include a notice that illustrations of benefits, including death benefits, policy values and cash surrender values were available upon request, as required by Section 54.10(d) of Department Regulation No. 77.

The Company violated Section 54.11(a) of Department Regulation No. 77 by failing to disclose to its variable universal life policyholders that coverage might terminate unless additional premiums are paid.

The Company violated Section 54.11(a) of Department Regulation No. 77 by failing to include the notice specified in Section 54.10(d) of Department Regulation No. 77 that illustrations of benefits, including death benefits, policy values, and cash surrender values are available upon request.

3. Section 53-3.5(b) of Department Regulation No. 74 states:

“If no illustration is used by an insurance producer or other authorized representative of the insurer in the sale of a life insurance policy or if the policy is applied for other than as illustrated, the producer or representative shall certify to that effect in writing on a form provided by the insurer. On the same form the applicant shall acknowledge that no illustration conforming to the policy applied for was provided and shall further acknowledge an understanding that an illustration conforming to the policy as issued will be provided no later than at the time of policy delivery. This form shall be submitted to the insurer at the time of policy application. If the policy is issued, a basic illustration conforming to the policy as issued shall be sent with the policy and signed no later than the time the policy is delivered. A copy shall be provided to the insurer and the policyowner.”

A review was made of 56 applications where the policy form was one that the Company indicated in its annual certification to the Department that the policy form was marketed with an illustration. In 16 out of the 56 (28.6%) cases reviewed the policy record failed to include a basic illustration signed by the applicant dated on or before the point of sale (date that the application was signed) or a certification signed by the agent and the applicant acknowledging that no illustration conforming to the policy applied for was provided at the time of sale.

The Company violated Section 53-3.5(b) of Department Regulation No. 74 by failing to obtain at the time of sale either a signed basic illustration or a certification from the producer, signed by the applicant, that no illustration conforming to the policy applied for was provided.

4. Section 53-3.6 of Department Regulation No. 74 states, in part:

“(a) In the case of a policy designated as one for which illustrations will be used, the insurer shall provide each policyowner with an annual report on the status of the policy that shall contain at least the following information:

(1) For policies subject to Section 4232(b) of the Insurance Law, the report shall include the following . . .

(viii) a notice, in the report for flexible premium policies, when applicable, that the policy’s net cash surrender value will not maintain insurance in-force until the end of the next reporting period unless further premium payments are made assuming guaranteed interest, mortality, and expense loads . . .

(b) If the annual report does not include an in-force illustration, it shall contain the following notice displayed prominently: ‘IMPORTANT POLICY OWNER NOTICE: You should consider requesting more detailed information about your policy to understand how it may perform in the future. You should not consider replacement of your policy or make changes in your coverage without requesting a current illustration. You may annually request, without charge, such an illustration by calling [insurer’s phone number], writing to [insurer’s name] at [insurer’s address] or contacting your agent or broker. If you do not receive a current illustration of your policy within 30 days from the date of your request, you should contact your state insurance department.’ The insurer may vary the sequential order of the methods for obtaining an in-force illustration. . . .”

The examiner selected a sample of life insurance policies that lapsed during the examination period and requested that the Company provide a copy of the annual report or annual statement that was mailed to the policyowner for the reporting period prior to the lapse of the policy.

In 3 of the 16 (18.7%) universal life cases reviewed the annual report did not contain a notice that the policy’s net cash surrender value will not maintain insurance in force until the end of the next reporting period unless further premium payments are made assuming guaranteed interest, mortality, and expense loads.

In addition, the examiner determined that the Company disseminated annual reports to universal life policyholders that did not include an inforce illustration or contain the required language concerning the insured’s right to request an illustration without charge.

The Company violated Section 53-3.6(a)(viii) of Department Regulation No. 74 by failing to include a notice in annual reports to universal life policyholders that the policy’s net cash surrender value will not maintain insurance in force until the end of the next reporting period unless further premium payments are made assuming guaranteed interest, mortality, and expense loads.

The Company violated Section 53-3.6(b) of Department Regulation No. 74 by disseminating annual reports to universal life policyholders that did not include an inforce illustration or contain the required language concerning the insured's right to request an illustration without charge.

5. Section 3211(b)(2) of the New York Insurance Law states:

“(b) The notice required by paragraph one of subsection (a) hereof shall...
(2) state the amount of such payment, the date when due, the place where and the person to whom it is payable; and shall also state that unless such payment is made on or before the date when due or within the specified grace period thereafter, the policy shall terminate or lapse except as to the right to any cash surrender value or nonforfeiture benefit.”

The examiner selected policies that lapsed for non payment of premium during the examination period. The examiner requested that the Company provide the billing notices (first notice of payment due, reminder notice, and the lapse notice). In some instances, the Company was unable to provide or re-produce the billing notices for the items in the sample. For certain traditional life notices, the disclosure language required by Section 3211(b)(2) of the New York Insurance Law was not included in its entirety, in other cases the disclosure appeared to be missing altogether.

The Company violated Section 3211(b)(2) of the New York Insurance Law by failing to include on premium notices sent to certain whole life and term life policyholders that unless such payment is made on or before the date when due or within the specified grace period thereafter, the policy shall terminate or lapse except as to the right to any cash surrender value or nonforfeiture benefit.

6. A review of life insurance claims revealed that the Company's standard method for paying claims is through a retained asset account. The retained asset account consists of an interest bearing checking account, referred to as “SecureLine” that is established in the name of the beneficiary and administered through The Northern Trust Bank. A “SecureLine” account is automatically established when the claim proceeds exceed a pre-determined amount (\$5,000 or \$10,000 depending upon the product). The Northern Trust Bank mails the checkbook and related information to the claimant.

The Company provided 11 claim forms used in its settlement process. A review of the claim forms indicated that the Company does not consistently provide all claimants the option of receiving a lump sum payment as a settlement option.

The examiner recommends that the Company add an “opt out” statement on all of its claim forms for the convenience of its claimants.

5. PRIOR REPORT SUMMARY AND CONCLUSIONS

Following are the violations and recommendations contained in the prior report on examination and the subsequent actions taken by the Company in response to each citation:

<u>Item</u>	<u>Description</u>
A	<p>The Company violated Section 219.4(e) of Department Regulation No. 34-A by using the words “there is no charge,” “no extra cost,” “no additional cost” and other similar terms to describe the benefit or service being made available with products being offered on its advertisements.</p> <p>A review indicated that the Company no longer uses the words “there is no charge,” “no extra cost,” “no additional cost” and other similar terms to describe the benefits or services being made available with products being offered on its advertisements.</p>
B	<p>The Company violated Section 219.4(p) of Department Regulation No. 34-A by failing to include the name of the city, town or village in which it has its home office on its advertisements. This is a repeat violation from the prior report on examination.</p> <p>A review indicated that the Company substantially complied with Section 219.4(p) of Department Regulation No. 34-A by including the name of the city, town or village in which it has its home office on its advertisements.</p>
C	<p>The Company violated Section 51.6(b)(2) of Department Regulation No. 60 by failing to require completed Disclosure Statements, on a consistent basis.</p> <p>A review of replacements revealed that the Company failed to take corrective action in response to the prior examination recommendation as significant examination findings indicate a lack of adequate control procedures or a breakdown in established controls and procedures over New York replacement processing. While the Company may have had established procedures, they were not consistently applied. (See Section 4A of this report)</p>
D	<p>The Company violated Section 51.6(b)(6) of Department Regulation No. 60 by failing to maintain the proposals, including sales material, as part of the replacement file, on a consistent basis, when the Disclosure Statement indicated that a proposal or sales material was used in the sale.</p> <p>A review of replacements revealed that the Company failed to take corrective action in response to the prior examination recommendation as significant examination findings indicate a lack of adequate control procedures or a breakdown in established controls and procedures over New York replacement processing. While the Company may have had established procedures, they were not consistently applied. (See Section 4A of this report)</p>

<u>Item</u>	<u>Description</u>
E	<p>The Company violated Section 243.2(b)(1)(iv) of Department Regulation No. 152 by failing to maintain the replaced company's response as part of the replacement file, on a consistent basis.</p> <p>A review of replacements indicated that the Company took corrective actions to ensure that the replaced company's response is maintained as part of the replacement file.</p>
F	<p>The Company violated Section 51.6(e) of Department Regulation No. 60 by failing to date stamp applications, Disclosure Statements, Important Notices, Definition of Replacements, Disclosure Authorizations and/or the replaced company's response upon receipt, and by not establishing or implementing procedures that all material be dated upon receipt.</p> <p>A review of replacements indicated that the Company had established procedures to ensure that all material be dated upon receipt. Additionally, many of the replacement transactions were imaged, eliminating the date stamp. In these instances, the date that the material was scanned was used as the receipt date as incoming mail is scanned within 24 hours.</p>
G	<p>The examiner recommends that the Company strengthen its replacement procedures.</p> <p>A review of replacements revealed that the Company failed to take corrective action in response to the prior examination recommendation as significant examination findings indicate a lack of adequate control procedures or a breakdown in established controls and procedures over New York replacement processing. While the Company may have had established procedures, they were not consistently applied. (See Section 4A of this report)</p>
H	<p>The Company violated Section 2614 of the New York Insurance Law by using a policy application form that made a distinction associated with an applicant's past lawful travel experiences.</p> <p>The Company failed to take corrective action in response to this prior report comment. (See Section 4B of this report)</p>
I	<p>The Company violated Section 3201(b)(1) of the New York Insurance Law by using a policy form that was not filed with and approved by the Superintendent.</p> <p>A review of policy forms indicated that the Company corrected the prior violation by filing and receiving approval for the policy form on November 1, 2006.</p>

<u>Item</u>	<u>Description</u>
J	<p>The examiner recommends that the Company file the form with the Superintendent for approval.</p> <p>A review of policy forms indicated that the Company filed and received approval for the policy form on November 1, 2006.</p>
K	<p>The examiner recommends that the Company maintain policy level detail to support all numbers and amounts reported in its Exhibit of Life Insurance in the future.</p> <p>A review of the Exhibit of Life Insurance indicated that Company maintained policy level detail to support all numbers and amounts reported.</p>
L	<p>The examiner recommends that the Company correctly report the number of immediate and deferred annuities and group contracts and certificates issued during the year, increased during the year, and deductions during the year in its Exhibit of Annuities in the appropriate line of the Exhibit in the future.</p> <p>A review of the Exhibit of Annuities indicated that the Company correctly reported the number of immediate and deferred annuities and group contracts and certificates issued during the year, increased during the year, and deductions during the year in the appropriate line of the Exhibit.</p>

6. SUMMARY AND CONCLUSIONS

Following are the violations and recommendations contained in this report:

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
A	The Company violated Section 41.3(a) of Department Regulation No. 143 by failing to include a statement in advertisements for accelerated death benefits that receipt of accelerated death benefits may affect eligibility for public assistance programs.	7
B	The Company violated Section 41.3(b) of Department Regulation No. 143 by failing to include a statement in advertisements for accelerated death benefits that receipt of accelerated death benefits may be taxable.	7
C	The Company violated Section 51.6(b)(9) of Department Regulation No. 60 by failing to provide a revised Disclosure Statement in situations where the life insurance policy or annuity contract applied for differed from the life insurance policy or annuity contract issued.	8
D	The Company violated Section 51.6(b)(3) of Department Regulation No. 60 by failing to examine and ascertain that the Disclosure Statement used in the sale of the proposed policy or annuity contract was accurate and met the requirements of Department Regulation No. 60.	9
E	The Company violated Section 51.6(b)(7) of Department Regulation No. 60 by failing to reject the application where the required forms were not received with the application; the forms did not meet the requirements of Department Regulation No. 60 or the forms were not accurate.	9
F	The Company violated Section 51.6(b)(4) of Department Regulation No. 60 by failing to furnish the insurer whose coverage was being replaced a copy of any proposal, including the sales material used in the sale of the proposed life insurance policy or annuity contract, and the completed Disclosure Statement within ten days of receipt of the application.	9
G	The examiner recommends that the Company implement a remediation plan acceptable to the Department to mitigate the deficiencies and provide relief to all policyholders and contractholders that did not receive complete, accurate and timely disclosure prior to completing an application to replace their existing life insurance policy and/or annuity contract. The remediation plan should include all affected policyholders and contractholders commencing with the beginning of this examination period through December 31, 2011.	9

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
H	The examiner recommends that the Company develop and implement an audit plan designed to review, test and monitor compliance with Department Regulation No. 60. Such plan should be approved by the Company's board of directors and its audit committee. Also, the results of audits performed should be reviewed by the board of directors and the audit committee.	10
I	The Company violated Section 3207(b) of the New York Insurance Law by issuing policies on the lives of minors for amounts of life insurance in excess of the limits of such section.	10
J	The Company violated Section 2611(a) of the New York Insurance Law by not obtaining a signed written informed consent from the applicant prior to performing HIV related tests.	11
K	The Company violated Section 2614 of the New York Insurance Law by using a policy application form that made a distinction associated with an applicant's past lawful travel experiences. This is a repeat violation (See item 5H of this report).	12
L	The Company violated Section 4221(a)(7) of the New York Insurance Law by failing to provide a statement containing the loan value under the policy at least annually to universal life policyholders.	12
M	The Company violated Section 86.4(d) of Department Regulation No. 95 by failing to place the fraud warning statement immediately above the space provided for the signature of the person executing the claim form.	13
N	The Company violated Section 54.11(a) of Department Regulation No. 77 by failing to disclose to its variable universal life policyholders that coverage might terminate unless additional premiums are paid.	15
O	The Company violated Section 54.11(a) of Department Regulation No. 77 by failing to include the notice specified in Section 54.10(d) of Department Regulation No. 77 that illustrations of benefits, including death benefits, policy values, and cash surrender values are available upon request.	15
P	The Company violated Section 53-3.5(b) of Department Regulation No. 74 by failing to obtain at the time of sale either a signed basic illustration or a certification from the producer, signed by the applicant, that no illustration conforming to the policy applied for was provided.	15

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
Q	The Company violated Section 53-3.6(a)(viii) of Department Regulation No. 74 by failing to include a notice in annual reports to universal life policyholders that the policy's net cash surrender value will not maintain insurance in force until the end of the next reporting period unless further premium payments are made assuming guaranteed interest, mortality, and expense loads.	16
R	The Company violated Section 53-3.6(b) of Department Regulation No. 74 by disseminating annual reports to universal life policyholders that did not include an inforce illustration or contain the required language concerning the insured's right to request an illustration without charge.	17
S	The Company violated Section 3211(b)(2) of the New York Insurance Law by failing to include on premium notices sent to certain whole life and term life policyholders that unless such payment is made on or before the date when due or within the specified grace period thereafter, the policy shall terminate or lapse except as to the right to any cash surrender value or nonforfeiture benefit.	17
T	The examiner recommends that the Company add an "opt out" statement on all of its claim forms for the convenience of its claimants.	18

Respectfully submitted,

_____/s/_____
Vincent Targia
Associate Insurance Examiner

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

Vincent Targia, being duly sworn, deposes and says that the foregoing report, subscribed by him, is true to the best of his knowledge and belief.

_____/s/_____
Vincent Targia

Subscribed and sworn to before me
this _____ day of _____

APPOINTMENT NO. 30312

STATE OF NEW YORK
INSURANCE DEPARTMENT

I, ERIC R. DINALLO, Superintendent of Insurance of the State of New York,
pursuant to the provisions of the Insurance Law, do hereby appoint:

VINCENT TARGIA

as a proper person to examine into the affairs of the

LINCOLN LIFE & ANNUITY COMPANY OF NEW YORK

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

COMPANY

with such other information as he shall deem requisite.

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

this 2nd day of April, 2009

ERIC R. DINALLO
Superintendent of Insurance

By:

MICHAEL MAFFEI
ASSISTANT DEPUTY SUPERINTENDENT
AND CHIEF OF THE LIFE BUREAU

