



STATE OF NEW YORK INSURANCE DEPARTMENT
REPORT ON MARKET CONDUCT EXAMINATION
OF THE
MUTUAL OF AMERICA LIFE INSURANCE COMPANY

CONDITION:

DECEMBER 31, 2006

DATE OF REPORT:

AUGUST 29, 2007

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AS OF
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EXAMINER:

ANTHONY A. CHIAREL

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STATE OF NEW YORK
INSURANCE DEPARTMENT
25 BEAVER STREET
NEW YORK, NEW YORK 10004

David A. Patterson
Governor

James J. Wrynn
Superintendent

March 3, 2010

Honorable James J. Wrynn
Superintendent of Insurance
Albany, New York 12257

Sir:

In accordance with instructions contained in Appointment No. 30202, dated September 24, 2008 and annexed hereto, an examination has been made into the market conduct activities of the Mutual of America Life Insurance Company, hereinafter referred to as "the Company," at its home office located at 320 Park Avenue, New York, NY 10022.

Wherever "Department" appears in this report, it refers to the State of New York Insurance Department.

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

1. EXECUTIVE SUMMARY

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

- The Company violated Section 51.6(b)(3) of Department Regulation No. 60 by failing to: examine and ascertain that a composite Appendix 10B Disclosure Statement was required and to provide such in situations where more than one existing contract was being replaced; and require the agent to indicate whether or not sales materials were used. (See item 4A of this report)
- The Company violated Section 51.6(b)(4) of Department Regulation No. 60 by failing to furnish the existing insurer a copy of the sales material used in the sale of the proposed annuity contract and the completed Disclosure Statement within ten days of the receipt of the application. (See item 4A of this report)
- The Company violated Section 4228(f)(1)(B) by making changes to its filed incentive compensation plan, and not filing those changes with the Department. (See item 5 of this report)

2. SCOPE OF EXAMINATION

This examination covers the period from January 1, 2002 through December 31, 2006. As necessary, the examiner reviewed transactions subsequent to December 31, 2006 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 Conduct Examiners' 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 violation and recommendations contained in the prior report on examination. The results of the examiner's review are contained in item 6 of this report.

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

3. DESCRIPTION OF COMPANY

A. History

The Company was incorporated and licensed as a retirement association under the laws of New York on January 3, 1945, and commenced business on October 1, 1945 as National Health and Welfare Retirement Association Incorporated, a not for profit organization, with the authority to transact business in accordance with what is currently codified as Article 46 of the New York Insurance Law.

On December 31, 1978, the Company converted to a mutual life insurance company pursuant to Section 7303 of the New York Insurance Law under the name National Health and Welfare Mutual Life Insurance Association, Incorporated and eventually assumed all of the business of National Health and Welfare Retirement Association Incorporated.

Effective January 1, 1984, the Company's name was changed to Mutual of America Life Insurance Company.

The Company is a mutual life insurer that specializes in providing employee benefits, including pensions and life and health insurance, to employees of employers in the "not for profit" field. Its clientele includes providers of health care, educational institutions, unions, religious and charitable organizations and governmental agencies and their employees. As a provider of benefits to the "not for profit" sector, the Company had been exempt from federal income taxes under Section 501(c)(4) of the Internal Revenue Code. The Tax Reform Act of 1986 limited the Company's federal tax exemption to the Company's pension business only. The Tax Payer Relief Act of 1997 made the Company's entire operations subject to federal income tax, effective January 1, 1998. This change was subject to certain "fresh start" transition rules, which moderated the impact of federal income taxes on the Company.

As a result of the Tax Relief Act of 1997, the Company was also able to broaden its policyholder base. The Company's original charter limited its policyholders to solely tax-exempt organizations, governmental entities and their directors, employees and families (to comply with its original restricted tax-exempt purpose). In December 1998, the Company's board of directors amended the charter so that the Company could serve the insurance and financial needs of the general public, including for-profit companies, while continuing to serve non-profit organizations.

During 1999, the Company submitted a Plan of Reorganization to the Department (“the Plan”) whereby the Company planned to sell American Life Insurance Company of New York (“American Life”), a wholly owned subsidiary. In preparation for the sale, the Company recaptured business previously reinsured with American Life and assumed all existing business originally written by American Life. Effective January 31, 2001, the Department gave final approval to the termination of the existing reinsurance agreement in effect between the companies, whereby the Company had ceded certain business to American Life. In addition, business written by American Life was assumed by the Company and American Life was sold on February 28, 2001.

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 and the District of Columbia. A majority of the Company’s direct writings, as reported in Schedule T of the 2006 filed annual statement, was produced within the following states:

<u>State</u>	<u>Life Insurance</u> <u>Premiums</u>		<u>Annuity</u> <u>Considerations</u>		<u>Deposit Type</u> <u>Contract Funds</u>	
	<u>Balance</u>	<u>Percent</u>	<u>Balance</u>	<u>Percent</u>	<u>Balance</u>	<u>Percent</u>
New York	\$ 2,386,184	21.0%	\$ 6,743,133	40.0%	\$1,198,197	16.9%
California	773,648	6.8%	564,034	3.4%	0	0.0%
Texas	668,922	5.9%	385,951	2.3%	0	0.0%
Pennsylvania	603,011	5.4%	3,837,385	23.0%	0	0.0%
Michigan	556,124	4.8%	504,078	3.0%	0	0.0%
Ohio	545,546	4.7%	0	0.0%	0	0.0%
Virginia	0	0.0%	0	0.0%	5,029,467	70.8%
All Others	<u>5,845,146</u>	<u>51.4%</u>	<u>4,755,724</u>	<u>28.3%</u>	<u>873,754</u>	<u>12.3%</u>
Total	<u>\$11,378,581</u>	<u>100.0%</u>	<u>\$16,790,305</u>	<u>100.0%</u>	<u>\$7,101,418</u>	<u>100.0%</u>

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.

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 . . .”

The examiner reviewed a sample of 35 variable annuity replacement contracts. This sample included 18 external annuity contract replacements and 17 internal annuity contract replacements. The replacements were reviewed for compliance with Department Regulation No. 60 as well as the Company's own written replacement procedures on file with the Department. The examiner noted inconsistencies in the Company's processing of the selected replacements as well as deviations from Department Regulation No. 60. These inconsistencies and deviations from Department Regulation No. 60 are noted below.

1. With respect to annuity replacements, the Appendix 10B Disclosure Statement requires that a “composite comparison shall be completed for all existing annuity contracts to all proposed annuity contracts” where more than one contract is being replaced.

In 4 of 35 (11.4%) annuity replacements reviewed, where more than one annuity contract was being replaced the Company failed to uniformly provide the required composite comparison presentation section of the Disclosure Statement, whereby the values of multiple existing contracts are summed up and compared to the contract of the Company.

The Company violated Section 51.6(b)(3) of Department Regulation No. 60 by failing to

examine and ascertain that a composite Appendix 10B Disclosure Statement was required and to provide such in situations where more than one existing contract was being replaced.

2. In 10 of the 35 (or 29%) annuity replacements reviewed by the examiner, the agent did not indicate on the Disclosure Statement whether or not sales material was used in the sale.

The Company violated Section 51.6(b)(3) of Department Regulation No. 60 in those cases where the agent failed to indicate whether or not sales materials were used.

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 all 18 (or 100%) of the external annuity replacements reviewed, the Company did not furnish the existing insurer a copy of the proposal, including sales material used in the sale and the completed Appendix 10B Disclosure Statement, within ten days of receipt of the application.

The Company violated Section 51.6(b)(4) of Department Regulation No. 60 by failing to furnish the existing insurer a copy of the sales material used in the sale of the proposed annuity contract and the completed Disclosure Statement within ten days of the receipt of the application.

B. Underwriting and Policy Forms

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

Based upon the sample reviewed, no significant findings were noted.

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.

Based upon the sample reviewed, no significant findings were noted.

5. INCENTIVE COMPENSATION

Section 4228(b)(6) of the New York Insurance Law states, in part;

“A ‘compensation arrangement’ means any arrangement by a company for compensating its agents or brokers on business that includes any of the following . . .

(D) Any plan of agent or broker compensation other than commissioned-based and fund-based compensation pursuant to paragraph two of subsection (e) of this section . . .”

Section 4228(e)(2)(A) of the New York Insurance Law states:

“A company may compensate an agent or broker pursuant to a plan of agent compensation that consists wholly or partly of elements other than commissioned-based compensation and fund-based compensation.”

Section 4228(f)(1) of the New York Insurance Law states, in part:

“Filing requirements for agent and broker compensation plans are as follows . . .

(B) Filings are required on or before the effective date of any changes to compensation arrangements as defined in this section . . . These filings shall consist of a summary of information in enough detail to generally describe the filing’s contents. . . .”

The Company initiated an incentive compensation program that was approved by the Department as of June 7, 2002. The Company’s sales force is included in the Company’s incentive compensation plan and new business (premiums/considerations) is one of the major components in determining an agent’s incentive compensation award. The examiner reviewed the plan and noted that changes to the plan occurred after June 7, 2002, which added an “Enhanced Incentive Compensation” portion for agents to the existing incentive compensation plan, and those changes had not been filed with the Department as required by Section 4228(f)(1)(B) of the New York Insurance Law.

The Company violated Section 4228(f)(1)(B) of the New York Insurance Law by making changes to its filed incentive compensation plan and not filing those changes with the Department.

6. PRIOR REPORT SUMMARY AND CONCLUSIONS

Following are the market conduct violation, 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 51.6(b)(6) of Department Regulation No. 60 when it did not maintain replacement files indexed by agent.</p> <p>The Company did maintain replacement files indexed by agent during the examination period.</p>
B	<p>The examiner recommends that a record of every communication and transaction be maintained for all claim files.</p> <p>A review of the Company's claim files indicated that it kept a record of all communications and transactions as required.</p>
C	<p>The examiner recommends that the Company date stamp all documents in its claim files.</p> <p>A review of the Company's claim files indicated that the Company did date stamp all documents it received for its claim files.</p>
D	<p>The examiner recommends that the Company maintain a record of all communication with complainant, whether written or oral, in each complaint file.</p> <p>A review of the Company's complaint files indicated that the Company did keep a record of the written and oral communications in its complaint files.</p>
E	<p>The examiner recommends that the Company follow its procedures and send the required confirmation letter to all complainants within four workdays.</p> <p>A review of the Company's complaint files indicated that the Company did send the required confirmation letter to all complainants within four workdays.</p>

7. SUMMARY AND CONCLUSIONS

Following are the violations contained in this report:

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
A	The Company violated Section 51.6(b)(3) of Department Regulation No. 60 by failing to examine and ascertain that a composite Appendix 10B Disclosure Statement was required and to provide such in situations where more than one existing contract was being replaced.	6
B	The Company violated Section 51.6(b)(3) of Department Regulation No. 60 in those cases where the agent failed to indicate whether or not sales materials were used.	7
C	The Company violated Section 51.6(b)(4) of Department Regulation No. 60 by failing to furnish the existing insurer a copy of the sales material used in the sale of the proposed annuity contract and the completed Disclosure Statement within ten days of the receipt of the application.	7
D	The Company violated Section 4228(f)(1)(B) by making changes to its filed incentive compensation plan, and not filing those changes with the Department.	8

Respectfully submitted,

_____/s/_____
Anthony Chiarel
Senior Insurance Examiner

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

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

_____/s/_____
Anthony Chiarel

Subscribed and sworn to before me
this _____ day of _____

APPOINTMENT NO. 30202

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:

ANTHONY CHIAREL

as a proper person to examine into the affairs of the

MUTUAL OF AMERICA LIFE INSURANCE COMPANY

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 24th day of September, 2008

ERIC R. DINALLO
Superintendent of Insurance



Superintendent

