



NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES  
MARKET CONDUCT REPORT ON EXAMINATION  
OF THE  
ATHENE ANNUITY & LIFE ASSURANCE COMPANY OF NEW YORK

CONDITION:

DECEMBER 31, 2013

DATE OF REPORT:

AUGUST 29, 2014

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EXAMINER:

FLORA EGBUCHULAM

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NEW YORK STATE  
DEPARTMENT *of*  
FINANCIAL SERVICES

Andrew M. Cuomo  
Governor

Linda A. Lacewell  
Acting Superintendent

February 25, 2019

The Honorable Linda A. Lacewell  
Acting Superintendent of Financial Services  
New York, New York 10004

Madam:

In accordance with instructions contained in Appointment No. 31093, dated March 07, 2013, and annexed hereto, an examination has been made into the condition and affairs of Athene Annuity and Life Assurance Company of New York, hereinafter referred to as “the Company,” at its home office located at 69 Lydecker Street, Nyack, NY 10960.

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 violations contained in this report are summarized below.

- The Company violated Section 219.4(e) of 11 NYCRR 219 (Insurance Regulation No. 34-A), by using advertisements that contain the words “no loads or fees”, “free withdrawal or free surrender withdrawal”, and “no sales charges or administrative fees”, that are of similar import to the words “free, no cost, without cost, no additional cost, at no extra cost” which may not be used with respect to the benefits or services being made available with the annuity contracts. (See item 4A-1 of this report.)
- The Company violated Section 51.6(b) of 11 NYCRR 51 (Insurance Regulation No. 60), by failing to examine the Disclosure Statements and ascertain that they are accurate and meet the requirements of Insurance Regulation No. 60 and New York Insurance Law. (See Item 4A-2 of this report.)
- The Company violated Section 243.2(a) and (b)(5) of 11 NYCRR 243 (Insurance Regulation No. 152), by failing to maintain the termination notices that are required records for examination purposes. (See item 4D-2 of this report.)

## 2. SCOPE OF EXAMINATION

This examination covers the period from January 1, 2010, through December 31, 2013. As necessary, the examiner reviewed matters occurring subsequent to December 31, 2013, 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 Regulations Handbook* or such other examination procedures, as deemed appropriate, in such review.

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 as a stock life insurance company under the laws of New York on May 17, 1965, and was licensed and commenced business on October 20, 1966, under the name Presidential Life Insurance Company (“Presidential Life”).

On December 28, 2012, Presidential Life was acquired by Athene Annuity and Life Assurance Company (“Athene Annuity”), a Delaware-domiciled life insurance company. The Company’s current name was adopted on October 1, 2013.

#### B. Territory and Plan of Operation

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 all 50 states and the District of Columbia. In 2013, 37% of life premiums, 89% of accident and health premiums, and 83% of annuity considerations were received from New York. Policies are written on a non-participating basis.

During the period under review the Company primarily wrote fixed annuities. In October 2013, the Company ceased selling substantially all life and accident and health products.

From January 1, 2010, through September 30, 2013, the Company’s agency operations were conducted on a general agency basis. Effective October 1, 2013, the Company switched from a general agency platform to a National Marketing Organization (“NMO”) platform. This platform uses broker-dealers, banks, large captive insurers, credit unions, insurance marketing organizations (“IMOs”), certified financial planners (“CFPs”), and chartered life underwriters (“CLUs”).

#### 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.

1. Section 219.4 of 11 NYCRR 219 (Insurance Regulation No. 34-A), states, in part:

“(a)(1) Advertisements shall be truthful and not misleading in fact or in implication. . . . Statements made should not cloud or misdirect the consideration of the purchaser. The use of statistics, illustrations and statements which may be factually correct will not be acceptable if their impact misleads . . .

(e) The words free, no cost, without cost, no additional cost, at no extra cost, . . . or words of similar import, may not be used with respect to any benefit or service being made available with the policy. An advertisement may specify the charge for a benefit or a service, or may state that a charge is included in the premium, or use other appropriate language.”

The examiner reviewed a sample of 43 advertisements used to market annuity products during the examination period. The review revealed that 7 of the 43 advertisements (16.3%) contained words and/or phrases, “no loads, no fees, free withdrawal, free surrender withdrawal, no sales charges or no administrative fees”, to describe the benefits or services being made available with the annuity products. Rather than specify the charge for the benefit or service, or state that a charge is included in the premium, the Company used words and phrases that may be deemed misleading and capable of being deceptive to consumers.

The Company violated Section 219.4(e) of 11 NYCRR 219 (Insurance Regulation No. 34-A), by using the words and/or phrases “no loads, no fees, free withdrawal, free surrender withdrawal, no sales charges or administrative fees” to describe the benefits or services being made available with the annuity products.

2. Insurance Regulation No. 60, 11 NYCRR Section 51.6(b) states, in part:

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

(2) Require with or as part of each application . . . the completed "Disclosure Statement;" . . .”

The examiner reviewed a sample of 31 annuity replacement transactions and 6 life replacement transactions that were processed during the examination period. In 9 of 31 annuity replacements (29%) reviewed and in 5 of 6 life replacements (83%) reviewed, the Disclosure Statement was incomplete. In one case (17%), the life policy record contained an unsigned and undated Definition of Replacement.

The examiner notes that opportunities for misrepresentation and incomplete comparison in replacement situations are created when customers are not provided with clear and concise information associated with the customer’s existing and proposed contracts; particularly the advantages of keeping the existing policy and the disclosure of the surrender charges of the existing and proposed policy or contract. This could lead the applicant to make uninformed decisions in replacement situations.

The Company violated Section 51.6(b) of 11 NYCRR 51 (Insurance Regulation No. 60), by failing to examine the Disclosure Statements and ascertain that they were complete and met the requirements of Insurance Regulation No. 60.

3. Suitability of Annuity Products:

The examiner reviewed the Company’s suitability policies and procedures in place during the examination period for compliance with Insurance Regulation No. 187. The examiner noted that the Company utilized the following forms for suitability purposes:

- I. Annuity Purchase Suitability (“APS”), - a questionnaire used by the Company to obtain a consumer’s suitability information.
- II. Annuity Suitability Worksheet (“ASW”), - an underwriting control sheet used by the Company to capture “red flags” or information that would require a suitability officer’s review and approval or disapproval of a sale based on the information disclosed in the APS by the consumer and the sales agent or broker.

In addition, the examiner selected a sample of 49 annuity contracts issued during the examination period that were reviewed for compliance with Insurance Regulation No. 187.

In 12 of the 49 contracts (24.5%) reviewed, the Company issued deferred annuities that mature in ten years to applicants aged 90 years or older. From January 2010, through September 2013, the Company used an APS form that allowed a consumer to opt out of providing needed suitability information. As a result, 12 applicants exercised that right. The contract files for the 12 applicants did not contain an explanation of why the Company deemed the product suitable or documentation of any reasonable efforts made by the agent or the Company to recommend or dissuade the consumers from purchasing the product. Effective October 1, 2013, the Company revised the APS form to remove the opt out option.

Although the revised APS form does not allow consumers to opt out, it does contain several boxes that could be checked off by anyone other than the consumer. The Company's position is that once the consumer signs the APS form, it has no responsibility to request additional documentation regarding the sale. In the 12 cases where the consumers did not provide the suitability information, the agent or the Company failed to include a remark in the contract file concerning the reasonable grounds for believing that the recommendation is suitable for the consumer. As a result, the examiner was unable to determine whether the consumers were informed of the benefits and disadvantages of the products being purchased.

The examiner recommends that the Company and its producers document in the policy record the reasonable efforts made to obtain the suitability information and reason(s) for believing that the recommendation is suitable.

#### 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.

### D. Records Retention

Section 243.1(c) of 11 NYCRR 243 (Insurance Regulation No. 152), states, in part:

“‘Durable Medium’ means a medium for maintaining a record where the properties of such medium provide reasonable assurances . . . and where the reproduction is an exact copy of the original. . . .”

Section 243.2 of 11 NYCRR 243 (Insurance Regulation No. 152), states, in part:

“(a) . . . [E]very insurer shall maintain its . . . underwriting, marketing . . . and producer licensing records, and such other records subject to examination . . .

(b) Except as otherwise required by law or regulation, an insurer shall maintain:

(1) A policy record for each insurance contract or policy for six calendar years after the date the policy is no longer in force or until after the filing of the report on examination in which the record was subject to review, whichever is longer. . . . A policy record shall include: . . .

(iii) The contract or policy forms issued including the declaration pages, endorsements, riders, and termination notices of the contract or policy. . . . and

(iv) Other information necessary for reconstructing the solicitation, rating, and underwriting of the contract or policy. . . .

(5) A licensing record for six calendar years after the relationship is terminated for each Insurance Law licensee with which the insurer establishes a relationship. Licensing records shall be maintained so as to show clearly the dates of appointment and termination of each licensee. . . .

(7) A financial record necessary to verify the financial condition of an insurer, including ledgers, journals, trial balances, annual and quarterly statement workpapers, evidence of asset ownership, and source documents, for six calendar years from its creation or until after the filing of the report on examination in which the record was subject to review, whichever is longer.

(8) Any other record for six calendar years from its creation or until after the filing of a report on examination or the conclusion of an investigation in which the record was subject to review . . .

(e) The records shall be readily available and easily accessible to the superintendent in accordance with Insurance Law, Section 310. . . .”

The examiner reviewed a sample of 20 terminated producers during the examination period. The Company did not maintain copies of the termination notices for 18 of the 20 (90%) terminations. Additionally, the examiner reviewed a sample of 20 active producer licensing files. The Company did not maintain copies of the appointment notices for 14 of 20 (70%) appointments as required by Sections 243.2(b)(5) and (b)(8) of Insurance Regulation No. 152.

The Company violated Section 243.2(a) and (b)(5) of 11 NYCRR 243 (Insurance Regulation No. 152), by failing to maintain a record of the termination notices.

The Company failed to retain premium due and other notices leading up to the termination or lapse of policies. The Company provided mailing logs showing dates that the notices were to have been mailed and duplicates of the notices that were apparently mailed to policyholders. However, the reproduced copies were not copies of the originals and did not reflect the dates of the notices as listed on the logs. As a result, the examiner could not confirm that the notices were mailed as indicated on the logs and that the notices mailed to policyholders contained all required details. In addition, copies of the preliminary information including the Addendum to the Buyer's Guide, were not retained in the policy files. Although, the Company provided copies of these records, the examiner could not confirm that the applicants were in fact provided the preliminary information as required.

The examiner recommends that, in addition to all other records that the Company is required to retain, all notices leading up to the termination or lapse of a policy or contract and all individualized preliminary information records be retained pursuant to Insurance Regulation No. 152, 11 NYCRR Sections 243.2(a), 243.2(b)(5)(8) and 243.3(a)(3).

## 5. 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 219.4(e) of 11 NYCRR 219 (Insurance Regulation No. 34-A) by using the words and/or phrases “no loads, no fees, free withdrawal, free surrender withdrawal, no sales charges or administrative fees” to describe the benefits or services being made available with the annuity products.	5
B	The Company violated Section 51.6(b) of 11 NYCRR 51 (Insurance Regulation No. 60) by failing to examine the Disclosure Statements and ascertain that they were complete and met the requirements of Insurance Regulation No. 60.	6
C	The examiner recommends that the Company and its producers document in the policy record the reasonable efforts made to obtain the suitability information and reason(s) for believing that the recommendation is suitable.	7
D	The Company violated Section 243.2(a) and (b)(5) of 11 NYCRR 243 (Insurance Regulation No. 152) by failing to maintain a record of the termination notices.	9
E	The examiner recommends that, in addition to all other records that the Company is required to retain, all notices leading up to the termination or lapse of a policy or contract and all individualized preliminary information records be retained pursuant to Insurance Regulation No. 152, 11 NYCRR Sections 243.2(a), 243.2(b)(5)(8) and 243.3(a)(3).	9

Respectfully submitted,

\_\_\_\_\_/s/\_\_\_\_\_  
Flora Egbuchulam  
Senior Insurance Examiner

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

Flora Egbuchulam, being duly sworn, deposes and says that the foregoing report, subscribed by her, is true to the best of her knowledge and belief.

\_\_\_\_\_/s/\_\_\_\_\_  
Flora Egbuchulam

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_

APPOINTMENT NO. 31093

NEW YORK STATE

**DEPARTMENT OF FINANCIAL SERVICES**

I, BENJAMIN M. LAWSKY, Superintendent of Financial Services of the State of New York, pursuant to the provisions of the Financial Services Law and the Insurance Law, do hereby appoint:

**FLORA EGBUCHULAM**

as a proper person to examine the affairs of the

**ATHENE ANNUITY & LIFE INSURANCE COMPANY OF NEW YORK**

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

**COMPANY**

with such other information as she shall deem requisite.

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

this 7th day of March, 2014

BENJAMIN M. LAWSKY  
Superintendent of Financial Services

By:

  
MICHAEL MAFFEI

ASSISTANT DEPUTY SUPERINTENDENT  
AND CHIEF OF THE LIFE BUREAU

