

DELAWARE DEPARTMENT OF INSURANCE
MARKET CONDUCT EXAMINATION REPORT

Aviva Life and Annuity Company

NAIC # 61689
Examination Authority #11.ANN.14
7700 Mills Civic Parkway
West Des Moines, IA 50266-3862

As of

May 15, 2012

Karen Weldin Stewart, CIR-ML
Commissioner



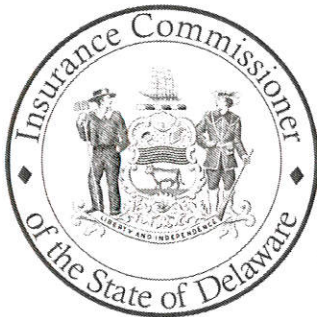
Delaware Department of Insurance

I, Karen Weldin Stewart, Insurance Commissioner of the State of Delaware, do hereby certify that the attached REPORT ON EXAMINATION, made as of May 15, 2012 on

Aviva Life and Annuity Company

is a true and correct copy of the document filed with this Department.

Attest By: 



In Witness Whereof, I have hereunto set my hand and affixed the official seal of this Department at the City of Dover.



Karen Weldin Stewart, CIR-ML
Insurance Commissioner

Karen Weldin Stewart, CIR-ML
Commissioner




Delaware Department of Insurance

REPORT ON EXAMINATION
OF THE
Aviva Life and Annuity Company
AS OF
May 15, 2012

The above-captioned Report was completed by examiners of the Delaware Department of Insurance.

Consideration has been duly given to the comments, conclusions and recommendations of the examiners regarding the status of the Company as reflected in the Report.

This Report is hereby accepted, adopted and filed as an official record of this Department.



Karen Weldin Stewart, CIR-ML
Insurance Commissioner

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Honorable Karen Weldin Stewart CIR-ML
Insurance Commissioner
State of Delaware
841 Silver Lake Boulevard
Dover, Delaware 19904

Dear Commissioner Stewart:

In compliance with the instructions contained in Certificate of Examination Authority Number 11.ANN.14, and pursuant to statutory provisions including 18 Del. CODE §318-322, a market conduct examination has been conducted of the affairs and practices of:

Aviva Life and Annuity Company

The examination was performed as of May 15, 2012, Aviva Life and Annuity Company, hereinafter referred to as the "Company" or as "Aviva," was incorporated under the laws of Iowa. The examination consisted of two phases, an on-site phase and an off-site phase. The on-site phase of the examination was conducted at the following Company location:

7700 Mills Civic Parkway
West Des Moines, IA 50266-3862

The off-site examination phase was performed at the offices of the Delaware Department of Insurance, hereinafter referred to as the "Department" or "DDOI," or other suitable locations.

The report of examination herein is respectfully submitted.

EXECUTIVE SUMMARY

Aviva Life and Annuity Company, is domiciled in Iowa and is licensed and writes products in all states except New York and the District of Columbia. The Company's main administrative offices are located in Iowa.

On their 2011 annual statement, the Aviva Life and Annuity Company reported total individual annuity premium written for all states of \$4,489,071,604 of which \$5,566,291 was written in Delaware.

The examination was announced as part of an examination series of companies in the Delaware annuity marketplace. The examination focused on the Company's annuity business in the following areas of operation: Company Operations and Management; Complaint Handling, Marketing and Sales, Producer Licensing, and Underwriting and Rating. This effort was conducted to ensure compliance with 18 Del. Admin. Code 1214 Senior Protection in Annuity Transactions, 18 Del. Admin. Code 1204 Replacements and 18 Del. CODE §1716 Notification to Insurance Commissioner of termination.

The following exceptions were noted in the areas of operation reviewed:

- Company Operations and Management – Forms: 1 Exception - 18 Del. CODE §2712. Approval of Forms.
 - For not fulfilling the reporting requirements associated with an approved form filing.
- Marketing and Sales: 5 Exceptions - 18 Del. CODE §320(c). Access to records.
 - For failing to maintain copies of all marketing and sales materials.
- Marketing and Sales: 3 Exceptions - 18 Del. CODE §2304. Deceptive Acts.
 - For reference to “free withdraws” in a misleading manner and not properly identifying the Company within a marketing and sales advertisement.
- Underwriting and Rating (Issued Annuities – Non-Replacements): 1 Exception - 18 Del. CODE §1715. Appointment.
 - For acceptance of business solicited or written by a producer not properly appointed by the Company.
- Underwriting and Rating (Issued Annuities – Replacements): 7 Exceptions – 18 Del. CODE §2712. Filing, approval of forms.
 - For failing to use forms that were properly filed and approved by the Department.
- Underwriting and Rating (Issued Annuities – Replacements): 5 Exceptions - 18 Del. Admin. Code 1204 §5.2 Replacement of Life Insurance.
 - For acceptance of replacement forms dated after the application date.

- Underwriting and Rating (Issued Annuities – Replacements): 1 Exception - 18 Del. CODE §1715. Appointment
 - For acceptance of business solicited or written by a producer not properly appointed by the Company.
- Underwriting and Rating (Terminated/Cancelled Annuities): 1 Exception - 18 Del. Admin. Code 902 §1.2.15 Affirm or deny coverage.
 - For failing to provide notice of acceptance or denial within 30 days.
- Underwriting and Rating (Terminated/Cancelled Annuities): 1 Exception - 18 Del. Admin. Code 903 §4.0 Prompt payment.
 - For failing to pay a claim timely.

SCOPE OF EXAMINATION

The Market Conduct Examination was conducted pursuant to the authority granted by 18 Del. CODE §318-322 and covered the experience period of January 1, 2010 through May 15, 2012. The purpose of the examination was to determine compliance by the Company with Delaware insurance laws and regulations applicable to the annuity market place.

The examination was a target market conduct examination of the Company's annuity business in the following areas of operation: Company Operations and Management, Complaint Handling, Marketing and Sales, Producer Licensing, and Underwriting and Rating.

METHODOLOGY

This examination was performed in accordance with Market Regulation standards established by the Department and examination procedures suggested by the NAIC. While examiners report on errors found in individual files, the examination also focuses on general business practices of the Company.

The Company identified the universe of files for each segment of the review. Based on the universe sizes, random sampling was utilized to select the files reviewed during this examination.

Delaware Market Conduct Examination Reports generally note only those items, to which the Department, after review, takes exception. An exception is any instance of Company activity that does not comply with an insurance statute or regulation. Exceptions 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 exceptions identified during the examination and review written summaries provided on the exceptions found.

COMPANY HISTORY AND PROFILE

The Company was incorporated in 1896 as Central Life Assurance Society of the United States, an Iowa domiciled mutual company. In 1902, it was reorganized as a stock company and in 1919, was re-mutualized with the word (Mutual) added to its name. Then, in 1924, the Company's name was changed to Central Life Assurance Society (Mutual) and in 1950 to Central Life Assurance Company.

In 1994, American Mutual Life Insurance Company merged into the Company. The name was changed to American Mutual Life Insurance Company. A mutual insurance holding company restructuring was completed in 1996 with the Company becoming a stock life insurance company. At that time, the Company changed its name to AmerUS Life Insurance Company and became a wholly owned subsidiary of American Mutual Holding Company. In connection with a demutualization completed in 2000, the Company's parent, American Mutual Holding Company, changed its name to AmerUs Group Co., and converted from a mutual holding company to a stock corporation.

In November 2006, AmerUs Group Co. was acquired by Aviva plc. Aviva plc is a public limited company incorporated under the laws of England and Wales. Since the acquisition of AmerUs Group Co., significant organization and operational initiatives were completed. The Company changed its name to Aviva Life and Annuity Company on November 1, 2007. Then on December 31, 2007, the Company merged with and into Bankers Life Insurance Company of New York. In connection with that merger, Bankers Life Insurance Company of New York changed its name to Aviva Life and Annuity Company of New York. On January 1, 2008, the Company's parent, AmerUs Group Co., changed its name to Aviva USA Corporation.

Further mergers with and into the Company took place on September 30, 2008 with Indianapolis Life Insurance Company and Aviva Life Insurance Company. Effective September 20, 2009, American Investors Life Insurance Company, Inc., was merged with and into the Company. As a result of these initiatives, Aviva's U.S., life insurance and annuity business is now conducted through two operating life insurance companies, the Company and its New York domiciled subsidiary, Aviva Life and Annuity Company of

New York.

Aviva Life and Annuity Company, is domiciled in Iowa and is licensed and writes products in all states, except New York and the District of Columbia.

The Company's annual statement for 2011 reported a total of \$4.49 billion in annuity premiums for all states. The Delaware 2011 annuity premium totaled \$5,556,291 of which all was direct annuity considerations.

COMPANY OPERATIONS AND MANAGEMENT

Internal Audit

The Company was provided information and documentation related to internal audits and internal market regulation reviews. Included with the requests were regulatory actions and court actions taken against the Company and Market Conduct Examination Reports. All reports covered the three years prior to May 15, 2012.

The examination included a sample review of internal audit reports and internal market regulation/conduct audits under the examination scope. When these reports identified deficiencies, corrective actions and remediation plans were included with the business units' response. Additionally, the information and documentation reviewed provided assurance that the internal controls methods, and audit procedures in place complied with the Company's established policies and procedures.

There were no exceptions or concerns noted as a result of the review.

Forms

The Company provided a list of all annuity contracts in-force during the experience period regardless of issue date. The Company identified a universe of 1,269 Annuities in-force in the state of Delaware. Of the 1,269 annuities in-force, 80 annuities consisted of contracts with the FPIA10P (06/06) form number. A review indicated that these contracts were approved with the provision that quarterly a Financial Investment Report be filed with the Department. The Company was unable to provide this Report.

Additionally forms were reviewed in the underwriting sections of the exam for compliance with 18 Del. CODE §2712, Filing, approval of forms. Exceptions related to the underwriting section review are addressed in the respective report section, as appropriate.

The following exception was noted.

1 Exception - 18 Del. CODE §2712. Filing, approval of forms.

(a) No basic insurance policy or annuity contract, form, or application form where written application is required and is to be made a part of the policy or contract or printed rider or endorsement form or form of renewal certificate shall be delivered or issued for delivery in this State, unless the form has been filed with the Commissioner.

The FPIA10P (06/06) form was filed with the Delaware Department of Insurance, however, the approval contained a requirement for the quarterly filing of a Financial Investment Report. The Company did not file the quarterly Financial Investment Report as required. The form was utilized in the 80 policies noted above.

Within the issued policy review sections there were a select number of policies identified as containing a different non-approved policy form. Since the findings were select and not global to the entire population of issued files, the select non-approved policy forms are addressed within the file review sections of the report.

Recommendation: It is recommended that the Company comply with all provisions within a form filing approval, as required within 18 Del. CODE §2712.

Subsequent Event: In March, 2013, after the examination was complete but prior to the completion of the report, the Company prepared and filed a Financial Investment Report. The Company plans to continue the quarterly reporting process of the Financial Investment Report in the future.

CONSUMER COMPLAINTS

The Company identified one consumer complaint received during the experience period. The single complaint was from a consumer and not forwarded from the Department of Insurance. The complaint file was reviewed along with the Company's complaint logs. The complaint log was reviewed for compliance with 18 Del. CODE §2304 (17).

No exceptions were noted.

PRODUCER LICENSING

The Company provided producer oversight policies and procedures related to the following activities:

- Appointment Review Procedures
- Complaint Handling and Misconduct Procedures
- Producer Terminations
- Monitoring of Producer Replacement Activity

Additionally, a list 168 producers terminated during the examination period was provided. All of the producers were terminated without cause. The producer oversight review did not result in any exceptions or irregularities.

MARKETING AND SALES

The Company provided a list of 168 Company generated advertising and marketing items. A list of 1347 Producer generated items was also provided. The advertising and marketing material consisted of: articles, brochures, business cards, emails, flyers, illustrations, letters, mailers, newspaper and other media advertisement items, postcards, presentations, scripts and websites. A random sample of 67 Producer generated and 42 Company produced items were selected for review.

The advertising materials were reviewed for compliance with the applicable statutory sections with the following exceptions noted:

5 Exceptions - 18 Del. CODE §320. Conduct of examination; access to records; correction:

(c) Every person being examined, the person's officers, attorneys, employees, agents and representatives, shall make freely available to the Commissioner, or the Commissioner's examiners, the accounts, records, documents, files, information, assets and matters of such person, in the person's possession or control, relating to the subject of the examination and shall facilitate the examination.

The Company was unable to produce marketing materials which has previously utilized in the sales and marketing of insurance products.

Recommendation: It is recommended that the Company maintain all documentation associated with the marketing of insurance policies and make them freely available, in accordance with 18 Del. CODE §320(c).

3 Exceptions - 18 Del. CODE §2304. Unfair methods of competition and unfair or deceptive acts or practices defined:

The following are hereby defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

(1) Misrepresentations and false advertising of insurance policies. -- No person shall make, issue, circulate or cause to be made, issued or circulated any estimate, circular, statement, sales presentation, omission or comparison which:

a. Misrepresents the benefits, advantages, conditions or terms of any insurance policy;

b. Misrepresents the dividends or share of the surplus to be received on any insurance policy;

c. Makes any false or misleading statements as to the dividends or share of surplus previously paid on any insurance policy;

(2) False information and advertising generally. -- No person shall make, publish, disseminate, circulate or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing any assertion, representation or statement with respect to the business of insurance or with respect to any person in the conduct of the insurance business, which is untrue, deceptive or misleading.

One exception within the print advertising submission 18515 contained language about “free withdraws” that could be misconstrued or misinterpreted. In addition, the advertisement was misleading about fees paid by the consumer. As a result, this advertising material contain assertions and statements that are misleading and in violation of 18 Del. CODE §2304 (2), *Unfair methods of competition and unfair or deceptive acts or practices defined*.

Two (2) files did not contain the Company’s name and location. This is misleading especially to a Consumer that is not knowledgeable about financial products and services. Further, a review of the Company’s ‘Advertising Guidelines, 12477 Rev. 3/2012,’ indicates that this is a concern of the Company as well. Specifically under the Section C. General Rules, Requirements and Prohibitions, on page 5 of 38 it states:

“Identity of Insurer and Product (for any advertisement that references Aviva, any of its issuing companies, its products or product features)

- The issuing company’s full name is used in the first / most prominent reference.
- No advertisement shall use the group or parent company’s name to mislead or deceive as to the true identity of the insurer or to create the impression that any entity other than the insurer is financially responsible for a policy.
- The Home Office location is indicated whenever the company or its products are referenced.”

Recommendation: It is recommended the Company ensure all advertising and sales information is not misleading or deceptive, per regulation 18 Del. CODE §2304.

UNDERWRITING AND RATING

A) Issued Annuities – Non-Replacements

The Company identified a universe of 120 annuity contracts issued during the experience period. A random sampling of 112 annuity contracts was reviewed. Of the 112 annuity contracts, 11 were determined to be duplicates. The remaining 101 Annuity contracts were reviewed to determine compliance with policy form, producer licensing and replacement statutes and regulations. Of the 101 annuity contracts reviewed, 42 were Indexed Annuity, 25 were Multi-Year Guaranteed and 34 Single Premium Immediate Annuity.

The following exception was noted:

1 Exception - 18 Del. CODE §1715. Appointment

(a) An insurance producer shall not act as an agent of an insurer unless the insurance producer becomes an appointed agent of that insurer. An insurance producer who is not acting an agent of an insurer is not required to be appointed.

The review noted one (1) annuity file was solicited by an agent who was not appointed by the Company.

Recommendation: It is recommended that the Company ensure that all agents that solicit and write business are properly appointed, as required by 18 Del. CODE §1715.

B) Issued Annuities – Replacements

The Company identified a universe of 44 annuity contracts issued during the experience period. The entire universe of 44 annuity contracts was reviewed to determine compliance with policy form, producer licensing and replacement statutes and regulations. Of the 44 annuity contracts reviewed, 24 were Indexed Annuity, 19 were Multi-Year Guaranteed and one Single Premium Immediate Annuity.

The following exceptions were noted:

7 Exceptions – 18 Del. CODE §2712. Filing, approval of forms.

(a) No basic insurance policy or annuity contract, form, or application form where written application is required and is to be made a part of the policy or contract or printed rider or endorsement form or form of renewal certificate shall be delivered or issued for delivery in this State, unless the form has been filed with the Commissioner.

Seven (7) files contained forms that were not properly filed with the Department, as required.

Recommendation: It is recommended that the Company ensure that all forms are filed with Department, as required.

5 Exceptions - 18 Del. Admin. Code1204 §5.2 Replacement of Life Insurance

Where replacement is involved, the agent or broker shall:

5.2.1 *Present to the applicant, not later than at the time of taking the application, a "Notice Regarding Replacement" (Delaware Insurance Form R, attached as Exhibit A), or other substantially similar form approved by the Commissioner. The notice shall be signed by both the applicant and the agent or broker and a copy left with the applicant.*

The replacement form was dated after the application date in five (5) of the files reviewed.

Recommendation: It is recommended that the Company ensure all replacement forms are presented to the applicant no later than at the time of application, accordance with 18 Del. Admin. Code1204.

1 Exception - 18 Del. CODE §1715. Appointment

(a) An insurance producer shall not act as an agent of an insurer unless the insurance producer becomes an appointed agent of that insurer. An insurance producer who is not acting an agent of an insurer is not required to be appointed.

One (1) file was noted that was solicited by an agent who was not appointed by the Company.

Recommendation: It is recommended that the Company ensure all agents that solicit and write business are properly appointed, as required by 18 Del. CODE §1715.

C) Terminated/Cancelled Annuities

The Company provided a list of all Annuities terminated during the experience period. The Company identified a universe of 91 Annuities terminated and all 91 files were reviewed. The files were reviewed to ensure that terminations were not the result of any discriminatory underwriting practice. The files terminated due to death were reviewed for compliance with 18 Del. Admin. Code 902. The following violations were noted:

1 Exception -18 Del. Admin. Code 902 §1.2.1.5

Failing to affirm or deny coverage or a claim or advise the person presenting the claim, in writing, or other proper legal manner, of the reason for the inability to do so, within 30 days after proof of loss statements have been received by the insurer.

The Company failed to provide notice of acceptance or denial or status as required by 18 Del. Admin. Code 902.

Recommendation: It is recommended that the Company provide acknowledgement letters on a timely basis, in accordance with 18 Del. Admin. Code 902.

1 Exception – 18 Del. Admin. Code 903 Prompt Payment of Settled Claims

4.0 For the purpose of this regulation prompt payment is defined as remittance of the check within 30 days from: the date of agreement, memorialized in writing; final order by the court; or unappealed arbitration award.

The Company failed to provide timely payment settlement.

Recommendation: It is recommended that the Company provide timely payment settlement within statutory timeframes, in accordance with 18 Del. Admin. Code 903.

D) Not Taken Annuities

The Company provided a list of annuities not taken during the experience period. The Company identified a universe of four (4) Annuities not taken. All four (4) annuity files were reviewed. Annuity not-taken files were reviewed to ensure compliance with the free-look provisions of the contract.

No exceptions were noted.

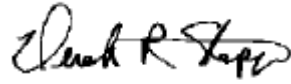
CONCLUSION

The recommendations made below identify corrective measures the Department finds necessary as a result of the exceptions noted in the Report. Location in the Report is referenced in parenthesis.

1. It is recommended the Company comply with all provisions within a form filing approval, as required within 18 Del. CODE §2712. (Company Operations – Forms)
2. It is recommended the Company maintain all documentation associated with the marketing of insurance policies and make them freely available, in accordance with 18 Del. CODE §320. (Marketing and Sales)
3. It is recommended that the Company ensure all advertising and sales information is not misleading or deceptive, per regulation 18 Del. CODE §2304. (Marketing and Sales)
4. It is recommended the Company ensure that all agents that solicit and write business are properly appointed, as required by 18 Del. CODE §1715. (Underwriting and Rating - Issued Annuities – Non-Replacement)
5. It is recommended that the Company ensure that all applicable forms are filed with Department, as required by 18 Del. CODE §2712. (Underwriting and Rating - Issued Annuities – Replacements)
6. It is recommended the Company ensure that all replacement forms are presented to the applicant no later than at the time of application, in accordance with 18 Del. Admin. Code 1204. (Underwriting and Rating - Issued Annuities – Replacements)
7. It is recommended that the Company ensure that all agents that solicit and write business are properly appointed, as required by 18 Del. CODE §1715. (Underwriting and Rating - Issued Annuities – Replacements)
8. It is recommended that the Company provide acknowledgement letters on a timely basis that is within statutory requirements, in accordance with 18 Del. Admin. Code 902. (Underwriting and Rating - Terminated/Cancelled Annuities)
9. It is recommended that the Company provide timely payment settlement within statutory time frames, in accordance with 18 Del. Admin. Code 903. (Underwriting and Rating - Terminated/Cancelled Annuities)

Aviva Life and Annuity Company
Delaware Market Conduct Examination Report

The examination conducted by Shelly Schuman, Derek Stepp, Gwendolyn Douglas, and John Rucidlo is respectfully submitted.



Derek Stepp, CIE, MCM
Examiner-in-Charge
Market Conduct
Delaware Department of Insurance