

THE COMMONWEALTH OF MASSACHUSETTS

**OFFICE OF CONSUMER AFFAIRS
AND BUSINESS REGULATION**

Division of Insurance

*Report on the Market Conduct Examination of
Berkshire Life Insurance Company of America*

Pittsfield, Massachusetts

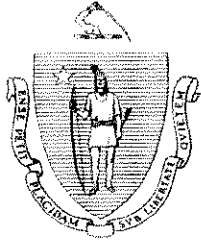
For the Period January 1, 2015 through December 31, 2015

NAIC COMPANY CODE: 71714

EMPLOYER'S ID NUMBER: 75-1277524

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GARY D. ANDERSON
COMMISSIONER OF INSURANCE

December 15, 2017

Honorable Gary D. Anderson
Commissioner of Insurance
Commonwealth of Massachusetts
Division of Insurance
1000 Washington Street, Suite 810
Boston, Massachusetts 02118-6200

Dear Commissioner Anderson:

Pursuant to your instructions and in accordance with Massachusetts General Laws, Chapter 175, § 4, a comprehensive examination has been made of the market conduct affairs of

BERKSHIRE LIFE INSURANCE COMPANY OF AMERICA

at their home offices located at:

700 South Street
Pittsfield, MA 01201

The following report thereon is respectfully submitted.

SCOPE OF EXAMINATION

The Massachusetts Division of Insurance (the “Division”) conducted a comprehensive market conduct examination (“examination”) of Berkshire Life Insurance Company of America (“BLICOA” or “the Company”) for the period January 1, 2015 through December 31, 2015. The examination was called pursuant to authority in Massachusetts General Laws Chapter (“M.G.L. c.”) 175, §4). The examination was conducted under the direction, management and control of the market conduct examination staff of the Division. Representatives from the firm of Risk & Regulatory Consulting, LLC (“RRC” or “the Examiners”) were engaged to complete the examination. The findings and observations expressed in this Report are based upon material and information provided by the Company as of December 15, 2017.

During the examination period, the Company sold individual disability income “DI” products. In addition, the Company had a closed block of specialty life insurance and individual long-term care “LTC” insurance.

EXAMINATION APPROACH

A tailored examination approach was developed using the guidance and standards of the 2015 NAIC Market Regulation Handbook, ("the Handbook") the examination standards of the Division, the Commonwealth of Massachusetts' insurance laws, regulations and bulletins, and selected Federal laws and regulations. All procedures were performed under the supervision of the market conduct examination staff of the Division, including procedures more efficiently addressed in the Division's separate financial examination of the Company. For those objectives, RRC and the market conduct examination staff used procedures performed by the Division's financial examination staff to the extent deemed appropriate to ensure that the market conduct objective was adequately addressed.

The operational areas that were reviewed under this examination include company operations/management, complaint handling, marketing and sales, producer licensing, policyholder service, underwriting and rating and claims. This examination report describes the procedures performed in these operational areas and the results of those procedures.

In addition to the processes and procedures guidance in the Handbook, the examination included an assessment of the Company's related internal controls. While the Handbook approach is designed to detect incidents of deficiency through transaction testing, the internal control assessment provides an understanding of the key controls that the Company's management uses to operate their business and to meet key business objectives, including complying with applicable laws and regulations related to market conduct activities.

The internal controls assessment is comprised of three significant steps: (a) identifying controls; (b) determining whether the control has been reasonably designed to accomplish its intended purpose in mitigating the risk; and (c) verifying that the control is functioning as intended (i.e., review or testing of the controls). The effectiveness of the internal controls was considered when determining sample sizes for transaction testing. The form of this examination report is "Report by Test," as described in Chapter 15, Section A of the Handbook.

The Division considers a "finding" to be a violation of Massachusetts insurance laws, regulations or bulletins. An "observation" is defined as a departure from an industry best practice. The Division recommends that Company management evaluate any "finding" or "observation" for applicability to other jurisdictions. All unacceptable or non-compliant practices may not have been discovered or noted in this report. Failure to identify unacceptable or non-compliant business practices does not constitute acceptance of such practices. When applicable, corrective actions should be taken in all jurisdictions. The Company shall report to the Division any such corrective actions taken.

EXECUTIVE SUMMARY

This summary of the examination of the Company is intended to provide a high-level overview of the examination results highlighting where recommendations were made or required actions were noted. The body of the report provides details of the scope of the examination, the examination approach, internal controls for each standard, review and test procedures conducted, findings and observations, recommendations and required actions and if applicable, subsequent Company actions. Company managerial and supervisory personnel from each operational area should review the examination report for results relating to their specific area.

The following is a summary of all findings and observations, along with related required actions and recommendations and, if applicable, subsequent company actions noted in this examination. All Massachusetts laws, regulations and bulletins cited in this report may be viewed on the Division's website at: www.mass.gov/doj.

Based upon the procedures performed in this examination, RRC has reviewed and tested Company operations/management, complaint handling, marketing and sales, producer licensing, policyholder service, underwriting and rating, and claims in accordance with the standards as set forth in the *2015 NAIC Market Regulation Handbook*, the examination standards of the Division, and the Commonwealth of Massachusetts' insurance laws, regulations and bulletins. The Division has made recommendations or has set forth required actions to address various concerns in the areas of operations and management, complaint handling, marketing and sales, policyholder services, underwriting and rating and claims. The findings and observations expressed in this Report are based upon material and information provided by the Company as of September 27, 2017.

The comprehensive market conduct examination resulted in the following required actions or recommendations:

I – COMPANY OPERATIONS AND MANAGEMENT

STANDARD I-11

Findings: The Company's form "C-AUTH-2013 MA" Medical Disclosure Authorization includes the names of multiple companies along with a check box for the insured to specify which companies are authorized to obtain information regarding the insured. The Examiners' testing of new business policies found numerous instances where the form is signed and dated by the applicant at the time of the application but no box is checked to specify which companies are authorized to obtain information regarding the insured, as required by M.G.L c.175I, §(5).

Required Actions: The Company shall modify its policies and procedures to require that form "C-AUTH-2013 MA" Medical Disclosure Authorization have the appropriate company or companies box(es) checked at the time the authorization is submitted. If no box(es) is checked, the Company will require that the form be resubmitted with the appropriate company or companies box(es) checked. The Company shall promptly provide a copy of the revised policies and procedures to the Division.

Subsequent Actions: The Company informed the Examiners that they had implemented an update to its electronic application process on June 22, 2017 in which the appropriate company or companies box(es) are checked at the time the Authorization is completed and submitted through the process. Additionally, the Company is currently researching approaches to have the issuing Company identified on all C-AUTH forms without requiring additional client contact. In the meantime, should the issuing Company not be identified on a submitted C-AUTH, then the Company will send correspondence to the applicant to explain the checkbox was not completed and which Company will be the potential issuer of the policy for which the applicant is applying. This was not tested by the Examiners as part of this examination.

STANDARD I-14

Observations: The Company was unable to provide policies and procedures for the Examiners review but did provide a written response which stated that the Company follows the Guardian Life Insurance Company of America's policies on such matters and does not engage in any information sharing practices that would require opt out disclosures. However, the Company's privacy policy notice does indicate that the Company will advise customers of opt out rights if the Company decides to disclose information that would trigger opt out rights.

Recommendations: If the Company decides to share consumer information, the Company should develop opt out procedures that comply with Massachusetts requirements.

II – COMPLAINTS

STANDARD II-1

Findings: The format used by the Company to record complaints in the complaint register appears to include all necessary information for each complaint pursuant to M.G.L. c.176D, §3(10). However, testing of the four complaints identified the following issues:

- Two of the four complaints on the log did not include sufficient information to confirm the date the complaint was received by the Company (47-1, 47-3)

Observations: The format used by the Company to record complaints in the complaint register, as stated in the Company's complaint handling manual, appears to include all necessary information. During the examination period, the Company received one direct complaint and three State complaints (from the Division). The complaints tested by the Examiners included all the required information as stated in the Company's complaint handling manual.

Required Actions: The Company shall implement procedures to date stamp complaints, if no other documentation is available, to track when a complaint is received by the Company. The Company shall promptly provide a copy of the revised procedures to the Division.

Subsequent Actions: The Company informed the Examiners that they had revised their current complaint handling procedures to capture date of receipt. This was not tested by the Examiners as part of this examination.

STANDARD II-2

Observations: The testing performed by the Examiners found that the Company's complaint handling procedures do not include the information necessary to ensure that complaints are recorded accurately on the complaint register as noted in the Examiner's Observation for Standards II-1. Testing performed by the Examiners found that the Company's communication with consumers appears to provide sufficient information regarding the complaint handling procedures. The correspondence included in the direct complaint and the three Division complaints were handled in accordance with the Company's policies and procedures.

Recommendations: The Company should enhance its written complaint handling procedures to incorporate the required actions noted in Standards II-1.

Subsequent Actions: The Company informed the Examiners that they had revised their current complaint handling procedures to capture date of receipt. This was not tested by the Examiners as part of this examination.

STANDARD II-4

Observations: In one of the four complaints tested, the Company did not respond timely, or within 14 calendar days. (47-4) The Company did however respond to the Division within the time specified in the letter from the Division.

Recommendations: The Company should clearly communicate expectations for timely final complaint resolution to Company personnel, including the immediate referral to the Compliance department, to ensure resolution timelines are within Company policy. The Company should also establish and clearly communicate expectations for communicating the status of complaints to complainants when resolution timelines exceed the established time frame.

Subsequent Actions: The Guardian Life Insurance Company of America (Guardian) Complaint Handling and Processing Manual (GLIC Complaint Manual or Manual) (applicable to Berkshire Life Insurance Company of America (BLICOA)) was updated in October 2015 to include a provision that outlines the timeframe for complaint review, including a 14-day period where the state fails to include a response date on the state's opening letter. According to Guardian, it continues to work with company employees, and subsidiaries including BLICOA, to ensure a compliant complaint review process. Guardian annually reviews and updates the GLIC Complaint Manual and publishes the Manual on Guardian's intranet. This was not tested by the Examiners as part of this examination as the Company did not have any Massachusetts complaints after October 2015.

III – MARKETING AND SALES

STANDARD III-1

Observations: Of the five pieces of marketing material reviewed for content and compliance with the Company's policies and procedures, one item (Sample 48-5) was not in compliance with the Company's policies and procedures. The communication piece did not include the full tracking number as required according to the Company's policies and procedures.

Recommendations: The Company's internal audit department should conduct regular reviews of the approval process for sales and marketing material to test and monitor compliance with the Company's policies and procedures.

Subsequent Actions: On October 12, 2015, the Company upgraded to a new web-based platform through Pinpoint Global Communications ("Pinpoint"). Pinpoint has automated functionality which

generates and assigns a full tracking number upon submission of any marketing material. The marketing piece included in the observation above was created and submitted prior to implementation of Pinpoint, and the Company's prior tool, referred to as "GEAR", did not have this automated functionality.

IV – PRODUCER LICENSING

STANDARD IV-3

Finding: The Company has policies and procedures in place to notify producers that their contract with the Company has been terminated. The Company conducted an internal audit of the producer termination process and provided the Examiners with a copy of the June 30, 2015 report. The internal audit found that 30% of the discrepancies in producer termination data were due to analyst error or oversight. The internal audit report included recommendation which were to be implemented by August 1, 2015.

The Examiners conducted testing of 20 agent terminations. In five of the 20 agent terminations tested, the Company's agent termination records did not match the Division's records. Each of these instances occurred prior to implementation of corrective actions taken as a result of the June 30, 2015 audit report findings. The Examiners found that the appointments for the five agents were already terminated by the Division. The Company stated that it takes no further action for terminations that fall into this category.

The market conduct examination report for the period January 1, 2010 through December 31, 2010, included a required action that said "The Company and Guardian shall modify as necessary its agent termination procedure specifically regarding timely notification of terminations to the Division and accurate record keeping in the Guardian appointment system. The Company and Guardian shall perform a reconciliation between their agent records and the Division's records at least annually." In response to this required action, the Company proposed conducting an annual reconciliation as of October 15 of each calendar year.

Required Actions: The Company shall implement a process to conduct an annual reconciliation of agent terminations between the Company's records and the Division's records. The Company shall conduct additional training of procedures for processing producer appointment terminations to reduce the frequency of inconsistent producer appointment data in the Company's producer licensing systems caused by analyst error or oversight. The Company shall revise its procedures to ensure that all

terminated agent licensing records are accurate and match the Division's records, even in instances where the agent's license was already terminated by the Division.

Subsequent Actions: The Company informed the Examiners that they implemented a new system on March 21, 2016 that allows terminated agent licensing records to be reviewed against the Division's records and to address discrepancies within the system. This was not tested by the Examiners as part of this examination.

V – POLICYHOLDER SERVICES

STANDARD V-1

Findings: The language included in the Company's Disability Income premium notice when a premium is overdue is in violation of M.G.L. c.175, §110B. The law states that "Such notice shall also contain a statement as to the lapse of the policy if no payment is made as provided in the policy." The "Conditions for Payment if Premium is Due" included in the Company's "Overdue" notice states "Unless the premium due is paid on or before the end of the grace period, the policy and all payments will be forfeited and void except as may be provided in the policy or by statute." The "Overdue" notice does not specifically state that the policy will "Lapse" to comply with the terms of M.G.L. c.175, §110B. The first correspondence to the insured that uses the term "Lapsed" is sent after the policy has lapsed.

Observations: Based upon the review and testing results, the Examiners noted that for each billing notice reviewed, the Company gave adequate notice prior to lapse in compliance with statutory requirements.

Required Actions: The Company shall modify the "Overdue" notice to clearly state the policy will "Lapse" in order to comply with the terms of M.G.L. c.175, §110B. The Company shall promptly provide a copy of the revised notice to the Division.

Subsequent Actions: The Company informed the Examiners that they modified their routine and overdue premium notices to reflect reference to the word "lapse". The Company anticipates these modified Notices will be implemented and placed in production by December 31, 2017. This was not tested by the Examiners as part of this examination.

STANDARD V-2

Findings: Testing of the 15 cancellations identified two policies that were not cancelled timely. The cancellations were not submitted timely by the agents and were therefore not processed timely by the Company, (Sample IDI 53-8 and 53-10), as required by M.G.L. c. 175, §187C.

Observations: Based upon review and testing results of the 15 cancellations, the Company processed 13 of the 15 timely and in compliance with statutory requirements. The Company conducts written policyholder surveys four times a year. A predetermined number of policies are randomly selected from the total number of policies. The surveys are reviewed by a Quality Analyst in the Claims and Policy Services area. Adverse comments are routed to a member of the management team in the appropriate business area for further handling.

Required Actions: The Company shall provide additional training to agents, reaffirming that cancellation notices shall be submitted to the appropriate department at the Company in a timely manner.

Subsequent Actions: The Company informed the Examiners that they will provide notification via a periodic field force publication to the agents and agencies reminding them of the Company's procedures related to policy cancellations, which includes directing cancellation notices to the Company in a timely manner. The Company will publish this information by December 31, 2017. This was not tested by the Examiners as part of this examination.

STANDARD V-5

Observations: The Examiners' testing found that the Company appeared to process policy transactions in a timely manner. There were two DI and two Life policy transactions that were lacking sufficient documentation. The two DI policy transactions were missing a written acknowledgement that the policy transactions were completed. (DI-1, DI-4,) One Life policy was lacking a copy of the letter to the insured confirming the cancellation request while the other Life policy was missing a copy of the insured's request for an illustration. (Life-3, Life-4)

Regarding the Company's policyholder survey results, they give the indication that the Company is handling policy transactions accurately and completely. Finally, the Company provides written notice prior to policy maturity for DI policies that are cancelable at age 65. For LTC policies, proper notice is provided to claimants in advance of exhaustion of benefits. The notice meets the requirements of M.G.L. c. 175, §110H.

Recommendations: The Company should maintain sufficient documentation to support the policy transaction. The Company should modify their process to include providing a written acknowledgment of all policy transactions.

STANDARD V-7

Findings: The Examiners testing of 15 DI cancellation requests found that the Company inaccurately processed one request where the policy had unearned premium that was due to the insured; however, the Company did not issue a refund. Testing of the 15 cancellations identified one policy that was not cancelled correctly. The cancellation date used in the cancellation was not the correct date, as required by M.G.L. c. 175, §187C. The process for cancelling DI policies includes an agent submitting the written cancellation from the insured to the policyholder service team on a date other than the date the cancellation is signed by the insured.

Observations: Based upon review and testing results of the 15 cancellations, the Company processed 14 of the 15 accurately and timely in compliance with statutory requirements. In addition, the Company's policyholder survey results indicate that the Company is handling the return of unearned premiums timely.

Required Actions: The Company shall refund additional premiums plus interest for the policy cancellation incorrectly handled. The Company shall provide documentation of the additional premium refund plus interest to the Division. The Company shall modify its policies and procedures to cancel policies using the date the insured signs the cancellation notice, and shall promptly provide a copy of the revised procedures to the Division.

Subsequent Actions: The Company informed the Examiners that they will be modifying their policy cancellation procedures to reflect that it will process a policy cancellation effective the date the form or written request is signed when said form or written request is received in good order at the Home Office within thirty (30) days of its signature. The Company will provide these procedures to the Division by December 31, 2017. This was not tested by the Examiners as part of this examination.

VI – UNDERWRITING AND RATING

STANDARD VI-1

Findings: The Examiners found that in five of the seven sample policies which included the Future Increase Option (FIO) rider, the FIO rider premium did not appear to be calculated as specified by the Company's applicable rating rule. The rating rule filed by the Company for rating the Future Insurance Option ("FIO") rider does not clearly specify which riders should be included in the FIO rider premium development calculation. While the rating rule was filed with the Division, the rule does not specify which riders should be included in the FIO rider premium development calculation as required by M.G.L. c. 175 §108.

Observations: The Company has a rate plan that is designed to be uniform and automated. The rating process appears to comply with statutory requirements allowing that the calculation of the Future Increase Option rider (FIO) was observed to be consistent with the Company's understanding of how the rule should be interpreted.

Required Actions: The Company shall file with the Division further clarification of the rule for developing the policy premium for the FIO rider.

Subsequent Actions: The Company provided documentation that they amended the premium rates for the FIO rider submitted to both the Interstate Insurance Product Regulation Compact "Compact" and the Division. The Company informed the Examiners that they received Compact approval for the amended premium rates for the FIO Rider in conjunction with application forms approval on March 10, 2017 and policy forms approval on May 11, 2017, respectively, it withdrew the pending product filing with the Division. This was not tested by the Examiners as part of this examination.

STANDARD VI-2

Findings: As the Automatic Benefit Enhancement Rider (ABE) is not included on the signed application, adding this rider to a policy is a violation of 211 CMR 42.09 (1) (d). The rider is added to the policy without the insured requesting the benefit and without the Company receiving an affirmative action from the insured that they want the benefit added to their policy.

Observations: The Examiners observed that the Company issued the ABE rider on some samples even though there was no evidence on the policy application that the rider was requested by the applicant.

Required Actions: The Company shall update the application process to include an affirmative request from the applicant to add the rider to the policy if eligible. The updated application process shall also clearly indicate that the applicant understands that additional premiums will be due as the benefit increases. The Company shall promptly provide a copy of the updated process to the Division.

Subsequent Actions: The Company informed the Examiners that they will be adding a one-page, standalone explanation of the ABE Rider to the application package. This will be implemented by December 31, 2017, and a copy of the additional application package page will be provided to the Division at that time. This was not tested by the Examiners as part of this examination.

STANDARD VI-4

Observations: There were instances where the Company did not follow its underwriting guidelines and made business decisions to relax the requirements and issue policies that were not completely consistent with guidelines. Some deviations found were the following:

- Complete financial information was not furnished
- Preferred risk status granted when selection criteria varied slightly from permissible criteria.
- "Select" risk class permitted with known tobacco use during the previous 12 months.
- Future Increase Option (FIO) limit issued exceeded maximum permitted limit.
- Applicant's suspended MA operator's license did not result in a rating.
- Replacement ratios were used that varied from guidelines.

Recommendations: The Company should modify their policies and procedures to require an underwriter to request all required documents before making a determination. If all required documents cannot be obtained prior to making a determination, the file shall include a second review to reduce the risk of being unfairly discriminatory.

STANDARD VI-8

Findings: The Company used a standard template for its adverse underwriting decision notice to its customers which failed to include a complete outline of the consumers rights as required by M.G.L c. 175I, §10 (1) (2). The adverse action letter utilized by the Company during the examination period, does not comply with the provisions of M.G.L c. 175I, §10 (1) (2) as the letter does not include the following disclosures:

- An individual to whom personal information refers has a right to have any factual error corrected and any misrepresentation or misleading entry amended or deleted as provided in section 9.
- The individual's right to request review by the Commissioner of insurance as provided by section 14.

The Examiners testing of 15 DI cancellation requests found that the Company inaccurately processed one request where the policy had unearned premium that was due to the insured; however, the Company did not issue a refund. Testing of the 15 cancellations identified one policy that was not cancelled correctly. The cancellation date used in the cancellation was not the correct date as required by M.G.L. c. 175, §187C. The tested process for cancelling DI policies includes an agent submitting the written cancellation from the insured to the policyholder service team on a date other than the date the cancellation is signed by the insured.

Observations: Based upon review and testing results of the 15 cancelled policies and 15 lapsed policies, the Company processed 14 of the 15 cancelled policies and all 15 lapsed policies appropriately for non-payment of premium or for some other cause.

Required Actions: The Company shall update the adverse action letter template to include the missing disclosures. The Company shall promptly provide documentation to the Division of the updated adverse action letter template. In addition, the Company shall refund additional premiums plus interest for the policy cancellation incorrectly handled. The Company shall provide documentation of the additional premium refund plus interest to the Division. The Company shall modify its policies and procedures to cancel policies using the date the insured signs the cancellation notice, and shall promptly provide documentation to the Division of the updated procedures.

Subsequent Actions: The Company informed the Examiners that they have revised the adverse underwriting decision notice to its customers to comply with the provisions of M.G.L. c. 175I § 10 (1) (2). This notice will be in production to Massachusetts applicants on or before December 31, 2017, and the Company will provide a copy to the Division at that time. This was not tested by the Examiners as part of this examination.

STANDARD VI-10

Findings: In one application the Examiners found that a date on the signature line of the application was changed but the change was not confirmed by the applicant, as required by M.G.L. c.175, §131.

Observations: 57 of the 58 applications tested were signed and issued consistent with the application, and any changes resulted in proper disclosure to the applicant.

Required Actions: The Company shall establish a procedure to require the applicant to re-sign the application in the event there is a change to the application, and shall promptly provide a copy of the procedures to the Division.

STANDARD VI-11

Findings: Of the policies tested that were subject to medical underwriting, the Examiners found that the AIDS/HIV Consent Form utilized by the Company during the examination period, Form 3446-4-2007 MA, does not comply with the provisions of 211 CMR 36.03-36.08 "AIDS related testing" nor meet minimum requirements, specifically 36.04 Informed Consent, sections (2) (b), (3) (b) and 3(e), for the following reasons:

- The form does not contain the minimum required information.
- The name of labs performing the HIV testing are not included.
- The form does not inform the individual that the individual may change his or her election by informing the carrier in writing.

Observations: Of the policies tested that were subject to medical underwriting, all policies tested included the necessary AIDS Consent Form as required under 211 CMR 36.04-36.06 and 36.08 and outlined under this Standard.

Required Actions: The Company shall update the AIDS/HIV Consent Form to include the missing information. The Company shall promptly provide documentation to the Division of the updated form.

Subsequent Actions: The Company informed the Examiners that they have revised their AIDS/ HIV Consent Form and the package it supplies to applicants to comply with 211 CMR 36.04 Informed Consent, sections (2) (b),(3) (b) and 3(e). This revised package moved to production on June 22, 2017. This was not tested by the Examiners as part of this examination.

VII – CLAIMS

STANDARD VII-2

Observations: In one of the 67 claims tested, the Examiners found that the Company did not investigate the claim timely, as required by M.G. L. c. 176D, §3(9)(c). Testing performed indicated that the Company's policies and procedures are not sufficient nor in compliance with statutory requirements. In the disability income claim (DI-030) the Company did not promptly handle the waiver of premium provision.

Recommendations: The Company should provide additional training to claims examiners regarding its claims review process. The Company should conduct self-audits to ensure that claim investigations are completed in a timely manner.

STANDARD VII-3

Observations: In one of the 67 claims tested, the Examiners found that the Company did not investigate the claim timely as required by M.G. L. c. 176D, § 3(9)(f). Testing performed indicated that the Company's policies and procedures are not sufficient nor in compliance with statutory requirements. In the disability income claim (Sample DI-030) the Company did not promptly handle the waiver of premium provision.

Recommendations: The Company should provide additional training to claims examiners regarding its claims review process. The Company should conduct self-audits to ensure that claim investigations are completed in a timely manner.

STANDARD VII-5

Findings: In 32 of the 67 claims tested, the Examiners found that the Company did not adequately document the claim files.

- Twenty-two files were missing documentation to support the calculation of the Cost of Living Adjustment (COLA).
- Seven files were missing documentation to support the calculation of the premium refund. In addition, while the correspondence to the insured indicated an amount of the premium refund

the correspondence was lacking details about how the premium refund amount was calculated. The correspondence did not include the number of premium payments included in the refund or the time period included in the premium refund.

- Three files were missing the COLA documentation identified in the first bullet and the premium refund documentation identified in the second bullet.

Required Actions: The Company shall provide additional training to claims examiners regarding its claims review process and what documentation needs to be included in the claim file. The Company shall conduct self-audits to ensure that all necessary documentation is included in the claim file. In the future, the Company shall provide sufficient information regarding the handling of all claim-related matters including but not limited to the calculation details for the refund of premium. The results of the audits shall be submitted to the Division promptly.

Subsequent Actions: The Company informed the Examiners that as of mid-September 2017, the Company revised the waiver of premium refund letters, which are now included in the claim file. In addition, the Company informed the Examiners that the Cost of Living Adjustment (COLA) documentation, as applicable, has been included in the claim file since September 2016. This was not tested by the Examiners as part of this examination.

The Company informed the Examiners that they perform annual claims handling practice training for its Claims Examiners. Training with all claim teams handling COLA payments was completed in June and July 2017. Additionally, the appropriate customer service personnel have been trained on the waiver of premium calculation and have been filing letters in the claim file since September 11, 2017. This was not tested by the Examiners as part of this examination.

Finally, the Company agrees to perform a self-audit to ensure that the COLA documentation and waiver of premium refund letter(s) are included in the claim file. Once the self-audit is complete, the Company will provide the Department with the results. This was not tested by the Examiners as part of this examination.

STANDARD VII-6

Findings: In four of the 67 claims tested, the Examiners found that the Company did not handle claims in accordance with policy provisions and applicable statutes (including HIPAA), rules and regulations.

- In two files the COLA was incorrectly calculated.
- In one file the waiver of premium was not handled timely.
- In one file the premium refund was incorrectly calculated and the interest paid on the additional premium due was incorrectly calculated.

Required Actions: The Company shall provide additional training to claims examiners regarding its claims review process. The Company shall provide documentation to the Division indicating that COLA benefits for the affected claims has been recalculated and any additional benefits due to the insureds have been paid with interest. The documentation shall be provided promptly to the Division.

Subsequent Actions: The Company informed the Examiners that they perform annual claims handling practice training for its Claims Examiners. Training with all claim teams handling COLA payments was completed in June and July 2017. Additionally, the Company provided documentation which supports the impacted insureds were paid with interest, as applicable. This was not tested by the Examiners as part of this examination.

STANDARD VII-10

Findings: In four of the 67 claims tested, the Examiners found that the benefit checks and drafts did not reflect appropriate claim handling practices.

- In two files the COLA was incorrectly calculated.
- In one file the waiver of premium was not handled timely.
- In one file the premium refund was incorrectly calculated and the interest paid on the additional premium due was incorrectly calculated.

Observations: Based upon the results of testing, it appears that the Company's processes for issuing claim payment checks are appropriate, and functioning in accordance with its policies and procedures.

Required Actions: The Company shall provide additional training to claims examiners regarding its claims review process. The Company shall provide documentation promptly to the Division, indicating

that COLA benefits for the affected claims has been recalculated and any additional benefits due to the insureds have been paid with interest.

Subsequent Actions: The Company informed the Examiners that they perform annual claims handling practice training for its Claims Examiners. Training with all claim teams handling COLA payments was completed in June and July 2017. Additionally, the Company provided documentation which supports the impacted insureds were paid with interest, as applicable. This was not tested by the Examiners as part of this examination.

COMPANY BACKGROUND

BLICOA is a wholly-owned subsidiary of The Guardian Life Insurance Company of America (Guardian). Founded in 1860, Guardian is the fourth largest mutual life insurance company in the United States. Based upon statutory accounting principles as of December 31, 2015, Guardian had \$48.1 billion in assets and \$6.1 billion in surplus. With more than 5,400 employees and 2,996 financial representatives, as well as over 95 agencies nationwide, Guardian and its subsidiaries provide individuals, businesses and their employees with life, disability and dental insurance products, and offer 401(k), financial products and trust services. BLICOA was formed in 2001 as the result of the merger of the former mutual company, Berkshire Life Insurance Company (BLICO), into Guardian. BLICO ceased to exist as a separate mutual company, and its policyholders became policyholders of Guardian. Immediately following the merger, Guardian contributed certain assets and continuing operations of BLICO into the newly formed BLICOA. BLICOA's primary mission is to operate a fully functioning disability income insurance business for the Guardian group of companies.

BLICOA primarily markets its products through Guardian's career agency system, which consists of approximately 95 general agencies nationwide, with four such agencies located in Massachusetts in 2015. The Company sells individual and multi-life disability income (DI) products.

The Company is rated A++ (Superior) by A.M. Best Company. In addition, Guardian is also rated AA+ (Very Strong) by Standard & Poors Corp and Aa2 (Excellent) by Moody's. BLICOA had \$3.38 billion in admitted assets and \$204.7 million in surplus as of December 31, 2015. For the year ended December 31, 2015, the Company's premiums were \$118.2 million, and net income was \$14.2 million.

The following is the 2015 direct premium and annuity considerations (which include first year and renewal business) written by the Company in Massachusetts by annual statement line of business:

Massachusetts Direct Premium and Annuity Considerations in 2015	Total
Individual Life Insurance Premiums	\$630,874
Individual Annuity Considerations	0
Accident and Health (including disability income and long term care)	22,039,410
Individual Deposit-Type Funds	0
Group Life Insurance	0
Group Annuities	0
Other Group Considerations	0
Total	\$22,670,284

The following summarizes the approximate life insurance and annuity death claims and accident and health claims paid in Massachusetts in 2015 based on the Massachusetts Annual Statement State Page:

Massachusetts Claim Benefits Paid in 2015	
Individual Life	\$ 1,160
Individual Disability	\$ 4,739,732
Multi Life Disability	\$ 614,862
Long Term Care	\$ 43,380
Total MA Claims Paid	\$ 5,399,134

I – COMPANY OPERATIONS AND MANAGEMENT

Evaluation of the Standards in this business area is based on (a) an assessment of the Company's internal control environment, policies and procedures, (b) the Company's response to various information and data requests, and (c) a review of various types of Company files. Unless otherwise stated, the policies and procedures addressed in the Standards below applied to the Company's management of DI, Life and LTC business.

Standard I-1. The Company has an up-to-date, valid internal, or external, audit program.

Objective: This Standard addresses the audit function and its responsibilities. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: The following controls were noted in review of this Standard:

- The Company's internal audit (IA) department performs audits of the Company's operational functions. The BLICOA Internal Audit function was integrated into the Guardian Internal Audit Department.
- The IA department conducts an annual risk assessment in order to identify business risks and the audits that will be conducted during the next year. The process entails interviewing senior management in order to identify business risk levels, projects completed and those planned, a review of the Risk Management Committee meeting minutes, and Audit Committee meeting minutes. The annual audit plan is drafted and presented to the Audit Committee for approval.
- The IA department conducts BLICOA operations related audits throughout the year, and an audit report is issued at the end of the review. The audit report notes all issues that were identified, and each issue is followed by an action plan with target dates. The IA department utilizes an Excel Spreadsheet to monitor the status of all issues in order to ensure that issues are addressed by the target dates. All audit issues including the status of the issue (e.g., open, closed, open past target date) are reported to the Audit Committee. The issues that remain open after the target date must be reported to the Audit Committee, and the Company must indicate why the issue remains open and a new target date is established. The Audit Committee will closely monitor the status of issues until they are deemed as closed.
- Guardian Internal Audit Department is responsible for conducting field audits of Guardian agents.

Controls Reliance: The Examiners tested the Company's controls by reviewing policies and procedures and/or conducting transaction testing.

Transaction Testing Procedure: RRC reviewed the Company's three internal audit reports issued during 2015 which pertained to the scope of this examination. Significant issues noted in such reports were further investigated and reviewed to determine if corrective action plans were implemented.

Transaction Testing Results:

Findings: None.

Observations: The internal audit reports reviewed were thorough and many of the audit reports included findings and recommendations. The reports with findings and recommendations included timelines to implement the recommendations and the necessary follow-up to assure the recommendation was implemented. No issues were identified during these audits.

Recommendations: None.

Standard I-2. The Company has appropriate controls, safeguards and procedures for protecting the integrity of computer information.

No work was performed during this market conduct examination. All required activity for this Standard is included in the scope of the Division's statutory financial examination of the Company which includes the period January 1, 2015 through December 31, 2015.

Standard I-3. The Company has antifraud initiatives in place that are reasonably calculated to detect, prosecute, and prevent fraudulent insurance acts.

Objective: This Standard addresses the effectiveness of the Company's antifraud plan. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: The following controls were noted in review of this Standard:

- The Company utilizes the Anti-Fraud Plan (Plan) prepared by Guardian Life. The Plan has been in effect for BLICOA since the merger in 2001. The Plan includes the requirements that the Company take all reasonable precautions to prevent, detect and thoroughly investigate potential insurance fraud.
- The Plan outlines procedures to report suspected fraud. Cases are referred to the Company's Special Investigative Unit (SIU), then the Legal Department followed by the appropriate law enforcement authorities and the Massachusetts Insurance Fraud Bureau.

Controls Reliance: The Examiners tested the Company's controls by reviewing policies and procedures and/or conducting transaction testing.

Transaction Testing Procedure: The Examiners reviewed the Company's Plan for policies and procedures regarding the identifying and reporting of suspected fraud.

Transaction Testing Results:

Findings: None.

Observations: The Examiners review of the Company's Plan found that the policies and procedures appear to be sufficient.

Recommendations: None.

Standard I-4. The Company has a valid disaster recovery plan.

No work was performed during this market conduct examination. All required activity for this Standard is included in the scope of the Division's statutory financial examination of the Company which includes the period January 1, 2015 through December 31, 2015.

Standard I-5. Contracts between the Company and entities assuming a business function or acting on behalf of the regulated entity, such as, but not limited to MGAs, general agents (Gas), third party administrators (TPAs) and management agreements must comply with applicable licensing requirements, statutes, rules and regulations.

Objective: This Standard addresses the Company's contracts with entities assuming a business function and compliance with licensing and regulatory requirements. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: The following controls were noted in review of this Standard:

- The Company has contractual agreements with third parties, other than producers, to perform a business function or action on behalf of the Company. The Company utilizes third parties to administer their LTC business, conduct medical examinations during underwriting and claim reviews, conduct telephone interviews with applicants and conduct surveillance during claim reviews.
- The Guardian internal audit department conducts field audits of each of the Guardian general agencies at least every three to four years.

Controls Reliance: The Examiners tested the Company's controls by reviewing policies and procedures and/or conducting transaction testing.

Transaction Testing Procedure: The Examiners interviewed Company management and staff about the use of third parties to perform Company functions. Also, the Examiners reviewed the Company's audit reports and contracts in effect with third parties. In addition, while testing other Standards as part of this examination, the Examiners reviewed for the appropriate oversight of third parties.

Transaction Testing Results:

Findings: None

Observations: The review indicated that the use of such third parties is conducted in compliance with Company policies and procedures. The review of the audit reports and contracts in effect with third parties indicated that the Company is monitoring the activities of entities acting on behalf of the Company.

Recommendation: None.

Standard I-6. The Company is adequately monitoring the activities of any entity that contractually assumes a business function or is acting on behalf of the Company.

Objective: This Standard addresses the Company's efforts to adequately monitor the activities of the contracted entities that perform business functions on its behalf. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: See Standard I-5.

Controls Reliance: See Standard I-5.

Transaction Testing Procedure: The Examiners began by interviewing Company management and staff about the use of third parties to perform Company functions. The oversight processes as explained during the interviews were considered when reviewing the related processes and controls. Also, the Examiners reviewed the Company's audit reports and contracts in effect with third parties. In addition, while testing other Standards as part of this examination, the Examiners reviewed for the appropriate oversight of third parties.

Transaction Testing Results:

Findings: None

Observations: The review indicated that the use of such third parties is conducted in compliance with Company policies and procedures. The review of the audit reports and contracts in effect with third parties indicated that the Company is monitoring the activities of entities acting on behalf of the Company.

Recommendation: None.

Standard I-7. Records are adequate, accessible, consistent and orderly and comply with record retention requirements.

Objective: This Standard addresses the adequacy and accessibility of the Company's records. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: The Company utilizes the Record Retention Policy prepared by Guardian Life. The policy details what records must be retained and as a general rule the Company requires that records be retained for a seven year period.

Controls Reliance: The Examiners tested the Company's controls by reviewing policies and procedures and/or conducting transaction testing.

Transaction Testing Procedure: The Examiners reviewed the Company's Record Retention Policy and tested the Company's compliance with such policies and procedures while testing other Standards as part of this examination.

Transaction Testing Results:

Findings: None.

Observations: The Company has a record retention policy in place, and in general, most of the requested documents were produced by the Company.

Recommendations: None.

Standard I-8. The Company is licensed for the lines of business that are being written.

Objective: This Standard addresses whether the lines of business written by the Company are in accordance with the authorized lines of business. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: No control assessment was performed regarding this Standard.

Controls Reliance: Not Applicable.

Transaction Testing Procedure: As part of the examination planning process, the Examiners discussed with the Division which lines of business the Company was licensed to write in the Commonwealth during the examination period. The Examiners reviewed the Company's premium as reflected in the Company's 2015 annual statement to determine if the Company recorded premiums for any lines of business other than those the Company was licensed to write in the Commonwealth.

Transaction Testing Results:

Findings: None.

Observations: The Examiners review of the Company's annual statement indicated that the only new business premiums reported were for the lines of business the Company was licensed to write during the examination period.

Recommendations: None.

Standard I-9. The Company cooperates on a timely basis with examiners performing the examinations.

Objective: This Standard is concerned with the Company's cooperation during the course of the examination conducted in accordance with M.G.L. c. 175, §4. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: No control assessment was performed regarding this Standard.

Controls Reliance: Not Applicable.

Transaction Testing Procedure: The Company's ability to respond to requests, provide access to information and provide access to staff was assessed throughout the examination.

Transaction Testing Results:

Findings: None.

Observations: The Company was very cooperative throughout the examination and responses to Examiner requests were provided in a timely manner.

Recommendations: None.

Standard I-10. The Company has procedures for the collection, use and disclosure of information gathered in connection with insurance transactions to minimize any improper intrusion into the privacy of applicants and policyholders.

Objective: This Standard is concerned with the Company's policies and procedures to ensure it minimizes improper intrusion into the privacy of consumers of life insurance. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: The following controls were noted in review of this Standard, and Standards I-11 through I-16:

- The Company maintains policies regarding the use and disclosure of personal information.
- The Company has a single document which acts as the Company's Privacy Statement and as a Privacy Policy that is distributed to customers with policy delivery and annually, thereafter. This policy indicates how the Company collects, discloses, and safeguards personal information. This notice also indicates how the Company shares information with affiliates and non-affiliates that administer the Company's business and although the Company does not presently share information with unrelated non-affiliates, the policy nevertheless grants the insureds the option to opt out of information sharing with non-affiliates. Finally, this policy offers customers the opportunity to access their information and make any corrections.
- The Company maintains a document detailing the Company's information system risk assessment process and the Company's operational risk and security governance principles. It details security measures taken by the Company to protect electronic data and physical access to this data. Other information includes the use and protection of personal information such as social security numbers; third party vendor management; and application development that requires built in security controls.
- As part of the application process the Company requires the agent to provide the Notice of Insurance Information Practices to each applicant. The notice states that the Company gathers certain types of personal information from third parties or other sources and gives examples of such third parties or

other sources. Further, the notice indicates that information may be disclosed in some cases, and that the applicant has a right to access and correct incorrect information.

- As part of the application process the Company requires the agent to provide the HIPAA/Privacy Disclosure Authorization. For both DI and LTC policies, the form is signed by the applicant at time of application for a new policy and submitted to the Company. The Company also requires that the authorization be submitted when a new claim is filed. The Company policy is to disclose nonpublic personal health information only as required or permitted by law to regulators and law enforcement agencies. Such information is provided to third parties who assist the Company in processing customer business transactions only if expressly authorized by the applicant.
- If the Company declines to issue a policy as applied for by the applicant, offers a policy to the applicant for less coverage than applied for by the applicant or offers coverage at higher than standard rates, the Company provides the applicant with a written Notice of Adverse Underwriting Decision which explains the reasons for the Company decision and the right to obtain additional information regarding the decision. The notice meets statutory requirements.
- The Company's procedures appear to comply with M.G.L. c. 175I, §§ 1-22 as the Company does not consider prior adverse underwriting decisions made by other insurers during the underwriting process; sexual orientation or perceived orientation; or personal information obtained from an insurance support organization, provided that the Company can base their decision on information obtained as a result of the initial receipt of such personal information.
- The Company's privacy policies are available on the Company's website via a link to the Guardian website.
- The Company maintains a policy whereby pretext interviews are prohibited except as allowed by law.
- The Company limits access to the Company's nonpublic and health information to only those employees in key electronic and operational areas, where the need to access this information exists.
- The Company's Law Department is responsible for identifying privacy related laws and communicating this information to impacted business units.
- The Internal Audit, Field Audit, and Compliance Departments conduct reviews that may include privacy functions.

Controls Reliance: The Examiners tested the Company's controls by reviewing policies and procedures and/or conducting transaction testing.

Transaction Testing Procedure: The Examiners began by interviewing Company management and staff responsible for the underwriting and claims processes. Also, the Examiners reviewed procedures regarding privacy. DI Underwriting files and LTC and DI Claim files were reviewed in order to identify any evidence of the Company's use of pretext interviews. The Examiners also reviewed DI policies to determine whether the policies were issued as applied for or whether an additional premium was applied to the policy or included an

exclusion rider at the time of issuance. Testing included verifying that all policies that were declined or issued as other than applied for contained an adverse underwriting action notice. As such, the Examiners reviewed 55 DI new business transaction; 18 DI transactions where policies were issued as other than applied for or with non-standard rates; and 31 DI declined applications.

Transaction Testing Results:

Findings: None.

Observations: Based upon testing, the Company's policies and procedures for providing Adverse Underwriting Notices appear to be functioning in accordance with its policies, procedures and statutory requirements. The Company provided the Adverse Underwriting Notice when it declined to offer coverage, offered coverage with exclusions or offered coverage at higher than standard rates.

Recommendations: None.

Standard I-11. The Company has developed and implemented written policies for the management of insurance information.

Objective: This standard is concerned with the Company's policies and procedures for handling, storing, and disposing of insurance information consistent with privacy laws and disclosing those procedures to its customers. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: See Standard I-10.

Controls Reliance: See Standard I-10.

Transaction Testing Procedure: Details of the Company's controls and testing related to privacy matters were included in the "Record of Work Done" in Underwriting and Rating Section VI-2.

Findings: The Company's form "C-AUTH-2013 MA" Medical Disclosure Authorization includes the names of multiple companies along with a check box for the insured to specify which companies are authorized to obtain information regarding the insured. The Examiner's testing of new business policies found numerous instances where the form is signed and dated by the applicant at the time of the application, but no box is checked to specify which companies are authorized to obtain information regarding the insured, as required by M.G.L c.175I, § 6 (5).

Observations: None.

Required Actions: The Company shall modify its policies and procedures to require that form "C-AUTH-2013 MA" Medical Disclosure Authorization have the appropriate company or companies box(es) checked at the time the authorization is submitted. If no box(es) is checked, the Company will require that the form be resubmitted with the appropriate company or companies box(es) checked. The Company shall promptly provide a copy of the revised policies and procedures to the Division.

Subsequent Actions: The Company informed the Examiners that they had implemented an update to its electronic application process on June 22, 2017 in which the appropriate company or companies box(es) are checked at the time the Authorization is completed and submitted through the process. Additionally, the Company is currently researching approaches to have the issuing Company identified on all C-AUTH forms without requiring additional client contact. In the meantime, should the issuing Company not be identified on a submitted C-AUTH, then the Company will send correspondence to the applicant to explain the checkbox was not completed and which Company will be the potential issuer of the policy for which the applicant is applying. This was not tested by the Examiners as part of this examination.

Standard I-12. The Company has policies and procedures to protect the privacy of nonpublic personal information relating to its customers, former customers and consumers that are not customers.

Objective: This Standard addresses policies and procedures to ensure privacy of nonpublic personal information. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: See Standard I-10.

Controls Reliance: See Standard I-10.

Transaction Testing Procedure: The Examiners selected a sample of 18 DI applications that the Company offered coverage with an exclusion or offered coverage at non-standard rates as a Notice of Adverse Underwriting Decision would be required in each situation. Also, the Examiners selected a sample of 31 DI applications that were declined by the Company. The review included verifying that the adverse underwriting action notice was provided to the applicant.

Transaction Testing Results:

Findings: None.

Observations: Testing did not identify any instances that the Company improperly provided information to parties other than the applicant.

Recommendations: None.

Standard I-13. The Company provides privacy notices to its customers and, if applicable, to its consumers who are not customers regarding treatment of nonpublic personal financial information.

Objective: This Standard addresses requirements to provide privacy notices. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: See Standard I-10.

Controls Reliance: See Standard I-10.

Transaction Testing Procedure: The Examiners reviewed the Company's policies and procedures for providing the Privacy Notice to applicants, and annually thereafter to policyholders. Further, the Examiners evaluated compliance with privacy disclosure requirements in conjunction with testing of 107 disability income new business applications.

Transaction Testing Results:

Findings: None

Observations: The Company has procedures in place to ensure that all privacy forms are provided to applicants as required by MG.L. c. 175I, §§ 1-22; Gramm-Leach-Bliley Act, §§ 502, 503, 504 and 505 and 16 CFR Part 313.

Recommendations: None.

Standard I-14. If the Company discloses information subject to an opt out right, the Company has policies and procedures in place so that nonpublic personal financial information will not be disclosed when a consumer who is not a customer has opted out, and the Company provides opt out notices to its customers and other affected consumers.

Objective: This Standard addresses policies and procedures with regard to opt out rights. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: See Standard I-10.

Controls Reliance: See Standard I-10.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for privacy compliance, and reviewed documentation supporting its privacy policies and procedures.

Transaction Testing Results:

Findings: None.

Observations: The Company was unable to provide policies and procedures for the Examiners review but did provide a written response which stated that the Company follows the Guardian Life Insurance Company of America's policies on such matters and does not engage in any information sharing practices that would require opt out disclosures. However, the Company's privacy policy notice does indicate that the Company will advise customers of opt out rights if the Company decides to disclose information that would trigger opt out rights.

Recommendations: If the Company decides to share consumer information, the Company should develop opt out procedures that comply with Massachusetts requirements.

<p><u>Standard I-15.</u> The Company's collection, use and disclosure of nonpublic personal financial information are in compliance with applicable statutes, rules and regulations.</p>

Objective: This Standard is concerned with the Company's collection and use of nonpublic personal financial information. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: See Standard I-10.

Controls Reliance: See Standard I-10.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for the underwriting process. As detailed in the "Examination Scope" section, a sample of 107 new DI business transactions were selected for testing. The Examiners tested the DI policies to determine whether the Company was in compliance with statutory and regulatory requirements pertaining to collection and use of nonpublic personal financial information.

Transaction Testing Results:

Findings: None.

Observations: Each policy in the new business sample was tested to determine whether the Company's collection and use of nonpublic personal financial information was reasonable and proper. Testing did not reveal any evidence that the Company's collection and use of nonpublic personal financial information was not in compliance with applicable statutes, rules and regulations. Based on the Examiner's review of the Company's policies and procedures the Company appears to properly collect, use and disclose nonpublic personal financial information.

Recommendations: None.

Standard I-16. In states promulgating the health information provisions of the NAIC model regulation, or providing equivalent protection through other substantially similar laws under the jurisdiction of the Department of Insurance, the company has policies and procedures in place so that nonpublic personal health information will not be disclosed except as permitted by law, unless a customer or a consumer who is not a customer has authorized the disclosure.

Objective: This Standard addresses efforts to maintain privacy of nonpublic personal health information. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: See Standard I-10.

Controls Reliance: See Standard I-10.

Transaction Testing Procedure: The Examiners interviewed Company personnel with responsibility for privacy compliance, and reviewed supporting documentation. The Examiners also sought evidence that the Company improperly disclosed nonpublic personal health information in conjunction with testing underwriting declinations, claims and new application processing. Finally, the Examiners reviewed compliance with HIPAA authorization disclosure requirements in conjunction with testing of 55 new DI applications submitted during the examination period.

Transaction Testing Results:

Findings: None.

Observations: Based on testing and review, the Examiners note that the HIPAA authorization disclosure was signed by disability income insurance applicants when necessary. Also, the Examiners did not note any instances where the Company improperly disclosed nonpublic personal health information in testing underwriting declinations, new business applications or claims files.

Recommendations: None.

Standard I-17. Each licensee shall implement a comprehensive written information security program for the protection of nonpublic customer information.

Objective: This Standard is concerned with the Company's information security efforts to ensure that nonpublic consumer information is protected. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: The following controls were noted in review of this Standard:

- The Company has developed and implemented information technology security policies and practices to safeguard nonpublic personal and health information. The Company annually conducts information systems risk assessments to consider, document and review information security threats and controls, and to continually improve information systems security.
- The Company's internal audit function conducts information technology audits, which address information security and access controls.
- Only individuals approved by Company management are granted access to the Company's electronic and operational areas where non-public personal financial and health information is located. Access is frequently and strictly monitored.

Controls Reliance: Controls tested via documentation inspection, procedure observation and/or corroborating inquiry appear to be sufficiently reliable to be considered in determining the extent of transaction testing procedures.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for privacy compliance. Limited work was performed during this market conduct examination as this Standard was also included in the scope of the Division's statutory financial examination of the Company which includes the period January 1, 2015 through December 31, 2015.

Transaction Testing Results:

Findings: None.

Observations: Based upon the Examiner's review of the Company's information security policies and procedures, it appears that the Company has implemented an information security program which provides reasonable assurance that its information systems protect nonpublic customer information.

Recommendations: None.

Standard I-18. All data required to be reported to department of insurance is complete and accurate.

Objective: This Standard addresses the Company's efforts to file complete and accurate certifications with the Division as required. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: No control assessment was performed regarding this Standard.

Controls Reliance: Not Applicable.

Transaction Testing Procedure: As part of the examination planning process, the Examiners discussed with the Division whether all data required to be reported to the Division was complete and accurate during the examination period. The Examiners reviewed the Company's premium as reflected in the Company's 2015 annual statement to determine if the Company recorded premiums for any lines of business other than those the Company was licensed to write in the Commonwealth.

Transaction Testing Results:

Findings: None.

Observations: The Examiners review of the Company's annual statement indicated that the only new business premiums reported were for the lines of business the Company was licensed to write during the examination period.

Recommendations: None

Standard I-19. The Company files all certifications with the insurance department, as required by statutes, rules and regulations.

Objective: This Standard addresses the Company's efforts to file certifications with the Division as required. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: No control assessment was performed regarding this Standard.

Controls Reliance: Not Applicable.

Transaction Testing Procedure: As part of the examination planning process, the Examiners discussed with the Division whether all data required to be reported to the Division was complete and accurate during the examination period. The Examiners reviewed the Company's premium as reflected in the Company's 2015 annual statement to determine if the Company recorded premiums for any lines of business other than those the Company was licensed to write in the Commonwealth.

Transaction Testing Results:

Findings: None.

Observations: The Examiners review of the Company's annual statement indicated that the only new business premiums reported were for the lines of business the Company was licensed to write during the examination period.

Recommendations: None.

II – COMPLAINT HANDLING

Evaluation of the Standards in this business area is based on (a) an assessment of the Company's internal control environment, policies and procedures, (b) the Company's response to various information and data requests, and (c) a review of various types of Company files.

Standard II-1. All complaints are recorded in the required format on the Company complaint register.

Objective: This Standard addresses whether the Company formally tracks complaints or grievances as required by statute. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: The following controls were noted in review of this Standard, and Standards II-2 through II-4:

- As required by M.G.L. c. 176D, §3(10), BLICOA has written policies and procedures to manage the complaint handling process for disability income, life and long term care complaints.
- The Company's definition of a complaint is similar to the statutory definition. BLICOA defines a complaint as any written expression of dissatisfaction relating to the Company's business practices, policies, products, services, transactions, employees, or producers.
- "Executive complaints" are defined as both verbal and written received directly by the Company while "State complaints" are defined as complaints received from state insurance departments.
- The Company logs all complaints received in its complaint register in a consistent format.
- The complaint register includes the date received, the date closed, the date responded to, the person making the complaint, the insured, the policy/client number, state of residence, the classification by line of insurance, the nature, and the NAIC disposition code of each complaint.
- The Company's website provides a toll free telephone number and company address. In addition, the Company states the same information is provided on its written responses.
- The Company's policy is to respond to Division complaints within 14 calendar days of receipt. The Company's standard for resolving consumer complaints is within 14 days of receipt as well.

Controls Reliance: The Examiners tested the Company's controls by reviewing policies and procedures and/or conducting transaction testing.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for complaint handling. During the examination period, the Company received one direct complaint and three complaints from the Division. Each complaint received was reviewed for completeness including whether the complaint had been recorded in the Company's standardized format for recording complaints. The Company's

complaint register was also compared to the Division's complaint records to ensure that the Company's records were complete.

Transaction Testing Results:

Findings: The format used by the Company to record complaints in the complaint register appears to include all necessary information for each complaint pursuant to M.G.L c.176D, § 3(10). However, testing of the four complaints identified the following issues:

- Two of the four complaints on the log did not include sufficient information to confirm the date the complaint was received by the Company (47-1, 47-3)

Observations: The format used by the Company to record complaints in the complaint register, as stated in the Company's complaint handling manual, appears to include all necessary information. During the examination period, the Company received one direct complaint and three State complaints (from the Division). The complaints tested by the Examiners included all the required information as stated in the Company's complaint handling manual.

Required Actions: The Company shall implement procedures to date stamp complaints if no other documentation is available to track when a complaint is received by the Company. The Company shall promptly provide a copy of the revised procedures to the Division.

Subsequent Actions: The Company informed the Examiners that they had revised their current complaint handling procedures to capture date of receipt. This was not tested by the Examiners as part of this examination.

<p><u>Standard II-2.</u> The Company has adequate complaint handling procedures in place and communicates such procedures to policyholders.</p>
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Objective: This Standard addresses whether the Company has adequate complaint handling procedures, and communicates those procedures to policyholders and consumers. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: Refer to Standard II-1.

Controls Reliance: Refer to Standard II-1.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for complaint handling. During the examination period, the Company received one direct complaint and three

complaints from the Division. The Examiners requested the complete complaint files for review, including whether the Company responded to the complaints within 14 calendar days as required by the Division and appeared to include all the necessary documentation to support the handling of the complaint. Also, the Company's Complaint Handling and Processing Manual defines a "complaint" as any written or verbal communication where a customer indicates dissatisfaction with a product or service. As the Company indicated that they review the post sale and policyholder service surveys for complaints, the Examiners reviewed the Company's log for completeness and to evaluate the handling of complaint matters. The Examiners selected and reviewed communication for five post sale surveys. In addition, the Company's website and various forms sent to policyholders were reviewed to determine whether they include Company contact information to consumers.

Transaction Testing Results:

Findings: None.

Observations: The Testing performed by the Examiners found that the Company's complaint handling procedures do not include the information necessary to ensure that complaints are recorded accurately on the complaint register as noted in the Examiner's Observation for Standards II-1. Testing performed by the Examiners found that the Company's communication with consumers appears to provide sufficient information regarding the complaint handling procedures. The correspondence included in the direct complaint and the three Division complaints were handled in accordance with the Company's policies and procedures.

Recommendations: The Company should enhance its written complaint handling procedures to, *inter alia* incorporate the required actions noted in Standards II-1.

Subsequent Actions: The Company informed the Examiners that they had revised their current complaint handling procedures to capture date of receipt. This was not tested by the Examiners as part of this examination.

<p><u>Standard II-3.</u> The Company should take adequate steps to finalize and dispose of the complaint in accordance with applicable statutes, rules and regulations and contract language.</p>
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Objective: This Standard addresses whether the Company's response to the complaint fully addresses the issues raised, and whether policyholders or consumers with similar fact patterns are treated consistently and fairly. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: Refer to Standard II-1.

Controls Reliance: Refer to Standard II-1.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for complaint handling. During the examination period, the Company received one direct complaint and three complaints from the Division. The Examiners requested the complete complaint files for review. All complaints were reviewed for completeness, including whether the Company fully addressed the issues raised and appeared to include all the necessary documentation to support the handling of the complaint.

Transaction Testing Results:

Findings: None.

Observations: The Examiners found that the Company responded to all issues identified in the four complaints and the file documentation appeared to be complete. For complaints received from the Division, the complaint files included: the Company's complaint data form, the insured's complaint to the Division, the Company's response to the Division and other related correspondence.

Recommendations: None.

<p>Standard II-4. The timeframe within which the Company responds to complaints is in accordance with applicable statutes, rules and regulations.</p>
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Objective: This Standard addresses the time required for the Company to process each complaint. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: Refer to Standard II-1.

Controls Reliance: Refer to Standard II-1.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for complaint handling. During the examination period, the Company received one direct complaint and three complaints from the Division. The Examiners requested the complete complaint files for review. All complaints received by the Company were reviewed for timeliness and completeness, including whether the Company responded to the complaints within 14 calendar days and appeared to include all the necessary documentation to support the handling of the complaint.

Transaction Testing Results:

Findings: None.

Observations: In one of the four complaints tested, the Company did not respond timely, or within 14 calendar days. (47-4) The Company did however respond to the Division within the time specified in the letter from the Division.

Recommendations: The Company should clearly communicate expectations for timely final complaint resolution to Company personnel, including the immediate referral to the Compliance department, to ensure resolution timelines are within Company policy. The Company should also establish and clearly communicate expectations for communicating the status of complaints to complainants when resolution timelines exceed the established time frame.

Subsequent Actions: The Guardian Life Insurance Company of America (Guardian) Complaint Handling and Processing Manual (GLIC Complaint Manual or Manual) (applicable to Berkshire Life Insurance Company of America (BLICOA)) was updated in October 2015 to include a provision that outlines the timeframe for complaint review, including a 14-day period where the state fails to include a response date on the state's opening letter. According to Guardian, it continues to work with company employees, and subsidiaries including BLICOA, to ensure a compliant complaint review process. Guardian annually reviews and updates the GLIC Complaint Manual and publishes the Manual on Guardian's intranet. This was not tested by the Examiners as part of this examination as the Company did not have any Massachusetts complaints after October 2015.

III – MARKETING AND SALES

Evaluation of the Standards in this business area is based on (a) an assessment of the Company's internal control environment, policies and procedures, (b) the Company's response to various information and data requests, and (c) a review of various types of Company files.

Standard III-1. All advertising and sales materials are in compliance with applicable statutes, rules and regulations.

Objective: This Standard is concerned with whether the Company maintains a system of control over the content, form and method of dissemination for all advertising materials. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: The following controls were noted in review of this Standard:

- The Company has written policies and procedures pertaining to the review and use of advertising materials.
- The Company maintains a system identified as the Guardian Electronic Advertising Review ("GEAR"), to log all printed or web-based advertising and sales material. The system includes documentation that tracks the approval or disapproval of all sales and marketing documents.
- The Company's process requires that the Sales and Marketing department will review all sales and marketing requests for content and will consult with legal and compliance personnel regarding applicable legal requirements.
- If a request is approved, the requester is notified and a compliance approval number will be attached to the document. Compliance approval numbers do not expire. If the request is not approved, the requester is notified, and is advised of the steps that must be taken in order for the request to be approved. The GEAR system is updated to reflect the review status of the request (e.g., approved or disapproved).
- In October 2010, the Company transitioned from maintaining catalogues of approved sales and marketing materials to a web-based marketing library system which is updated in "real-time".
- The Company website provides the Company's name and address.

Controls Reliance: The Examiners tested the Company's controls by reviewing policies and procedures and/or conducting transaction testing.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for the sales and marketing process. The Company provided a list of approved sales and advertising materials in effect during the examination period for the Company's DI and LTC products. As such, a judgmental sample of

five approved advertising pieces was reviewed for content and home office approval. Also, the Company's website was examined for disclosure of the Company's name and address.

Transaction Testing Results:

Findings: None.

Observations: Of the five pieces reviewed for content and compliance with the Company's policies and procedures, one piece (Sample 48-5) was not in compliance with the Company's policies and procedures. The communication piece did not include the full tracking number as required according to the Company's policies and procedures.

Recommendations: The Company's internal audit department should conduct regular reviews of the approval process for sales and marketing material to test and monitor compliance with the Company's policies and procedures.

Subsequent Actions: On October 12, 2015, the Company upgraded to a new web-based platform through Pinpoint Global Communications ("Pinpoint"). Pinpoint has automated functionality which generates and assigns a full tracking number upon submission of any marketing material. The marketing piece included in the observation above was created and submitted prior to implementation of Pinpoint, and the Company's prior tool, referred to as "GEAR", did not have this automated functionality.

Standard III-2. Company internal producer training materials are in compliance with applicable statutes, rules and regulations.

Objective: This Standard is concerned with whether the Company's producer training materials are in compliance with state statutes, rules and regulations. Sales materials that are producer-related are tested in Standard III-1. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: The following controls were noted in review of this Standard:

- The Company has developed producer DI and LTC training programs which Guardian career agents must attend. The training programs can be tailored based on agent experience and needs.
- The Company's GEAR system is utilized to log when training programs have been reviewed for content and approved for use. All training programs must be approved by management and the Company's compliance department prior to use.
- The Company does not have any required internal training for DI producers.

Controls Reliance: The Examiners tested the Company's controls by reviewing policies and procedures and/or conducting transaction testing.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for the sales and marketing process. The Company provided a list containing 19 trainings conducted during the examination period. As such, ten trainings were selected and reviewed for content and home office approval.

Transaction Testing Results:

Findings: None.

Observations: The Company policies and procedures regarding the review of training materials prior to approval appear adequate. Testing of the ten approved training pieces revealed that the Company's process to approve training pieces was followed in all cases. Therefore, it appears that the Company is complying with the terms of the Standard.

Recommendations: None.

Standard III-3. Company communications to producers are in compliance with applicable statutes, rules and regulations.

Objective: This Standard is concerned with whether the written and electronic communication between the Company and its producers is in accordance with Company policies and procedures. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: The following controls were noted in review of this Standard:

- Producer communications including electronic mail and bulletins are approved by Company personnel prior to distribution.
- The Company updates producers on product and compliance matters by circulating "Guardian Weekly," an electronic newsletter containing headline topics and links to specific related articles.

Controls Reliance: The Examiners tested the Company's controls by reviewing policies and procedures and/or conducting transaction testing.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for the sales and marketing process. The Company provided the communications sent to producers during the

examination period. As such, a judgmental sample of five communications was reviewed for content and home office approval.

Transaction Testing Results:

Findings: None

Observations: The Company policies and procedures regarding the review of communication materials prior to approval appear adequate. Testing of the five approved communication pieces revealed that the Company's process to approve communication pieces was followed in all cases. Therefore, it appears that the Company is complying with the terms of the Standard.

Recommendations: None.

Standard III-4. Company rules pertaining to producer requirements in connection with replacements are in compliance with applicable statutes, rules and regulations.

No work was performed under this market conduct examination as the Company did not offer the products covered by this Standard during the examination period.

Standard III-5. Company rules pertaining to Company requirements in connection with replacements are in compliance with applicable statutes, rules and regulations.

No work was performed under this market conduct examination as the Company did not offer the products covered by this Standard during the examination period.

Standard III-6. An illustration used in the sale of a policy contains all required information and is delivered in accordance with statutes, rules and regulations.

No work was performed under this market conduct examination as the Company did not offer the products covered by this Standard during the examination period.

Standard III-7. The Company has suitability standards for its products, when required by applicable statutes, rules and regulations.

No work was performed under this market conduct examination as the Company did not offer the products covered by this Standard during the examination period.

Standard III-8. Pre-need funeral contracts or pre-arrangement disclosures and advertisements are in compliance with statutes, rules and regulations.

No work was performed under this market conduct examination as the Company did not offer the products covered by this Standard during the examination period.

Standard III-9. The Company's policy forms provide required disclosure material regarding accelerated benefit provisions.

No work was performed under this market conduct examination as the Company did not offer the product covered by this Standard during the examination period.

Standard III-10. Policy application forms used by depository institutions provide required disclosure material regarding insurance sales.

No work was performed under this market conduct examination as the Company did not offer the product covered by this Standard during the examination period.

Standard III-11. Insurer rules pertaining to producer requirements with regard to suitability in annuity transactions are in compliance with applicable statutes, rules and regulations.

No work was performed under this market conduct examination as the Company did not offer the product covered by this Standard during the examination period.

Standard III-12. Insurer rules pertaining to requirements in connection with suitability in annuity transactions are in compliance with applicable statutes, rules and regulations.

No work was performed under this market conduct examination as the Company did not offer the product covered by this Standard during the examination period.

Standard III-13. The insurer has procedures in place to educate and monitor insurance producers and to provide full disclosure to consumers regarding all sales of products involving fixed-index annuity products, and all sales are in compliance with applicable statutes, rules and regulations.

No work was performed under this market conduct examination as the Company did not offer the product covered by this Standard during the examination period.

Standard III-14. The insurer has procedures in place to educate and monitor insurance producers and to provide full disclosure to consumers regarding all sales of products involving index life, and all sales are in compliance with applicable statutes, rules and regulations.

No work was performed under this market conduct examination as the Company did not offer the product covered by this Standard during the examination period.

Standard III-15. The insurer has procedures in place to provide full disclosure to consumers regarding all sales of products involving fixed-index annuity products, and all sales are in compliance with applicable statutes, rules and regulations.

No work was performed under this market conduct examination as the Company did not offer the product covered by this Standard during the examination period.

Standard III-16. The insurer has procedures in place to provide full disclosure to consumers regarding all sales of products involving index life, and all sales are in compliance with applicable statutes, rules and regulations.

No work was performed under this market conduct examination as the Company did not offer the product covered by this Standard during the examination period.

Standard III-17. The insurer's underwriting requirements and guidelines pertaining to travel are in compliance with applicable statutes, rules and regulations.

Objective: This Standard is concerned with whether the Company's underwriting requirements regarding travel are in compliance with Massachusetts requirements.

Controls Assessment: The following controls were noted in review of this Standard:

- The disability insurance application contains a question regarding the applicant's future plans to travel or reside outside of the United States. Applicants that provide a "yes" response to this question are asked to indicate the location, frequency, for work or pleasure, date of departure and length of stay. The Company's goal is to offer coverage to persons who plan to permanently reside in the United States. The Company believes foreign travel to countries on the U.S. Travel Warning list may increase the risk of disease or harm.
- The Company's policies and procedure provides the necessary oversight regarding the consideration of travel as a part of the underwriting process.
- The Company's underwriting guidelines appear to meet the requirements of M.G.L. c. 175, § 122A

Controls Reliance: The Examiners tested the Company's controls by reviewing policies and procedures, reviewing available documentation and/or conducting transaction testing.

Transaction Testing Procedure: The Examiners reviewed 100 life new business transactions to determine whether any adverse underwriting or rating actions were based solely on an applicant's foreign travel. Additionally, the Examiners reviewed 10 declinations to determine whether any of these applications were declined solely on an applicant's foreign travel.

Transaction Testing Results:

Findings: None.

Observations: The Examiner's review of 100 life new business transactions and 10 declinations did not identify any violations of M.G.L. c. 175, §122A.

Recommendations: None.

IV – PRODUCER LICENSING

Evaluation of the Standards in this business area is based on (a) an assessment of the Company's internal control environment, policies and procedures, (b) the Company's response to various information and data requests, and (c) a review of various types of Company files.

Standard IV-1. Company records of licensed and appointed (if applicable) producers agree with insurance department records.

Objective: The Standard addresses licensing and appointment of the Company's producers. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: The following controls were noted in review of this Standard, and Standards IV-2 through IV-5:

- The Company uses producers known as "field representatives" that are primarily Guardian career general agents. The Guardian Agent Licensing and Contracting Department (Guardian Unit) is responsible for obtaining and reviewing background check information for each new Guardian agent; creating agent records on the Company's Licensing System after a new contract is established; processing agent appointments with each state in which the agent is authorized to sell Company products; processing renewal appointments; and performing monthly self audits.
- The Company also uses independent brokers. The Berkshire Broker Licensing Department (BLICOA Unit) is responsible for reviewing background check information for each new broker; creating broker records on the system after a new contract is established; and processing broker appointments in each state in which the broker is authorized to sell Company products.
- The Guardian and BLICOA Units (collectively referred to as the Units) receive notification of a new agent (Guardian responsibility) or a new broker (BLICOA responsibility) from the General Agency Department. The Units will review the National Insurance Producer Registry in order to determine if the agent or broker is licensed in applicable states. The Company will not contract with an agent or broker (collectively referred to as producers) until they are licensed and pass a background check to be in compliance with State, and Company requirements. Once producers are licensed and meet background criteria, the Units will enter appointment information into the Company's system and a producer record is established. Simultaneously, appointments for each producer are entered into the Massachusetts on-line producer appointment system referred to as OPRA. Producer appointment terminations are handled by the Units in the same manner as new appointments.
- The Company and Guardian use standard individual written contracts that define the Producers' duties and responsibilities including their responsibility to maintain current licenses, comply with law and regulations and conduct business honestly and ethically.

- All appointment renewals are performed by the Guardian Unit. Most states require annual appointment renewals. On a monthly basis, the Guardian Unit will submit renewal rosters by state to the BLICOA unit. The BLICOA Unit will inform the Guardian Unit of all producers' appointments that need to be renewed, and those that need to be terminated.
- The Company tracks all producers' appointments through a Guardian database. On a monthly basis, the Guardian unit performs audits regarding all appointment transactions processed by the Guardian and BLICOA Units to ensure that the Company's records reconcile to the state's records. The Guardian Unit will inform the BLICOA unit of all producers' un-reconcilable items, and the BLICOA Unit will process corrective entries and inform the Guardian Unit once completed. The Guardian Unit will address all un-reconcilable items regarding producers. Appointment errors are addressed with employees, and the unit does not publish a formal audit report. Management indicated that the Guardian Unit is audited on a periodic basis by Internal Audit, and a review was performed in 2015. Management indicated that no significant issues were identified.
- The Company and Guardian have a written policy which requires notice, as defined in the agreement, to agents when their appointment is terminated.
- The Company's written policy is to notify the Division of all agent terminations and the reason for any "for cause" termination.

Controls Reliance: The Examiners tested the Company's controls by reviewing policies and procedures and/or conducting transaction testing.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for the licensing and appointment process. Also, the Examiners selected a judgmental sample of five agent appointments from the Division's records and five appointments from the Company's records which also included Guardian's records to determine if the appointments dates match. The appointments were reviewed to determine whether the appointment data was consistent on both lists.

Transaction Testing Results:

Findings: None.

Observations: All of the 10 agent appointments sampled reconciled to the Division's records. All agents in the sample were properly licensed, appointed and in good standing with the Division.

Recommendations: None.

Standard IV-2. Producers are properly licensed and appointed and have appropriate continuing education (if required by state law) in the jurisdiction where the application was taken.

Objective: This Standard addresses the requirement that producers must be licensed and agents must be appointed. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: Refer to Standard IV-1.

Controls Reliance: Refer to Standard IV-1.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for the producer contracting, appointment and termination process. Also, a sample of 20 new business transactions was selected for testing. The Examiners tested the sampled policies to determine whether the selling producer for each issued policy was included on the Division's list of Company appointed agents.

Transaction Testing Results:

Findings: None.

Observations: The Examiners testing of the 20 policies found that all agents were active and appointed at the time the policy was issued.

Recommendations: None.

Standard IV-3. Termination of producers complies with applicable standards, rules and regulations regarding notification to the producer and notification to the state, if applicable.

Objective: This Standard addresses the Company's termination of producers in accordance with applicable statutes requiring notification to the state and the producer. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: Refer to Standard IV-1.

Controls Reliance: Refer to Standard IV-1.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for the producer contracting, appointment and termination process. Also, the Examiners selected a random sample of 20 agent terminations from the Company's records which also included Guardian's records to determine if the records reconciled with the Division's records, and provided timely notice of the terminations to the Division and the producers. In addition, the Examiners reviewed the report issued by the Compliance Unit in reference to the review of agent licensing. The Examiners reviewed actions taken to address discrepancies in appointment termination data noted in a June 30, 2015 internal audit of producer terminations.

Transaction Testing Results:

Findings: The Company has policies and procedures in place to notify producers that their contract with the Company has been terminated. The Company conducted an internal audit of the producer termination process and provided the Examiners with a copy of the June 30, 2015 report. The internal audit found that 30% of the discrepancies in producer termination data were due to analyst error or oversight. The internal audit report included recommendation which were to be implemented by August 1, 2015.

The Examiners conducted testing of 20 agent terminations. In five of the 20 agent terminations tested, the Company's agent termination records did not match the Division's records. Each of these instances occurred prior to implementation of corrective actions taken as a result of the June 30, 2015 audit report findings. The Examiners found that the appointments for the five agents were already terminated by the Division. The Company stated that it takes no further action for terminations that fall into this category.

The market conduct examination report for the period January 1, 2010 through December 31, 2010, included a required action that said "The Company and Guardian shall modify as necessary its agent termination procedure specifically regarding timely notification of terminations to the Division and accurate record keeping in the Guardian appointment system. The Company and Guardian shall perform a reconciliation between their agent records and the Division's records at least annually." In response to this required action, the Company proposed conducting an annual reconciliation as of October 15 of each calendar year.

Observations: None

Required Actions: The Company shall implement a process to conduct an annual reconciliation of agent terminations between the Company's records and the Division's records. The Company shall conduct additional training of procedures for processing producer appointment terminations to reduce the frequency of inconsistent

producer appointment data in the Company's producer licensing systems caused by analyst error or oversight. The Company shall revise its procedures to ensure that all terminated agent licensing records are accurate and match the Division's records, even in instances where the agent's licensed was already terminated by the Division.

Subsequent Actions: The Company informed the Examiners that they implemented a new system on March 21, 2016 that allows terminated agent licensing records to be reviewed against the Division's records and to address discrepancies within the system. This was not tested by the Examiners as part of this examination.

<p>Standard IV-4. The Company's policy of producer appointments and terminations does not result in unfair discrimination against policyholders.</p>

Objective: The Standard addresses the Company's policy for ensuring that producer appointments and terminations do not unfairly discriminate against policyholders. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: Refer to Standard IV-1.

Controls Reliance: Refer to Standard IV-1.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for the producer contracting, appointment and termination process. Also, the Examiners selected a random sample of 20 agent terminations from the Company's records which also included Guardian's records to determine if the termination dates matched the Division's records. The Examiners reviewed the agent termination records for any evidence of unfair discrimination against policyholders. In addition, the Examiners tested for any evidence of unfair discrimination against policyholders while reviewing the new business files for Standard VI-4.

Transaction Testing Results:

Findings: None.

Observations: Testing of the agent terminations revealed no evidence of unfair discrimination against policyholders. Therefore, it appears that the Company is complying with the terms of the Standard.

Recommendations: None.

Standard IV-5. Records of terminated producers adequately document the reasons for terminations.

Objective: The Standard addresses the Company's documentation of producer terminations. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: Refer to Standard IV-1.

Controls Reliance: Refer to Standard IV-1.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for the producer contracting, appointment and termination process. The Examiners selected a random sample of 20 agent termination from the Company's records which also included Guardian's records to determine if the Company and Guardian's documentation regarding an agent's termination was adequate.

Transaction Testing Results:

Findings: None.

Observations: Testing of the agent termination records revealed that the Company and Guardian retain adequate documentation regarding an agent's termination. Therefore, it appears that the Company is complying with the terms of the Standard.

Recommendations: None.

Standard IV-6. Producer account balances are in accordance with the producer's contract with the Company.

Objective: The Standard is concerned with whether the Company's contracts with producers limit excessive balances with respect to handling funds. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: The following controls were noted in review of this Standard:

- The billing methods the Company offers for its DI policies are either direct to the insured, automatic withdrawal, group list billing or an individual list billing. The billing methods offered for its LTC policies are either direct to the insured, automatic withdrawal or a group list billing.
- The Company pays commissions and provides a commission statement to producers semi-monthly.

- The Company generates an 'aged payable report' to identify negative commission balances. BLICOA also determines if producers have future vested earnings from other policies to offset negative commissions. If so, future commissions earned will be used to offset the negative commission. If no future earnings exist, producers are notified via letter and requested to reimburse the amount due via check.

Controls Reliance: The Examiners tested the Company's controls by reviewing policies and procedures and/or conducting transaction testing.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for the producer contracting, appointment and termination process. Also, a sample of 20 new business transactions were selected for testing. Policies were tested to ensure that commission payments were paid accurately in accordance with contracted terms and also to ensure compliance with laws and regulations.

Transaction Testing Results:

Findings: None.

Observations: Testing of the 20 policies revealed that the Company's commission payments were paid accurately in accordance with contracted terms. Therefore, it appears that the Company is complying with the terms of the Standard.

Recommendations: None.

V – POLICYHOLDER SERVICE

Evaluation of the Standards in this business area is based on (a) an assessment of the Company's internal control environment, policies and procedures, (b) the Company's response to various information and data requests, and (c) a review of various types of Company files.

Standard V-1. Premium notices and billing notices are sent out with an adequate amount of advance notice.

Objective: This Standard addresses efforts to provide policyholders with sufficient advance notice of premiums due and disclosure of the lapse risk due to non-payment. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: The following controls were noted in review of this Standard:

- The Company has written policies and procedures regarding policy premiums and billings that are aligned to meet state requirements including M.G.L. c. 175, §§108, 110B, 187C and 187D.
- The Company offers several billing modes such as monthly through electronic funds transfer, quarterly, semi-annual, and annual. The insured is able to select their preferred billing mode. Additionally, premiums regarding policies sold through marketing agreements with employers are remitted to the Company through payroll deductions.
- Premium Billing Notices are sent 30 days in advance of the payment due date. This notice states that the policy will lapse if the premium due is not received.
- If payments are not received by the due date, the Company sends a Late Payment Offer Letter to the insureds 17 days after the payment due date. This notice mentions a 31 day grace period for payments. Also, the notice indicates that the insured will not have coverage if payment is not received by the 62nd day after the premium due date.
- If premiums are not received by the end of the grace period, the Company sends several other letters to insureds at the following intervals: 35, 70, and 120 days after the premium due date. These letters include reinstatement offers.
- The Company has established time standards for premium and billing notices and performance of these time standards is monitored by management through the client services Balanced Scorecard.

Controls Reliance: The Examiners tested the Company's controls by reviewing policies and procedures and/or conducting transaction testing.

Transaction Testing Procedure: The Examiners discussed billing procedures with Company personnel, and obtained supporting documentation. Also, the Examiners selected a sample of 12 disability income, one life and

one long term care policy that lapsed for non-payment during the examination period to test for compliance with policies, procedures and statutory requirements.

Transaction Testing Results:

Findings: The language included in the Company's Disability Income premium notice when a premium is overdue is in violation of M.G.L c.175, §110B. The law states that "Such notice shall also contain a statement as to the lapse of the policy if no payment is made as provided in the policy." The "Conditions for Payment if Premium is Due" included in the Company's "Overdue" notice states "Unless the premium due is paid on or before the end of the grace period, the policy and all payments will be forfeited and void except as may be provided in the policy or by statute." The "Overdue" notice does not specifically state that the policy will "Lapse" to comply with the terms of M.G.L c.175, §110B. The first correspondence to the insured that uses the term "Lapsed" is sent after the policy has lapsed.

Observations: Based upon the review and testing results, the Examiners noted that for each billing notice reviewed, the Company gave adequate notice prior to lapse in compliance with statutory requirements.

Required Actions: The Company shall modify the "Overdue" notice to clearly state the policy will "Lapse" in order to comply with the terms of M.G.L c.175, §110B. The Company shall promptly provide a copy of the revised notice to the Division.

Subsequent Actions: The Company informed the Examiners that they modified their routine and overdue premium notices to reflect reference to the word "lapse". The Company anticipates these modified Notices will be implemented and placed in production by December 31, 2017. This was not tested by the Examiners as part of this examination.

<u>Standard V-2. Policy issuance and insured requested cancellations are timely.</u>

Objective: This Standard addresses the Company's procedures to ensure that insured-requested cancellations are processed timely. Policy issuance testing is included in Standard VI-6. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: The following controls were noted in review of this Standard:

- The Company has written policies and procedures regarding policy issuance and insured request cancellations that are aligned to meet state requirements including 211 CMR 42.05.

- Company procedures require insureds to submit cancellation requests in writing. Cancellations are effective on the date that the Company receives such written requests, and any unearned premium is refunded to the insured.
- New DI policyholders are afforded the opportunity to return a policy to the Company within 10 days of receiving it. Similarly, new LTC policyholders have 30 days to return a policy to the Company. Premium payments are subsequently returned to the policyholder.
- The Company has written service standards regarding the timely processing of insured requested cancellations and performance of these standards is monitored through the Balanced Scorecard.
- The Company has a program in place to conduct policyholder and post sale service surveys to measure customer satisfaction. Company procedures require the timely investigation and response to significant feedback.

Controls Reliance: The Examiners tested the Company's controls by reviewing policies and procedures and/or conducting transaction testing.

Transaction Testing Procedure: The Examiners discussed policy issuance, free look, insured-requested cancellation and surrender procedures with Company personnel, and obtained supporting documentation. Also, the Examiners selected a sample of 107 new business underwriting, 12 DI policy insured requested cancellations, two life policy insured requested cancellations and one long term care insured-requested policy cancellation in order to ensure that transactions were processed accurately and timely. Finally, the Examiners reviewed the post sale and policyholder service surveys in order to determine if significant feedback was timely investigated and responded to by the Company.

Transaction Testing Results:

Findings: Testing of the 15 cancellations identified two policies that were not cancelled timely. The cancellations were not submitted timely by the agents and were therefore not processed timely by the Company, (Sample IDI 53-8 and 53-10), as required by M.G.L. c. 175, §187C.

Observations: Based upon review and testing results of the 15 cancellations, the Company processed 13 of the 15 timely and in compliance with statutory requirements. The Company conducts written policyholder surveys four times a year. A predetermined number of policies are randomly selected from the total number of policies. The surveys are reviewed by a Quality Analyst in the Claims and Policy Services area. Adverse comments are routed to a member of the management team in the appropriate business area for further handling.

Required Actions: The Company shall provide additional training to agents, reaffirming that cancellation notices shall be submitted to the appropriate department at the Company in a timely manner.

Subsequent Actions: The Company informed the Examiners that they will provide notification via a periodic field force publication to the agents and agencies reminding them of the Company's procedures related to policy cancellations, which includes directing cancellation notices to the Company in a timely manner. The Company will publish this information by December 31, 2017. This was not tested by the Examiners as part of this examination.

Standard V-3. All correspondence directed to the regulated entity is answered in a timely and responsive manner by the appropriate department.

Objective: This Standard addresses the Company's procedures for providing timely and responsive information to customers. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: The following controls were noted in review of this Standard:

- The Client Services Unit is responsible for providing service to agents and customers regarding policy transactions such as address changes, insured request cancels, policy reinstatement and conservation, changes in coverage and premium billing changes that are received through mail, facsimile, or phone. There are written policies and procedures governing the processing of each type of transaction.
- The Company has written service standards regarding the timely processing of insured requests and performance of these standards is monitored through its Balanced Scorecard.
- The Company has a program in place to conduct policyholder and post sale service surveys to measure customer satisfaction. According to the Company's policies and procedures, responses to survey comments are to be done timely and address all comments.

Controls Reliance: Controls tested via documentation inspection, procedure observation and/or corroborating inquiry appear to be sufficiently reliable to be considered in determining the extent of transaction testing procedures.

Transaction Testing Procedure: The Examiners discussed correspondence procedures with Company personnel, obtained supporting documentation and reviewed policyholder requests to ensure that any necessary responses were timely provided. The Examiners also evaluated the Company's efforts to correspond with policyholders in various complaint handling and claims standards.

Transaction Testing Results:

Findings: None.

Observations: Based upon review and testing results, the Company appears to timely respond to customer inquiries including complaints, claims, and policyholder requests as necessary.

Recommendations: None.

Standard V-4. Whenever the regulated entity transfers the obligation of its contracts to another regulated entity pursuant to an assumption reinsurance agreement, the regulated entity has gained prior approval of the insurance department and the regulated entity has sent the required notices to affected policyholders.

No work was performed under this market conduct examination as the Company did not enter into such agreements covered by this Standard during the examination period.

Standard V-5. Policy transactions are processed accurately and completely.

Objective: This Standard addresses loan interest rates and procedures for processing beneficiary and ownership changes, conversions, policy loans and maturities. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: The following controls were noted in review of this Standard:

- The Client Services Unit is responsible for providing service to agents and customers regarding policy transactions such as address changes, insured-requested cancellations, policy reinstatement and conservation, changes in coverage and premium billing changes that are received through mail, facsimile, or phone. There are written policies and procedures governing the processing of each type of transaction.
- The Company provides written notice prior to policy maturity for DI policies that are cancelable at age 65. The notice meets the requirements of M.G.L. c. 175, §110H.
- The Company has written service standards regarding the timely processing of insured requests and performance of these standards is monitored through Balanced Scorecard.
- The Company has a program in place to conduct policyholder and post sale service surveys to measure customer satisfaction. Company procedures require the timely investigation and response to significant feedback.

Controls Reliance: Controls tested via documentation inspection, procedure observation and/or corroborating inquiry appear to be sufficiently reliable to be considered in determining the extent of transaction testing procedures.

Transaction Testing Procedure: The Examiners discussed policy change procedures with Company personnel, and obtained supporting documentation. Also, the Examiners selected a judgmental sample of ten Disability Income, five Life and five Long Term Care insured requested policy change transactions. The Examiners conducted these reviews to ensure that the Company processed transactions accurately, timely and in accordance with statutory requirements and policy provisions.

Transaction Testing Results:

Findings: None.

Observations: The Examiners' testing found that the Company appeared to process policy transactions in a timely manner. There were two DI and two Life policy transactions that were lacking sufficient documentation. The two DI policy transactions were missing a written acknowledgement that the policy transactions were completed. (DI-1, DI-4,) One Life policy was lacking a copy of the letter to the insured confirming the cancellation request while the other Life policy was missing a copy of the insured's request for an illustration. (Life-3, Life-4)

Regarding the Company's policyholder survey results, they give the indication that the Company is handling policy transactions accurately and completely. Finally, the Company provides written notice prior to policy maturity for DI policies that are cancelable at age 65. For LTC policies, proper notice is provided to claimants in advance of exhaustion of benefits. The notice meets the requirements of M.G.L. c. 175, § 110H.

Recommendations: The Company should maintain sufficient documentation to support the policy transaction. The Company should modify their process to include providing a written acknowledgment of all policy transactions.

<p><u>Standard V-6. Reasonable attempts to locate missing policyholders or beneficiaries are made.</u></p>

Objective: This Standard addresses efforts to locate missing contract owners and beneficiaries, and to comply with escheatment and reporting requirements. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: The following controls were noted in review of this Standard:

- The Company has policies and procedures in place to locate missing policyholders and claimants.

- The Company policy requires that outstanding checks, including claim payments and premium refunds be reported as unclaimed property and escheated to the state when the policy owner cannot be found.
- The Company annually reports escheatable funds to the State Treasurer as required under M.G.L. c. 200A, §§7-7B, 8A.

Controls Reliance: Controls tested via documentation inspection, procedure observation and/or corroborating inquiry appear to be sufficiently reliable to be considered in determining the extent of transaction testing procedures.

Transaction Testing Procedure: The Examiners discussed the Company's procedures for locating missing policyholders and escheatment of funds with Company personnel, and reviewed supporting documentation.

Transaction Testing Results:

Findings: None.

Observations: The Company has processes for locating missing policyholders and claimants. No testing performed as the Company has entered into a settlement agreement.

Recommendations: None.

Standard V-7. Unearned premiums are correctly calculated and returned to the appropriate party in a timely manner and in accordance with applicable statutes, rules and regulations.

Objective: This Standard addresses the calculation and timely return of unearned premiums. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: The following controls were noted in review of this Standard:

- The Company has written policies and procedures regarding policy cancellations that are aligned to meet state requirements including M.G.L. c. 175, §§187C and 187D.
- The Company's system automatically calculates the unearned premium on cancelled policies for return of premium to policyholders.
- The Company has written service standards regarding the timely processing of insured requests and performance of these standards is monitored through Balanced Scorecard.

- The Company has a program in place to conduct policyholder and post sale service surveys to measure customer satisfaction. Company procedures require the timely investigation and response to significant feedback.

Controls Reliance: The Examiners tested the Company's controls by reviewing policies and procedures and/or conducting transaction testing.

Transaction Testing Procedure: The Examiners discussed cancellation procedures with Company personnel, and obtained supporting documentation. Also, the Examiners selected a judgmental sample of 15 insured-requested cancellations from the examination period to ensure that requests were processed accurately and timely. Finally, the Examiners reviewed the post sale and policyholder service surveys in order to determine if significant feedback was timely investigated and responded to by the Company.

Transaction Testing Results:

Findings: The Examiners testing of 15 DI cancellation requests found that the Company inaccurately processed one request where the policy had unearned premium that was due to the insured; however, the Company did not issue a refund. Testing of the 15 cancellations identified one policy that was not cancelled correctly. The cancellation date used in the cancellation was not the correct date, as required by M.G.L. c. 175, §187C. The tested process for cancelling DI policies includes an agent submitting the written cancellation from the insured to the policyholder service team on a date other than the date the cancellation is signed by the insured.

Observations: Based upon review and testing results of the 15 cancellations, the Company processed 14 of the 15 accurately and timely in compliance with statutory requirements. In addition, the Company's policyholder survey results indicate that the Company is handling the return of unearned premiums timely.

Required Actions: The Company shall refund additional premiums plus interest for the policy cancellation incorrectly handled. The Company shall provide documentation of the additional premium refund plus interest to the Division. The Company shall modify its policies and procedures to cancel policies using the date the insured signs the cancellation notice, and shall promptly provide a copy of the revised procedures to the Division.

Subsequent Actions: The Company informed the Examiners that they will be modifying their policy cancellation procedures to reflect that it will process a policy cancellation effective the date the form or written request is signed when said form or written request is received in good order at the Home Office within thirty (30) days of

its signature. The Company will provide these procedures to the Division by December 31, 2017. This was not tested by the Examiners as part of this examination.

Standard V-8. Reinstatement is applied consistently and in accordance with policy provisions.
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Objective: This Standard addresses consistent reinstatement processing in compliance with policy provisions. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: The following controls were noted in review of this Standard:

- The Company has policies and procedures regarding the reinstatement process and such information is designed to align with state requirements including M.G.L. c. 175, §108.
- Premium notices that are sent to insureds after their policies have lapsed include information regarding reinstatements of coverage. The policy contracts allow insureds to apply for reinstatement of their insurance coverage up to six months past the lapse date and the insured needs to complete a short form application. The insured must submit a new business application after the six month period as reinstatement of coverage is not available.
- The Company has written service standards regarding the timely processing of reinstatements and performance of these standards is monitored through the Balanced Scorecard.

Controls Reliance: Controls tested via documentation inspection, procedure observation and/or corroborating inquiry appear to be sufficiently reliable to be considered in determining the extent of transaction testing procedures.

Transaction Testing Procedure: The Examiners discussed reinstatement procedures with Company personnel and obtained supporting documentation. Also, the Examiners selected a random sample of nine disability income and six long term care reinstatements from the examination period to ensure that reinstatements were handled consistently, timely and in accordance with policy provisions.

Transaction Testing Results:

Findings: None.

Observations: The Examiners review of the reinstatements determined that all were processed consistently and in a timely manner. Therefore, it appears that the Company is complying with the terms of the Standard.

Recommendations: None.

Standard V-9. Non-forfeiture options are communicated to the policyholder and correctly applied in accordance with the policy contract.

No work was performed under this market conduct examination as the Company did not offer the product covered by this Standard during the examination period.

Standard V-10. The regulated entity provides each policy owner with an annual report of policy values in accordance with statutes, rules and regulations and, upon request, an in-force illustration or contract policy summary.

Objective: This Standard addresses periodic disclosure to the policyholder of contract information. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: The following controls were noted in review of this Standard:

- The Company mails DI and LTC individual policyholders annual statements disclosing monthly benefits, automatic benefit increases, elimination periods, and premium changes to policyholders on their policy anniversary date.
- The Company has written service standards to ensure the timely processing of annual statements to policyholders.

Controls Reliance: The Examiners tested the Company's controls by reviewing policies and procedures and/or conducting transaction testing.

Transaction Testing Procedure: The Examiners reviewed annual statement disclosure procedures with Company personnel, and reviewed examples of such disclosures.

Transaction Testing Results:

Findings: None.

Observations: The Company appears to have adequate procedures for providing policyholders with timely annual statements in compliance with Company policies.

Recommendations: None.

Standard V-11. Upon receipt of a request from policyholder for accelerated benefit payment, the regulated entity must disclose to policyholder the effect of the request on the policy's cash value, accumulation account, death benefit, premium, policy loans and liens. The regulated entity must also advise that the request may adversely affect the recipient's eligibility for Medicaid or other government benefits or entitlements.

No work was performed under this market conduct examination as the Company did not offer the product covered by this Standard during the examination period.

VI – UNDERWRITING AND RATING

Evaluation of the Standards in this business area is based on (a) an assessment of the Company's internal control environment, policies and procedures, (b) the Company's response to various information and data requests, and (c) a review of various types of Company files.

Standard VI-1. The rates charged for the policy coverage are in accordance with filed rates (if applicable) or the Company rating plan.

Objective: This Standard addresses whether the Company uses and charges proper premium rates. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: The following controls were noted in review of this Standard:

- The Company has written underwriting policies and procedures which are designed to reasonably assure consistency in classification and rating of new business. These procedures appear to comply with M.G.L. c. 175, §120; M.G.L. c. 175 § 193T; M.G.L. c. 176D, §3 (7) (b); and Division Bulletins 2008-08.
- The Company utilizes three underwriting classes: preferred, select, and standard. Underwriters assign a debit rating for rating applicants based on guidelines that consider the applicant's medical history, family history, height, weight, and other characteristics.
- The factors utilized by the Company to determine occupation classes and rates for individual DI policies include: occupation, age, years of work experience and the applicant's health. The Company applies premium surcharges to increase rates when an increase in claim risk exists (i.e., pre-existing health condition). Prior to 2015 the Company utilizes parameters as set by the Company's reinsurer, MunichRe, in order to apply additional premiums. After 2015, the Company developed their own parameters to apply additional premiums. The Company offers a preferred rate discount to those applicants who meet certain underwriting criteria.
- Rates are automatically computed based on applicant information and rating classifications assigned by the underwriter.
- The Company processes filings through the System for Electronic Rate and Form Filing.
- For disability income insurance replacements, application forms, including a Massachusetts-specific replacement notice (form 25.19-11-2003) are selected for printing to be included in the application package. The notice discloses facts that could affect rights under the new policy, and is signed by the applicant, including the notice delivery date.
- The Company has procedures designed to assure that its customers receive information and privacy disclosure notices at the time of application as required by M.G.L. c. 175I, §(4) (c). The Company uses a disability insurance application "required checklist" in its application package. The notice of

information practices and privacy notice is a required item within the application package and the Company requires the agent certify to delivering the notice to the consumer.

Controls Reliance: The Examiners tested the Company's controls by reviewing policies and procedures and/or conducting transaction testing.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for the underwriting process. The Examiners selected a sample of 58 individual disability new business eighteen adverse underwriting decision and three replacement transactions from the period of review. From those transactions, the Examiners selected a sample of 15 policies and re-rated the premium charges for each to determine compliance with Massachusetts rate requirements. Also, in conjunction with Standard VI-5, the Examiners requested documentation to support that the product filings were submitted and approved by the Division.

Transaction Testing Results:

Findings: The Examiners identified that in five of the seven sample policies that included the Future Increase Option (FIO) rider, the FIO rider premium did not appear to be calculated as specified by the Company's applicable rating rule. The rating rule filed by the Company for rating the Future Insurance Option ("FIO") rider does not clearly specify which riders should be included in the FIO rider premium development calculation. While the rating rule was filed with the Division, the rule does not specify which riders should be included in the FIO rider premium development as required by M.G.L. c. 175 § 108.

Observations: The Company has a rate plan that is designed to be uniform and automated. The rating process appears to comply with statutory requirements allowing that the calculation of the Future Increase Option rider (FIO) was observed to be consistent with the Company's understanding of how the rule should be interpreted.

Required Actions: The Company shall file with the Division further clarification of the rule for developing the policy premium for the FIO rider.

Subsequent Actions: The Company provided documentation that they amended the premium rates for the FIO rider submitted to both the Compact and the Division. The Company informed the Examiners that they received Compact approval for the amended premium rates for the FIO Rider in conjunction with application forms approval on March 10, 2017 and policy forms approval on May 11, 2017, respectively, it withdrew the pending product filing with the Division. This was not tested by the Examiners as part of this examination.

<p><u>Standard VI-2.</u> All mandated disclosures are documented and in accordance with applicable statutes, rules and regulations.</p>
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Objective: This Standard addresses mandated underwriting disclosures for insurance policies, which are required in accordance with statutes, regulations and Company policy. Requirements to provide illustrations and other disclosures are included in Standard III-6. Replacement disclosures are included in Standards III-4 and III-5, and adverse underwriting notices are included in Standards VI-7 and VI-8. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: See Std VI-1

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for the underwriting process. The Examiners selected a sample of 58 individual disability new business, eighteen adverse underwriting decision, and three replacement transactions from the period of review.

Transaction Testing Results:

Findings: As the Automatic Benefit Enhancement Rider (ABE) is not included on the signed application, adding this rider to a policy is not in compliance with 211 CMR 42.09 (1) (d). The rider is added to the policy without the insured requesting the benefit and without the Company receiving an affirmative action from the insured that they want the benefit added to their policy.

Observations: The Examiners observed that the Company issued the ABE rider on some samples even though there was no evidence on the policy application that the rider was requested by the applicant.

Required Actions: The Company shall update the application process to include a request from the applicant to add the rider to the policy if eligible. The updated application process shall also indicate that the applicant understands that additional premiums will be due as the benefit increases. A copy of the updated application process shall promptly be submitted to the Division.

Subsequent Actions: The Company informed the Examiners that they will be adding a one-page, standalone explanation of the ABE Rider to the application package. This will be implemented by December 31, 2017, and a copy of the additional application package page will be provided to the Division at that time. This was not tested by the Examiners as part of this examination.

Standard VI-3. The Company does not permit illegal rebating, commission-cutting or inducements.
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Objective: This Standard prohibits illegal rebating, commission cutting or inducements in Company correspondence to producers, and in advertising/marketing materials. Reduced commissions paid on internal replacements are discussed in Standard III-5. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: The following controls were noted in review of this Standard:

- The Company has written policies and guidelines to provide oversight of the process to pay agents' commissions. The Company has implemented steps to prevent illegal rebating, commission cutting and inducements as required by this Standard through its agent contracts and Company policies.
- After agents are properly licensed and pass the Company appointment criteria, they are contracted and appointed with the Company. Agents are paid in accordance with their agent agreements.

Controls Reliance: Controls tested via documentation inspection, procedure observation and/or corroborating inquiry appear to be sufficiently reliable to be considered in determining the extent of transaction testing procedures.

Transaction Testing Procedure: The Examiners interviewed Company personnel with responsibility for commission processing and producer contracting. Also, the Examiners reviewed producer contracts, new business materials, and manuals for indications of rebating, improper commission cutting or inducements. In addition, the Examiners reviewed a subsample of 15 new business and adverse action transactions issued during the period of review to ensure that the related commission payments were in accordance with contractual terms and did not indicate any unusual activity such as rebating, improper commission cutting or inducements.

Transaction Testing Results:

Findings: None.

Observations: Testing of the commissions paid on the sampled DI policies found that commissions were paid according to the agent's contract and appeared reasonable. The Company's processes appear sufficient to prevent inducements, commission cutting and rebating. Therefore, it appears that the Company is complying with the terms of the Standard.

Recommendations: None.

Standard VI-4. The Company's underwriting practices are not unfairly discriminatory.
The Company adheres to applicable statutes, rules and regulations and regulated entity guidelines in the selection of risks.

Objective: This Standard addresses unfair discrimination in underwriting. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: The following controls were noted in review of this Standard:

- The Company has written policies and guidelines to prohibit unfair discrimination while underwriting. The Company has implemented steps designed to assure reasonable consistency in classification and rating of risks as required by this Standard.
- The Company has procedures in place for underwriting self audits to ensure adherence to underwriting guidelines.

Controls Reliance: The Examiners tested the Company's controls by reviewing policies and procedures and/or conducting transaction testing.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for the underwriting process. Also, a subsample of 15 new and adverse action DI business transactions were selected for testing. The Examiners verified that the policy forms used for each of the 15 sample policies was approved with no evidence of discriminatory rates or contract provisions.

Transaction Testing Results:

Findings: None.

Observations: There were instances where the Company did not follow its underwriting guidelines and made business decisions to relax the requirements and issue policies that were not completely consistent with guidelines. Some deviations found were the following:

- Complete financial information was not furnished.
- Preferred risk status granted when selection criteria varied slightly from permissible criteria.
- "Select" risk class permitted with known tobacco use during the previous 12 months.
- Future Increase Option (FIO) limit issued exceeded maximum permitted limit.
- Applicant's suspended MA operator's license did not result in a rating.
- Replacement ratios were used that varied from guidelines.

Recommendations: The Company should modify their policies and procedures to require an underwriter to request all required documents before making a determination. If all required documents cannot be obtained prior to making a determination, the file shall include a second review to reduce the risk of being unfairly discriminatory.

Standard VI-5. All forms, including contracts, riders, endorsement forms and certificates are filed with the insurance department, if applicable.

Objective: This Standard addresses the required filing of all policy forms and endorsements. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: The following controls were noted in review of this Standard:

- The Company utilizes policy forms, rates, contract riders, and endorsement forms that are developed by teams from its actuarial, marketing, legal, compliance and information technology departments, and subsequently filed and approved by the Division to comply with statutory provisions.
- The Company's underwriting guidelines were developed and are utilized to assure reasonable consistency that the necessary forms are filed with the Division as required by this Standard.

Controls Reliance: The Examiners tested the Company's controls by reviewing policies and procedures and/or conducting transaction testing.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for the underwriting process. Also, a subsample of 15 new and adverse action DI business transactions were selected for testing from the full sample. The Examiners tested the sampled policies to determine whether the contracts, riders and endorsement forms used by the Company were submitted with and approved by the Division.

Transaction Testing Results:

Findings: None.

Observations: Each policy and all attached riders included in the DI subsample was tested to determine whether the policy issued had been filed and approved by the Division. All contract forms, rider and endorsements tested were filed and approved by the Division.

Recommendations: None.

Standard VI-6. Policies, riders and endorsements are issued or renewed accurately, timely and completely.
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Objective: This Standard addresses whether the Company issues insurance policies timely and accurately. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: The following controls were noted in review of this Standard:

- The Company's underwriting guidelines were developed and are utilized to assure reasonable consistency that all policies and riders are issued or renewed accurately, timely and completely as required by this Standard.
- The Company's policies and procedures require that all new business applications and supporting information submitted to the Company are reviewed by the new business department for accuracy and completeness. Once all the required new business information is received, insurance applications are assigned to an underwriter for further review. Company underwriters review all insurance applications to ensure that they are complete and internally consistent, and to obtain additional information needed to make an underwriting decision.

Controls Reliance: The Examiners tested the Company's controls by reviewing policies and procedures and/or conducting transaction testing.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for the underwriting process. Also, a sample of 58 new DI business transactions were selected for testing. The Examiners tested the sampled policies to determine whether the policies and riders issued by the Company were done timely, accurately and completely.

Transaction Testing Results:

Findings: None.

Observations: Each policy in the DI sample was tested to determine whether the policy was issued accurately, timely and completely as required by the Division. All policies tested were accurately, timely and completely. Therefore, it appears that the Company is complying with the terms of the Standard.

Recommendations: None.

Standard VI-7. Rejections and declinations are not unfairly discriminatory.
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Objective: This Standard addresses whether application denials are fair. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: The following controls were noted in review of this Standard:

- The Company has underwriting guidelines for DI policies that were developed and are utilized to assure reasonable consistency that all policies are handled without discrimination. The guidelines were designed to meet the requirements of M.G.L. c. 175, §24A, and 193T; M.G.L. c. 176D, § 3(7); M.G.L. c. 175I, §12.
- The Company uses policy forms, rates, contract riders and endorsement forms that are developed by teams from its actuarial, marketing, legal, compliance and information technology departments.
- The Company maintains approval by the Division of all such policy forms, rates, contract riders and endorsement forms to comply with applicable statutes.
- The Company sends applicants an adverse underwriting notice when an application is rejected, declined, rated, or issued with less favorable terms than as applied for.

Controls Reliance: The Examiners tested the Company's controls by reviewing policies and procedures and/or conducting transaction testing.

Transaction Testing Procedure: The Examiners reviewed written Company policies and procedures requiring that the Adverse Underwriting Notice be provided when the Company declines applications, elects to provide a reduced amount of coverage and when it offers coverage at higher than standard rates. The Examiners also selected a sample of thirty one DI rejections/declinations from the period of review to determine if Adverse Underwriting Decision Notices were sent to applicants.

Transaction Testing Results:

Findings: None.

Observations: Based upon testing, the Company's policies and procedures for providing Adverse Underwriting Notices appear to be functioning in accordance with its policies, procedures and statutory requirements. The Company provided the Adverse Underwriting Notice when it declined to offer coverage, offered coverage with exclusions or offered coverage at higher than standard rates. Refer to Standard VI-8 for findings related to the content of the form.

Recommendations: None.

Standard VI-8. Cancellation/nonrenewal, discontinuance and declination notices comply with policy provisions, state laws and the regulated entity's guidelines.

Objective: This Standard addresses whether the non-underwriting reasons for a cancellation are valid according to policy provisions and state laws. Compliance with adverse underwriting notice requirements are tested in Standard VI-7. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: The following controls were noted in review of this Standard:

- The Company's DI policies are guaranteed renewable and as such the Company may not cancel any policy except as stated in M.G.L. c. 175 §108 (3)(a)(2).

Controls Reliance: The Examiners tested the Company's controls by reviewing policies and procedures and/or conducting transaction testing.

Transaction Testing Procedure: The Examiners judgmentally selected a sample of 15 lapsed policies for review which were comprised of 13 DI, one LTC and one Life policy. The Examiners judgmentally selected a sample of 15 policies cancelled for nonpayment to evaluate whether the Company's cancellation of these policies was in compliance with statutory requirements. The 15 policies were comprised of 12 DI policies, one LTC policy and two Life. In addition, the Examiners selected a sample of 18 DI applications for which the Company offered coverage with an exclusion or offered coverage at non-standard rates as a Notice of Adverse Underwriting Decision would be required in each situation. Also, the Examiners selected a sample of 31 DI applications that were declined by the Company. The review included verifying that the adverse underwriting action notice was provided to the applicant.

Transaction Testing Results:

Findings: The Company used a standard template for its adverse underwriting decision notice to its customers which failed to include a complete outline of the consumers rights as required by M.G.L. c175I § 10 (1) (2). The adverse action letter utilized by the Company during the examination period, does not comply with the provisions of M.G.L c175I § 10 (1) (2) as the letter does not include the following disclosures:

- An individual to whom personal information refers has a right to have any factual error corrected and any misrepresentation or misleading entry amended or deleted as provided in section 9.

- The individual's right to request review by the Commissioner of insurance as provided by section 14.

The Examiners' testing of 15 DI cancellation requests found that the Company inaccurately processed one request where the policy had unearned premium that was due to the insured; however, the Company did not issue a refund. Testing of the 15 cancellations identified one policy that was not cancelled correctly. The cancellation date used in the cancellation was not the correct date, as required by M.G.L. c. 175, §187C. The process for cancelling DI policies includes an agent submitting the written cancellation from the insured to the policyholder service team on a date other than the date the cancellation is signed by the insured.

Observations: Based upon review and testing results of the 15 cancelled policies and 15 lapsed policies, the Company processed 14 of the 15 cancelled policies and all 15 lapsed policies appropriately for non-payment of premium or for some other cause.

Required Actions: The Company shall update the adverse action letter template to include the missing disclosures. The Company shall promptly provide documentation to the Division of the updated adverse action letter template. In addition, the Company shall refund additional premiums plus interest for the policy cancellation incorrectly handled. The Company shall provide documentation of the additional premium refund plus interest to the Division. The Company shall modify its policies and procedures to cancel policies using the date the insured signs the cancellation notice, and shall promptly provide documentation to the Division of the updated procedure.

Subsequent Actions: The Company informed the Examiners that they have revised the adverse underwriting decision notice to its customers to comply with the provisions of M.G.L c. 175I § 10 (1) (2). This notice will be in production to Massachusetts applicants on or before December 31, 2017, and the Company will provide a copy to the Division at that time. This was not tested by the Examiners as part of this examination.

<p><u>Standard VI-9. Rescissions are not made for non-material misrepresentation.</u></p>
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Objective: The Standard addresses whether: (a) rescinded policies indicate a trend toward post-claim underwriting practices; (b) decisions to rescind are made in accordance with applicable statutes, rules and regulations; and (c) Company underwriting procedures meet incontestability standards. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: The following controls were noted in review of this Standard:

- The Company's DI policies are guaranteed renewable and as such the Company may not rescind any policy except as stated in M.G.L. c. 175 §108 (3)(a)(2).
- Although rare, within the first two years of the policy issuance date for Massachusetts policies, the Company will rescind a policy if fraud or material misrepresentations are made. After the said two year period, the Company will rescind a policy only if fraudulent misstatements were made by the applicant during the application process. The Company's process is in place to meet the requirements of M.G.L. c. 175, §132(2).
- The Company's underwriting process considers the risk of material misrepresentation by applicants, and attempts to corroborate information received including health status.
- Cases considered for rescission are reviewed by the Underwriting Department, Special Investigation Unit, and Legal Department management.

Controls Reliance: The Examiners tested the Company's controls by reviewing policies and procedures and/or conducting transaction testing.

Transaction Testing Procedure: The Examiners reviewed the population of one policy that was rescinded during the period of review to determine if the transaction was processed in accordance with Massachusetts Laws. The Examiners also reviewed for evidence of improper rescissions during testing of complaints and claims. No files involving rescission investigations were identified while testing standards applicable to complaints.

Transaction Testing Results:

Findings: None.

Observations: Based upon review and testing, the Examiners determined that the one policy rescission was in compliance with Massachusetts Laws. Also, the Examiners did not note any instances of improper rescissions during the testing of complaints and claims.

Recommendations: None.

Standard VI-10. Pertinent information on applications that form a part of the policy is complete and accurate.

Objective: This Standard addresses whether: (a) the requested coverage is issued; (b) the Company verifies the accuracy of application information; (c) applicable non-forfeiture and dividend options are indicated on the application; (d) changes and supplements to applications are initiated by the applicant; and (e) supplemental applications are used where appropriate. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: The following controls were noted as part of this Standard:

- The Company's individual disability income applications require submission of information regarding the applicant's employment status, occupation, monthly earnings, income, age, existing disability income coverage and family member information, to assist in determining the applicant's needs.
- The Company reviews all individual disability applications to ensure that they are complete and internally consistent.
- The Company's long-term care policy servicing processes are outsourced to an unaffiliated third party administrator. The contract contains performance standards requiring timely and accurate policy servicing processes and compliance with all applicable laws and regulations.

Controls Reliance: Controls tested via documentation inspection, procedure observation and/or corroborating inquiry appear to be sufficiently reliable to be considered in determining the extent of transaction testing procedures.

Transaction Testing Procedure:

The Examiners interviewed Company management and staff responsible for the underwriting process. Also, a sample of 58 new DI business transactions were selected for testing. The Examiners tested the sampled policies to determine whether the application for issued policies was signed and complete. Also, the Examiners reviewed the individual disability income illustrations. The Examiners tested whether the insurance policies or contracts received were consistent with those applied for, and that any changes resulted in full written disclosure to applicants.

Transaction Testing Results:

Findings: In one application the Examiners found that a date on the signature line of the application was changed but the change was not confirmed by the applicant as required by M.G.L.c.175, § 131.

Observations: 57 of the 58 applications tested were signed and issued consistent with the application, and any changes resulted in proper disclosure to the applicant.

Required Actions: The Company shall establish a procedure to require the applicant to re-sign the application in the event there is a change to the application, and shall promptly provide a copy of the procedures to the Division.

Standard VI-11. The Company complies with the specific requirements for AIDS-related concerns in accordance with statutes, rules and regulations.

Objective: This Standard addresses procedures to ensure that the Company does not use medical records indicating AIDS-related concerns to discriminate against life and individual disability income insurance applicants, without medical evidence of disease. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: The following controls were noted in review of this Standard:

- The Company's underwriting guide indicates that the Company shall not use medical records indicating AIDS-related concerns to discriminate against applicants without medical evidence of the disease.
- The Company's new business submission process includes requirements in underwriting designed to meet the requirements of 211 CMR 36.04-36.06 and CMR 36.08.
- The Company has a form, provided at the time of application, stating that an applicant must give prior written informed consent before the insurer may conduct an AIDS-related test, designed to meet the requirements of 211 CMR 36.05.
- The Company requires applicants to acknowledge in writing that he or she understands his or her rights regarding the tests for HIV status that are required for underwriting.

Controls Reliance: The Examiners tested the Company's controls by reviewing policies and procedures and/or conducting transaction testing.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for the underwriting process. Also, a sample of 58 new DI business, twenty eight rejected/denied, eighteen adverse action and three replacement policy transactions were selected for testing. The Examiners tested the DI policies to determine whether the policies included signed Massachusetts AIDS testing disclosure notices from the applicants and that no discrimination was applied during the underwriting process.

Transaction Testing Results:

Findings: Of the policies tested that were subject to medical underwriting, the Examiners found that the AIDS/HIV Consent Form utilized by the Company during the examination period, Form 3446-4-

2007 MA, does not comply with the provisions of 211 CMR 36.03-36.08 - AIDS related testing and meet minimum requirements, specifically 36.04 Informed Consent, sections (2) (b), (3) (b) and 3(e), for the following reasons:

- The form does not contain the minimum required information.
- The name of labs performing the HIV testing are not included.
- The form does not inform the individual that the individual may change his or her election by informing the carrier in writing.

Observations: Of the policies tested that were subject to medical underwriting , all policies tested included the necessary AIDS Consent Form as required under 211 CMR 36.04-36.06 and 36.08 and outlined under this Standard.

Required Actions: The Company shall update the AIDS/HIV Consent Form to include the missing information. The Company shall promptly provide documentation to the Division of the updated form.

Subsequent Actions: The Company informed the Examiners that they have revised their AIDS/ HIV Consent Form and the package it supplies to applicants to comply with 211 CMR 36.04 Informed Consent, sections (2) (b),(3) (b) and 3(e). This revised package moved to production on June 22, 2017. This was not tested by the Examiners as part of this examination.

VII – CLAIMS

Evaluation of the Standards in this business area is based on (a) an assessment of the Company's internal control environment, policies and procedures, (b) the Company's response to various information and data requests, and (c) a review of various types of Company files.

Standard VII-1. The initial contact by the Company with the claimant is within the required time frame.

Objective: The Standard addresses the timeliness of the Company's initial contact with the claimant. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: The following controls were noted in review of this Standard, and Standards VII-2 through VII-13:

- The Company has written policies and procedures to provide oversight of the claim handling process.
- For DI claims, the claims analyst must determine whether the insured is "disabled" as defined by their policy. In order to meet the policy definition of "disabled" the insured must be either "totally disabled" or "residually disabled." In order to be considered totally disabled, the insured must be unable to perform the material and substantial duties of his or her own occupation ("own occ"). In order to be considered residually disabled, the insured must be gainfully employed and not totally disabled with a specific loss of income percentage based on the policy language (i.e., 15%). For certain occupations underwritten by the Company, following the first five years of disability the insured must be totally disabled from any occupation ("modified own occ"). The insured must remain disabled throughout the policy's elimination period which is stated in the policy as a specific number of days or months. Once the elimination period has been satisfied, the insured is eligible for the monthly benefit as stated in the policy, in addition to any riders.
- DI claims are reported to the Company through an agent or through the Company's toll free phone number. The claim is entered into the Company's claim system and assigned to a claims examiner. The claims examiner sends the initial claim form package to the claimant within five business days of claims notification. The initial claim form package consists of an informational letter, a Claimant Statement, an Attending Physician's Statement, and an Authorization Form which must be signed by the claimant to allow the Company to communicate with the claimant's attending physician. Prior to sending the initial claim form package, the claims examiner must determine whether multiple policies are in force for the insured by researching the Company databases. The Company's policy is to send follow up letters to the claimant within 30 days of the initial informational letter. The Company's policy is to send additional follow-up letters within 31-60 days and if no claim forms are received after

90 days, the Company gives final notice to the claimant that information must be submitted within 30 days or the claim will be closed.

- The Company's process is to provide an acknowledgement letter to the claimant when the initial claim forms are received by the Company. If necessary, the Company will gather medical records and financial data before making a claim determination. The Company used both in-house and contracted medical staff to assist in reviewing medical records. In addition, the Company uses in-house and contracted financial experts to assist in reviewing financial data used to calculate residual disability claims and business overhead expense claims.
- If fraud is suspected, the claim is referred to the law department and the SIU for investigation.
- The Company's claims system, "Cypress", maintains claim documentation and history notes. The Company also uses occupational experts when necessary to conduct on-site visits to assess a claimant's disability.
- The Company makes the initial DI benefit payment once it receives all information necessary to adjudicate a claim and determines if benefits are due.
- Regarding the waiver of premium provision on the policies, the claims examiner is responsible for notifying the billing department that the policy should be placed on waiver. According to the policy language, once the insured is eligible for the waiver of premium benefit, if the premium mode is not already annual, the policy premium mode will be changed to an annual premium based on the policy.

Controls Reliance: The Examiners tested the Company's controls by reviewing policies and procedures and/or conducting transaction testing.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for claims handling. Also, the Examiners selected a sample of 60 disability income, five long term care, one life waiver of premium claim and one denied disability income claim for review. This sample is referenced again in other standards within this section.

Transaction Testing Results:

Findings: None.

Observations: In all of the claims tested, the Examiners found that the Company's initial contact was timely. Testing performed indicated that the Company's policies and procedures appear to be sufficient and in compliance with statutory requirements.

Recommendations: None.

Standard VII-2. Timely investigations are conducted.

Objective: The Standard is concerned with the timeliness of the Company's claims investigations. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: See Standard VII-1.

Controls Reliance: See Standard VII-1.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for claims handling. Also, the Examiners selected a sample of 60 disability income, five long term care, one life waiver of premium claim and one denied disability income claim for review. This sample is referenced again in other standards within this section.

Transaction Testing Results:

Findings: None.

Observations: In one of the 67 claims tested, the Examiners found that the Company did not investigate the claim timely as required by M.G. L. c. 176D, §3(9)(c). Testing performed indicated that the Company's policies and procedures are not sufficient nor in compliance with statutory requirements. In the disability income claim, (DI-030) the Company did not promptly handle the waiver of premium provision.

Recommendations: The Company should provide additional training to claims examiners regarding its claims review process. The Company should conduct self-audits to ensure that claim investigations are completed in a timely manner.

Standard VII-3. Claims are resolved in a timely manner.
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Objective: The Standard is concerned with the timeliness of the Company's claims settlements. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: See Standard VII-1.

Controls Reliance: See Standard VII-1.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for claims handling. Also, the Examiners selected a sample of sixty disability income, five long term care, one life waiver of premium claim and one denied disability income claims for review. This sample is referenced again in other standards within this section.

Transaction Testing Results:

Findings: None.

Observations: In one of the 67 claims tested, the Examiners found that the Company did not investigate the claim timely as required by M.G. L. c. 176D, § 3(9)(f). Testing performed indicated that the Company's policies and procedures are not sufficient nor in compliance with statutory requirements. In the disability income claim (Sample DI-030) the Company did not promptly handle the waiver of premium provision.

Recommendations: The Company should provide additional training to claims examiners regarding its claims review process. The Company should conduct self-audits to ensure that claim investigations are completed in a timely manner.

Standard VII-4. The Company responds to claims correspondence in a timely manner.
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Objective: The Standard addresses the timeliness of the Company's response to all claim correspondence. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: See Standard VII-1.

Controls Reliance: See Standard VII-1.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for claims handling. Also, the Examiners selected a sample of 60 disability income, five long term care, one life waiver of premium claim and one denied disability income claim for review. This sample is referenced again in other standards within this section.

Transaction Testing Results:

Findings: None.

Observations: In all of the claims tested, the Examiners found that the Company responded to claims correspondence timely. Regarding the Company's timely response to claim correspondence, testing performed indicated that the Company's policies and procedures appear to be sufficient and in compliance with statutory requirements.

Recommendations: None.

Standard VII-5. Claim files are adequately documented.

Objective: The Standard addresses the adequacy of information maintained in the Company's claim records. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: See Standard VII-1.

Controls Reliance: See Standard VII-1.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for claims handling. Also, the Examiners selected a sample of 60 disability income, five long term care, one life waiver of premium claim and one denied disability income claim for review. This sample is referenced again in other standards within this section.

Transaction Testing Results:

Findings: In 32 of the 67 claims tested, the Examiners found that the Company did not adequately document the claim files.

- Twenty two files were missing documentation to support the calculation of the Cost of Living Adjustment (COLA).
- Seven files were missing documentation to support the calculation of the premium refund. In addition, while the correspondence to the insured indicated an amount of the premium refund the correspondence was lacking details about how the premium refund amount was calculated. The correspondence did not include the number of premium payments included in the refund or the time period included in the premium refund.
- Three files were missing the COLA documentation identified in the first bullet and the premium refund documentation identified in the second bullet.

Observations: None.

Required Actions: The Company shall provide additional training to claims examiners regarding its claims review process and what documentation needs to be included in the claim file. The Company shall conduct self-audits to ensure that all necessary documentation is included in the claim file. In the future, the Company shall provide sufficient information regarding the handling of all claim-related matters including but not limited to the calculation details for the refund of premium. The results of the audits shall be submitted to the Division promptly.

Subsequent Actions: The Company informed the Examiners that as of mid-September 2017, the Company revised the waiver of premium refund letters, which are now included in the claim file. In addition, the Company informed the Examiners that the Cost of Living Adjustment (COLA) documentation, as applicable, has been included in the claim file since September 2016. This was not tested by the Examiners as part of this examination.

The Company informed the Examiners that they perform annual claims handling practice training for its Claims Examiners. Training with all claim teams handling COLA payments was completed in June and July 2017. Additionally, the appropriate customer service personnel have been trained on the waiver of premium calculation and have been filing letters in the claim file since September 11, 2017. This was not tested by the Examiners as part of this examination.

Finally, the Company agrees to perform a self-audit to ensure that the COLA documentation and waiver of premium refund letter(s) are included in the claim file. Once the self-audit is complete, the Company will provide the Department with the results. This was not tested by the Examiners as part of this examination.

<p>Standard VII-6. Claims are properly handled in accordance with policy provisions and applicable statutes (including HIPAA), rules and regulations.</p>
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Objective: This Standard addresses whether appropriate claim amounts including applicable interest have been paid to the appropriate beneficiary/payee. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: See Standard VII-1.

Controls Reliance: See Standard VII-1.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for claims handling. Also, the Examiners selected a sample of 60 disability income, five long term care, one life

waiver of premium claim and one denied disability income claim for review. This sample is referenced again in other standards within this section.

Transaction Testing Results:

Findings: In four of the 67 claims tested, the Examiners found that the Company did not handle claims in accordance with policy provisions and applicable statutes (including HIPAA), rules and regulations.

- In two files the COLA was incorrectly calculated.
- In one file the waiver of premium was not handled timely.
- In one file the premium refund was incorrectly calculated and the interest paid on the additional premium due was incorrectly calculated.

Observations: None.

Required Actions: The Company shall provide additional training to claims examiners regarding its claims review process. The Company shall provide documentation to the Division indicating that COLA benefits for the affected claims has been recalculated and any additional benefits due to the insureds have been paid with interest. The documentation shall be provided promptly to the Division.

Subsequent Actions: The Company informed the Examiners that they perform annual claims handling practice training for its Claims Examiners. Training with all claim teams handling COLA payments was completed in June and July 2017. Additionally, the Company provided documentation which supports the impacted insureds were paid with interest, as applicable. This was not tested by the Examiners as part of this examination.

<u>Standard VII-7. The Company claim forms are appropriate for the type of product.</u>
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Objective: The Standard addresses the use of claim forms that are appropriate for the policy. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: See Standard VII-1.

Controls Reliance: See Standard VII-1.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for claims handling. Also, the Examiners selected a sample of 60 disability income, five long term care, one life

waiver of premium claim and one denied disability income claim for review. This sample is referenced again in other standards within this section.

Transaction Testing Results:

Findings: None.

Observations: In all of the claims tested, the Examiners found that the claim forms were appropriate. Testing performed indicated that the claim forms used were in compliance with the Company's policies and procedures.

Recommendations: None.

Standard VII-8. Claim files are reserved in accordance with the regulated entity's established procedures.

No work performed under this market conduct examination. All required activity for this Standard is included in the scope of the Division's statutory financial examination of the Company which includes the period January 1, 2015 through December 31, 2015.

Standard VII-9. Denied and closed without payment claims are handled in accordance with policy provisions and state law.

Objective: This Standard is concerned with the adequacy of the Company's decision-making, and its documentation of denied and closed-without-payment claims.

Controls Assessment: See Standard VII-1.

Controls Reliance: See Standard VII-1.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for claims handling. Also, the Examiners selected a sample of one denied disability income claim for review. This sample is referenced again in other standards within this section.

Transaction Testing Results:

Findings: None.

Observations: In the denied claims tested, the Examiners found that the Company handled claims in compliance with M.G.L. c. 176D, §§ 3(9)(d), 3(9)(h) and 3(9)(n).

Recommendations: None.

Standard VII-10. Canceled benefit checks and drafts reflect appropriate claim handling practices.
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Objective: The Standard addresses the Company's procedures for issuing claim checks. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: See Standard VII-1.

Controls Reliance: See Standard VII-1.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for claims handling. Also, the Examiners selected a sample of 60 disability income, five long term care, one life waiver of premium claim and one denied disability income claim for review. This sample is referenced again in other standards within this section.

Transaction Testing Results:

Findings: In four of the 67 claims tested, the Examiners found that the benefit checks and drafts did not reflect appropriate claim handling practices.

- In two files the COLA was incorrectly calculated.
- In one file the waiver of premium was not handled timely.
- In one file the premium refund was incorrectly calculated and the interest paid on the additional premium due was incorrectly calculated.

Observations: Based upon the results of testing, it appears that the Company's processes for issuing claim payment checks are appropriate, and functioning in accordance with its policies and procedures.

Required Actions: The Company shall provide additional training to claims examiners regarding its claims review process. The Company shall provide documentation promptly to the Division, indicating that COLA

benefits for the affected claims has been recalculated and any additional benefits due to the insureds have been paid with interest.

Subsequent Actions: The Company informed the Examiners that they perform annual claims handling practice training for its Claims Examiners. Training with all claim teams handling COLA payments was completed in June and July 2017. Additionally, the Company provided documentation which supports the impacted insureds were paid with interest, as applicable. This was not tested by the Examiners as part of this examination.

Standard VII-11. Claim handling practices do not compel claimants to institute litigation, in cases of clear liability and coverage, to recover amounts due under policies by offering substantially less than is due under the policy.

Objective: The Standard addresses whether the Company's claim handling practices force claimants to (a) institute litigation for the claim payment, or (b) accept a settlement that is substantially less than what the policy contract provides for. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: See Standard VII-1.

Controls Reliance: See Standard VII-1.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for claims handling. Also, the Examiners selected a sample of 60 disability income, five long term care, one life waiver of premium claim and one denied disability income claim for review. This sample is referenced again in other standards within this section.

Transaction Testing Results:

Findings: None.

Observations: The Examiners found no instances where claimants needed to institute litigation to receive claim payments or where claimants were required to accept less than the amount due under the policy. Testing of the 67 claims indicated that the Company's policies and procedures appear to be sufficient and in compliance with statutory requirements to prevent claimants from needing to institute litigation to receive claim payments or accept less than the amount due under the policy.

Recommendations: None.

Standard VII-12. The Company provides the required disclosure material to policyholders at the time an accelerated benefit payment is requested.

No testing was performed during this examination as this Standard does not apply to any claims received by the Company during the examination period.

Standard VII-13. The Company does not discriminate among insureds with differing qualifying events covered under the policy or among insureds with similar qualifying events covered under the policy.

Objective: The Standard is concerned with whether the Company's claim handling practices discriminate against claimants with similar qualifying events covered under its policies. See Appendix A for applicable statutes, regulations and bulletins.

Controls Assessment: See Standard VII-1.

Controls Reliance: See Standard VII-1.

Transaction Testing Procedure: The Examiners interviewed Company management and staff responsible for claims handling. Also, the Examiners selected a sample of 60 disability income, five long term care, one life waiver of premium claim and one denied disability income claim for review. This sample is referenced again in other standards within this section.

Transaction Testing Results:

Findings: None.

Observations: The Examiners found no indication that the Company unfairly discriminates against claimants. Testing revealed that the Company's claim handling policies and procedures do not appear to discriminate against claimants with similar qualifying events covered under its policies.

Recommendations: None.

Standard VII-14. The regulated entity provides the beneficiary, at the time a claim is made, written information describing the settlement options available under the policy and how to obtain specific details relevant to the settlement options.

No testing was performed during this examination as this Standard does not apply to any claims received by the Company during the examination period.

SUMMARY

During this examination, RRC reviewed and tested Company operations/management, complaint handling, marketing and sales, producer licensing, policyholder service, underwriting and rating and claims as set forth in the NAIC Market Conduct Examiner's Handbook, the market conduct examination standards of the Division, and the Commonwealth of Massachusetts insurance laws, regulations and bulletins. RRC has identified required actions for which the Company needs to report to the Division by specified dates as well as recommendations the Company should consider addressing in the future.

ACKNOWLEDGMENT

This is to certify that the undersigned is duly qualified and that, in conjunction with RRC, applied certain agreed-upon procedures to the corporate records of the Company in order for the Division of Insurance of the Commonwealth of Massachusetts to perform a market conduct examination of the Company.

The undersigned's participation in this examination as the Examiner-In Charge encompassed responsibility for the coordination and direction of the examination performed, which was in accordance with, and substantially complied with, those standards established by the National Association of Insurance Commissioners ("NAIC") and the *NAIC Market Conduct Examiners' Handbook*. This participation consisted of involvement in the planning (development, supervision and review of agreed-upon procedures), administration and preparation of the examination report. In addition to the undersigned, Paul Carlberg of the Division's Market Conduct Department participated in the examination and in the preparation of the report.

The cooperation and assistance of the officers and employees of the Company extended to all examiners during the course of the examination is hereby acknowledged.

Richard N. Bradley, Esquire, MCM
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Examiner-In Charge
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Boston, Massachusetts