

**MARKET CONDUCT EXAMINATION REPORT**

**of**

**THE NEW ENGLAND LIFE INSURANCE COMPANY**

**of**

**BOSTON, MASSACHUSETTS**

**As of**

**December 31, 2003**

**By**

**VERMONT DEPARTMENT OF BANKING,  
INSURANCE, SECURITIES AND HEALTH CARE  
ADMINISTRATION**



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May 18, 2006

The Honorable John Crowley  
Commissioner  
Vermont Department of Banking, Insurance,  
Securities and Health Care Administration  
89 Main Street, Drawer 20  
Montpelier, Vermont 05620

Dear Commissioner Crowley:

Pursuant to your instructions and in compliance with the provisions of 8 V.S.A. § 3565 et seq. and procedures promulgated by the National Association of Insurance Commissioners, an examination of the market conduct activities has been conducted of:

The New England Life Insurance Company, NAIC # 91626

Mail Address:  
4100 Boy Scout Boulevard  
Tampa, Florida 33607

Statutory Home Office:  
501 Boylston Street  
Boston, Massachusetts 02117

Main Administrative Office:  
501 Boylston Street  
Boston, Massachusetts 02117

The report thereon, as of December 31, 2003, is respectfully submitted.

## **FOREWORD**

This target market conduct examination report is written generally by exception and references to additional practices, procedures and files subject to review during the examination were omitted from the report if no improprieties were observed.

The New England Life Insurance Company is referred to throughout this report as the "Company" or NELIC, unless specifically mentioned by name. The Vermont Department of Banking, Insurance, Securities and Health Care Administration is referred to as the "Department" or the "Vermont Department".

The Company's responses, with respect to the findings of this examination, will be made available upon written request to the Vermont Department.

The examiners wish to acknowledge the exceptional cooperation of the Company's Assistant Vice President, Robert F. DiLorenzo, JD, FLMI and Ms. Janice Genchur, Coordinator, in facilitating the examination process.

## **SCOPE OF EXAMINATION**

### **EXAMINATION AUTHORITY**

The examination of the New England Life Insurance Company was conducted pursuant to applicable Vermont statutes and regulations.

### **TIME FRAME**

The examination generally covers the period from January 1, 2001 through December 31, 2003.

### **SAMPLING METHODOLOGY**

The examiners used random sampling techniques, utilizing ACL software.

### **EXAMINATION SITUS**

The Company's statutory home office is located at, 501 Boylston Street, Boston, Massachusetts 02117, however, this examination was conducted entirely off-site. Information, documents and other materials were provided directly to the examiners in hard copy and/or computer diskettes and by electronic mail.

### **MATTERS EXAMINED**

- Replacements
- Claims administration
- Complaints

## PREVIOUS EXAMINATIONS

### PRIOR REPORT SUMMARY AND CONCLUSIONS

The Vermont Department did not conduct an examination of New England Life Insurance Company during the last five years, however, the Department did conduct an examination of the Metropolitan Life Insurance Company for the period from December 31, 1997 through December 31, 2000. Metropolitan Life Insurance Company merged with the New England Mutual Life Insurance Company (NEMLIC) in 1996. NEMLIC's subsidiary, New England Variable Life Insurance Company continued operations, after the merger, as a subsidiary of Metropolitan, under the new name of New England Life Insurance Company.

It should be noted that the examination of Metropolitan included a review of NEMLIC's paid life claims, which are administered by New England Life Insurance Company. A major finding of that review revealed that NEMLIC was noncompliant with 8 V.S.A. § 3665 (c) (2) in that, out of the one hundred twenty-four (124) claims filed with the Company and administered by New England Life Insurance Company, one hundred fifteen (115) or 93% of the claims included interest which was paid at a rate less than the required statutory rate of 6%. Refer to section (I) (C) **PRODUCTION OF RECORDS -CLAIMS SAMPLE.**

## **EXECUTIVE SUMMARY**

### **(I) Production of Records**

During the course of this examination the examiners encountered numerous problems in securing appropriate, complete company records for review. The nature of this problem is described in detail in the text of the report. In view of their concern, the examiners have recommended that an audit of the Company's records be conducted under the auspices of the Vermont Department and that the Company initiate procedures to assure that information and documents, which may be requested by the Commissioner and subject to the examination, are accurate and readily available.

### **(II) Claims Procedures and Processing**

As a direct result of this examination, beneficiaries of Vermont policyholders received over seventy-three thousand dollars (\$73,000) in additional interest due to the failure of the Company to pay the full 6% interest on death claims from the date of death until the date of payment as required by 8 V.S.A. § 3665 (c) (2).

The examiners' review revealed that the Company failed to pay the statutorily required rate of interest on thirteen (13) of the thirty-seven (37) claim files reviewed and subject to the examination. Since some files contained multiple policies there was a total of twenty-six (26) policies involved. As a consequence of the examiners' findings they have recommended that the Company go back as far as the Vermont Department deems appropriate and perform an audit on those claims which are subject to Vermont statutes and recalculate and pay the additional interest due, using the statutory rate including interest on the additional amount due, from the date of the initial claim payment to the date the corrective action is taken.

### **(III) Replacements**

The examiners performed tests to determine compliance with Vermont Regulation 88-2 and Regulation 2001-3 which replaced Regulation 88-2 effective March 1, 2002.

Out of a sample of forty (40) life replacement files the examiners observed twenty-two (22) various violations of applicable regulations as described in the text of this report. The sample also contained sixteen (16) annuity replacement files for which the examiners' review did not reveal any violations.

The examiners further requested a listing of all life policies which were issued during the examination period. The listing contained approximately four hundred and sixty-two (462) records. From a randomly selected sample of fifty (50) files, the examiners observed sixteen (16) files containing evidence of a total of thirty-three (33) violations of the replacement regulations.

The Company failed to comply with Vermont Regulation 2001-3 § 6 C. which requires that they send a notice to the insured providing certain specified information when the insured makes a request to borrow, surrender or withdraw any policy values where a replacement is involved. The company stated in a memorandum that they would begin sending the required notices.

The examiners' review of a sample of six (6) replacement notices received from the replacing companies for life policies and four (4) such notices regarding annuity contracts revealed a total of one (1) violation of Vermont Regulation 88-2 § 8 B 3 and four (4) violations of Regulation 2001-3 § 6 B. These regulations require that certain specified information be furnished to insureds by the existing insurers in replacement situations. The Company stated in writing that the process of furnishing such information has been instituted and that since they now image all documents evidence of compliance can be produced.

Various other miscellaneous violations of replacement regulations are noted in the report for which the Company indicated that corrective action has been initiated.

#### **(IV) Complaints**

The Company reported having received eight (8) complaints from Vermont consumers during the examination period. Two (2) of these involved unreasonable delays in furnishing substantive responses to the complainants. The examiners have recommended that the Company improve its procedures so as to avoid unreasonable delays in the future.

## **COMPANY PROFILE**

### **HISTORY**

New England Life Insurance Company was originally incorporated as New England Pension and Annuity Insurance Company under the laws of Delaware on September 12, 1980 and commenced business on December 30, 1980. The name was changed to New England Variable Life Insurance Company in 1983. The Company's former parent, New England Mutual Life Insurance Company, merged with Metropolitan Life Insurance Company on August 30, 1996, at which time the policyholders of New England Mutual became policyholders of Metropolitan and the New England Mutual Life Insurance Company ceased to exist as a legal entity. As a result of the merger, New England Mutual's former subsidiary, New England Variable Life Insurance Company, became a direct subsidiary of New England Holdings, Inc., a wholly-owned subsidiary of Metropolitan Life Insurance Company, which in turn is a wholly-owned subsidiary of MetLife, Inc. The name was then changed to New England Life Insurance Company and it was redomiciled from Delaware to Massachusetts.

The Company, which markets under the name New England Financial, principally provides variable life insurance and variable annuities through a network of general agencies and independent brokers located throughout the United States. It is licensed in all states in addition to the District of Columbia, Puerto Rico and Canada.

### **STATUTORY HOME OFFICE**

501 Boylston Street  
Boston, Massachusetts 02117

### **MAIN ADMINISTRATIVE OFFICE**

501 Boylston Street  
Boston, Massachusetts 02117

## VERMONT REPORTED PREMIUMS

Direct written premiums in Vermont for the years indicated are as follows:

	<b>2001</b>	<b>2002</b>	<b>2003</b>
<b>Ordinary Life</b>	4,252,667	2,979,719	2,889,659
<b>Individual Annuities</b>	11,744,438	8,049,482	9,922,963
<b>Group Life</b>	10,663	5,654	2,190
<b>Group Annuities</b>	1,825,895	7,597,503	23,275,066
<b>Accident &amp; Health</b>	627,284	449,114	272,261
<b>Totals</b>	\$ 18,460,947	\$ 19,081,472	\$ 36,362,139

## **(I) PRODUCTION OF RECORDS**

The receiving of accurate, sufficient and complete records selected for review by the examiners is of paramount importance when performing a market conduct examination. Without appropriately presented sample files, determining the Company's compliance with Vermont statutes and regulations is greatly obstructed.

During the course of this examination, the examiners encountered numerous problems in securing Company records as discussed below.

### **(A) REPLACEMENTS SAMPLE**

The Company provided a listing of all life insurance policies and annuities that were reported as replacements (occurring during the examination period) from which, a total of fifty-three (53) sample files was selected for the review. Out of the fifty-three (53) sample files, thirty-seven (37) were life insurance replacements and the remaining sixteen (16) were annuity replacements.

The Company failed to furnish three (3) of the initially requested life replacement files which led the examiners to select additional samples. The additional sample size was six (6) resulting in a total of forty (40) life replacements selected for the review. The Company either failed to provide complete file copies or was unable to locate and reproduce complete files as required by Vermont Regulation 99-1 § 4 A. (1) and 99-1 § 6 A. C. and D. for four (4) of the life replacement sample files.

### **(B) ISSUED LIFE SAMPLE**

The examiners requested a listing of all life policies that were issued during the examination period from which a sample of fifty (50) files was selected for review. Of the fifty (50) sample files, seven (7) were determined to represent disability income policies and according to the Company these policies were inadvertently included in the individual life listing in error. There were approximately fifty (50) disability income policies included in the issued life listing. Clearly, the examiners did not receive an accurate representation of the number of life policies which were issued in Vermont during the examination period. Subsequently, the examiners selected an additional seven (7) policy files in order to attain a sufficient sample size for the review.

Out of the fifty (50) issued life sample files, the Company failed to produce a copy of the application for policy file # 0Z283246 in violation of Vermont Regulation 99-1 § 4 A. (1) (b) and Vermont Regulation 99-1 § 6 A. and C.

The Company responded to the examiners' criticism for its failure to furnish requested documents by stating: *during the timeframe of the examination, the Company was in the process of converting paper files to images. Since the Company now images all documents, we do not anticipate a reoccurrence of such findings.*

### (C) CLAIMS SAMPLE

The examiners drew a sample of fifty-four (54) claim files for review. The initially provided claim files were not complete in that documents necessary to trace the inception and disposition of the claims and other vital information were not included. Upon receipt and review of the additional information, the examiners determined that fourteen (14) of the fifty-four (54) claim files represented policies that were not issued (applied for) in the state of Vermont and therefore not subject to the review. These fourteen (14) sample files were disallowed leaving a total of forty (40) claim files.

Three (3) of the remaining forty (40) sample files were eventually identified as New England Mutual Life Insurance Company's policies, thus reducing the total number of sample claim files reviewed and subject to the examination to thirty-seven (37). (Emphasis added)

#### Class Action Relief Payments

It wasn't revealed until after the initial review of the forty (40) sample claim files, that three (3) of the files were actually claims for New England Mutual Life Insurance Company's policies as mentioned above. (Emphasis added) However, an irregularity was observed, prior to discovering that these claim files had been mistakenly included in the sample, as discussed below.

#### **(Reference policies numbered 6852658, 8136326 and 8215885)**

The review of the referenced claims revealed that these claims involved **Class Action Relief** payments (free death benefits) which were provided as part of the terms of a settlement dated December 28, 1999, resolving the **Multidistrict Litigation**. Further, it was observed that the Company failed to pay the statutorily required rate of interest on these benefits. The examiners criticized the Company for violating 8 V.S.A. § 3665 (c) for its failure to pay the required rate of interest on the claim value and the general relief payment for policy # 8215885 and for not paying the required rate of interest on the general relief payments for policies # 8136326 and # 6852658. The Company responded, in relevant part, as follows:

*.....involved general relief payments as part of the New England Mutual Life class action. The interest paid on these claims was correct as the settlement specified a different method of calculating interest.*

The Company offered this explanation as to why these claims were included as part of the claims sample:

*On further review we have determined that New England Mutual Life Insurance Company claims were mistakenly included on the electronic life insurance claims list provided the examiners for the New England Life Insurance Company market conduct examination and from which policies 6852658 (Name) and 8136326 (Name) were selected for review. The class action under which "class action relief" payments were made involved only New England Mutual Life Insurance Company and not New England Life Insurance Company. New England Mutual Life Insurance Company merged with the Metropolitan Life Insurance Company on August 30, 1996. Policies issued by the former New England Mutual Life Insurance Company became Metropolitan Life Insurance Company policies at that time by operation of law. The New England Life Insurance Company issued policies and paid claims on this business in Vermont as of September 1996. As the New England Life Insurance Company was not involved in the class action, it is our understanding that those claims and related matters are not within the scope of the exam.*

As previously discussed, the New England Life Insurance Company administers the claims for the former New England Mutual Life Insurance Company. Further, the market conduct examination of the Metropolitan Life Insurance Company by the Vermont Department, covering the period from December 31, 1997 through December 31, 2000, revealed that out of one hundred twenty-four (124) claims, which were paid during the examination period and administered by NELIC, one hundred fifteen (115) were paid at an interest rate lower than the statutorily required rate violating 8 V.S.A. § 3665 (c) (2). **(Refer to the section of this report entitled: PREVIOUS EXAMINATIONS)**

#### **(D) CONCLUSION AND RECOMMENDATION**

Regulation 99-1 requires an insurer to maintain its books, records, documents, and other business records so that the insurer's claims, rating, underwriting, marketing and other records subject to examination by the Commissioner are readily available and accurately represented. Such was not the case with NELIC as detailed in this section of the report.

The examiners recommend that an audit of the Company's records be conducted under the auspices of the Vermont Department and that the Company implement procedures to assure that information and documents, which may be requested by the Commissioner and subject to examination, are accurate and readily available.

**See Appendix**

## (II) CLAIMS PROCEDURES AND PROCESSING

As a direct result of this examination, beneficiaries of Vermont policyholders received over seventy-three thousand dollars (\$73,000.00) in additional interest due to the noncompliant actions of the Company as detailed in this section of the report.

### Vermont Reported Death Benefits Paid

Year	Death Benefits
2001	\$ 189,250
2002	\$ 113,657
2003	\$ 413,411

### (A) SAMPLE SELECTION

From an approximate population of one hundred twenty-three (123) life insurance claims, which were paid during the examination period, fifty-four (54) sample claim files were randomly selected for review in order to determine compliance with Vermont's statutes and regulations. As previously discussed (**Section (I) (C) PRODUCTION OF RECORDS – CLAIMS SAMPLE**) the final sample contained thirty-seven (37) claims which were subject to the review.

### (B) VIOLATIONS OF 8 V.S.A. § 3665

The Company failed to pay the statutorily required rate of interest on thirteen (13) of the thirty-seven (37) claim files reviewed. The following chart details the numerous violations of Vermont statutes.

**Note:** Each row under the heading **Policy Number**, represents a single claim, as in some cases the insured had more than one policy.

Policy Number	Comments/Violations
6082455 6238994	Violation of 8 V.S.A. § 3665 (c) (2). Co. did not pay 6% interest.
1576267 3501713	Violation of 8 V.S.A. § 3665 (c) (2). Co. did not pay 6% interest.
2893098 2992067 3331284	Violation of 8 V.S.A. § 3665 (c) (2). Co. did not pay 6% interest.
1512037	Violation of 8 V.S.A. § 3665 (c) (2). Co. did not pay 6% interest.

**Table Continued:**

<b>Policy Number</b>	<b>Comments/Violations</b>
0847598 1647354 1688254 2079711	Violation of 8 V.S.A. § 3665 (c) (2). Co. did not pay 6% interest.
1613219	Violation of 8 V.S.A. § 3665 (c) (2). Co. did not pay 6% interest.
8425566	Violation of 8 V.S.A. § 3665 (c) (2). Co. did not pay 6% interest.
2639622	Violation of 8 V.S.A. § 3665 (c) (2). Co. did not pay 6% interest.
6260286	Violation of 8 V.S.A. § 3665 (c) (2). Co. did not pay 6% interest.
2784264	Violation of 8 V.S.A. § 3665 (c) (2). Co. did not pay 6% interest.
1608000 1608001 1608002 1816092 1855727	Violation of 8 V.S.A. § 3665 (c) (2). Co. did not pay 6% interest.
1682978 2357867 3130759	Violation of 8 V.S.A. § 3665 (c) (2). Co. did not pay 6% interest.
01079832	Violation of 8 V.S.A. § 3665 (d) in that proof of loss was received 7-22-02, claim paid 9-3-02, over 30 days from receipt of proof of loss. Co. did not pay 12% interest as required by the statute.

Upon receiving criticisms from the examiners regarding the Company's noncompliance, the Company undertook corrective action and made additional payments to the affected beneficiaries. These payments totaling over seventy-three thousand dollars (\$73,000), which did not include additional interest, were made in May and June of 2005.

**(C) ADDITIONAL VIOLATION OF 8 V.S.A. 3665 (c) (2)**

The examiners observed during the review that the interest on the claim for policy # 02730143 was paid initially (8-21-02) at a rate less than the required 6% in violation of 8 V.S.A. § 3665 (c) (2). It was further observed that the Company initiated corrective action on 7-7-04, some three (3) months after the examination began, by making an

additional payment. The accompanying letter explaining the additional payment read in relevant part as follows:

*It is New England Life Insurance Company's practice to periodically identify and select certain policies in order to have the information in our claim file confirmed and verified as being correct. Your policy was one of the policies selected for review.*

The examiners inquired as to how the Company identified this violation of Vermont's statute. NELICO responded by stating: *Our contact in the Claims Department noticed this while gathering the files for you and took the corrective action.*

#### **(D) RECOMMENDATION**

The examiners recommend that the Company go back as far as the Vermont Department deems appropriate and perform an audit on those claims which are subject to Vermont statutes and recalculate and pay the additional interest due, using the statutory rate including interest on the additional amounts due, from the date of the initial claim payment to the date the corrective action is taken.

### **(III) REPLACEMENTS**

The examination period for this report runs from January 1, 2001 through December 31, 2003. Vermont Regulation 2001-3 became effective on March 1, 2002, and replaced Regulation 88-2, which was in effect prior to that time. Tests were performed in order to determine compliance with these regulations as described below.

#### **(A) SAMPLE SELECTION**

Initially, the examiners requested listings representing populations of all life replacements, annuity replacements, issued life policies and issued annuity contracts for the period January 1, 2001 through December 31, 2003. Refer to **Section (I) PRODUCTION OF RECORDS**.

#### **(B) REPLACEMENT REVIEW**

The examiners selected fifty-three (53) sample files from the Company's replacement register which contained an approximate total of one hundred and twelve (112) life replacements and one hundred and twenty-one (121) annuity replacements. The sample of fifty-three (53) contained a total of thirty-seven (37) life policies and sixteen (16) annuity contracts.

##### **(1) Annuity Replacements**

The examiners review of the sixteen (16) annuity contracts contained in the replacement sample did not reveal any violations of Vermont's Replacement Regulation.

##### **(2) Life Replacements**

As discussed in **Section (I) (A)**, the Company failed to furnish three (3) of the life replacement policy files, leading the examiners to select an additional sample of six (6) resulting in a total of forty (40) life replacement files subject to the review.

The review revealed that five (5) files, comprising 13% of the sample, contained twenty-two (22) violations of the replacement regulation. The following table details the results of the review.

## Life Replacements

Policy Number	Violations (Numbers are keyed to legend)	Comment
0Y126356	1,3,5,6,8	Used noncompliant replacement notice.
0Y121253	2,3,6,9	Company failed to produce replacement notice.
0Y096184	2,3,4,6,7,9	Company failed to produce replacement notice.
0Y087746	2,9	Company failed to produce replacement notice (failed to produce entire file).
28099247	1,3,5,6,8	Used noncompliant replacement notice.

### LEGEND

- 1 Failure to verify that the required forms are received and are in compliance with the Regulation- Reg. 2001-3 § 5 A (1).
- 2 Failure to produce copies of the notification regarding replacement- Reg. 2001-3 § 5 A (3).
- 3 Failure to provide to the policy or contract owner notice of the right to return the policy or contract within thirty (30) days of the delivery of the contract and receive an unconditional full refund of all premiums or in the case of a variable policy or contract, a payment of the cash surrender value provided under the policy or contract plus fees and other charges - Reg. 2001-3 § 5 A (4).
- 4 No evidence that the producer provided a signed statement identifying any preprinted or electronically presented company approved sales materials used- Reg. 2001-3 § 3 E or a statement that the producer used only company-approved sales materials-Reg. 2001-3 § 5 C (1) (a).
- 5 Replacement notice does not conform to Reg. 2001-3 (Appendix A).
- 6 No notice signed by both applicant and producer attesting that the notice has been read aloud by the producer or that the applicant did not wish the notice to be read aloud – Reg. 2001-3 § 3 B.
- 7 No statement signed by both the applicant and the producer as to whether the applicant has existing policies or contracts – Reg. 2001-3 § 4 C.

- 8 Failure to notify producer and applicant or to fulfill the outstanding requirements of the replacement regulation – Reg. 2001-3 § 4 G.
- 9 Failure to maintain records in accordance with Regulation 99-1-Reg. 2001-3 § 4 H.

There were three (3) files for which the Company failed to produce copies of the notification regarding replacement in accordance with Regulation 2001-3 § 5 A (3) (violation “2” on the Legend) and two (2) files which contained replacement notifications that did not conform with Regulation 2001-3 Appendix A (violation “5” on the Legend).

These five (5) files representing violations relating to the replacement notification, resulted in multiple violations of the replacement regulation. Specifically, the files which contained replacement notifications that did not conform to Regulation 2001-3 Appendix A, represented additional violations of Regulation 2001-3 § 5 A (1) (violation “1” on the Legend) and Regulation 2001-3 § 4 G (violation “8” on the Legend) due to the Company’s failure to verify that the required forms were received and in compliance with the regulation. Two (2) of the files for which the Company failed to produce the replacement notification, were as a consequence, also in violation of Regulation 2001-3 § 3 B (violation “6” on the Legend).

In some instances, the notice to the policy owner of the right to return the policy within thirty (30) days of the delivery of the contract and receive an unconditional full refund of all premiums, as required by Regulation 2001-3 § 5 A (4), was combined with the replacement notification form. With respect to these cases, the replacement notification was not provided, nor was the notice of the right to return the contract within thirty (30) days. There were four (4) cases, as identified in the above table, where the Company failed to provide the insured the right to return the policy within thirty (30) days of the delivery of the contract and receive an unconditional full refund of all premiums or in the case of a variable policy, a payment of the cash surrender value provided under the policy plus fees and other charges, as required by Regulation 2001-3 § 5 A (4). There is no way of determining which of these persons, if any, would have returned their contracts for a refund of premiums had they been notified of the proper thirty (30) day “free look” period required by Regulation 2001-3 § 5 A (4) (violation “3” on the Legend). It appears that the Company did afford these policyholders a ten (10) day “free look”. In the interest of making these persons whole, the examiners recommend that they be afforded a new “free look” period of twenty (20) days (thirty (30) minus ten (10) ). During the new “free look” period the affected policyholders should be allowed an opportunity to return their contracts and refunds as prescribed by the regulation.

The Company responded to the examiners’ criticism stating that corrective action had been taken as follows:

*The Company’s new Underwriting and Issue system provides the underwriter with information concerning the forms (form number and date) required to be compliant with*

*state specific replacement regulations. Outstanding forms to fulfill the replacement requirements are requested from the producer and must be received. Therefore, we do not anticipate a reoccurrence of such findings.*

*The Company further stated: The Company's new Underwriting and Issue system provides compliance requirements and incorporates the NAIC state requirements including a thirty (30) day free look period for policies issued as a result of a replacement transaction in Vermont. The Company currently packages the "Important Notice: Replacement of Life Insurance or Annuities" with the application for life insurance and therefore does not anticipate reoccurrence of such findings.*

**Note: Company's comments subsequent to the examination:**

The Company was afforded an opportunity in which to respond to factual assertions or errors contained in the draft report prior to submission to the Department. The following objection, with respect to the examiners' recommendation, was received from the Company:

*The Company respectfully disagrees with the examiners' recommendation to provide the four policyholders with a new "free look" period because the Company could not produce evidence that the thirty (30) free look notice was given to them. First, these policyholders were not materially disadvantaged. The Company's policy issue system will generate and print on the cover of the policy a minimum ten day free look in all instances in all states, unless a longer period is required. Therefore, the policyholders did receive notice of the right to return the policy for a refund. The Company's experience is that the percentage of policies returned for a refund during the free look period is extremely small and does not vary significantly based on the length of the period or whether the policy was issued as a result of a replacement transaction. As indicated during the examination, there were four policies returned for a free look refund, none of which were issued as a result of a replacement. The Company attributes these minimal numbers to good sales practices as a result of its comprehensive training and to the Company's extensive compliance programs related to replacement.*

*Second, the Company believes providing a free look period to these policyholders approximately four years after issue is not in the best interest of the policyholders. All of these policies are in force with premiums paid. The four policyholders have received periodic statements and none have complained to the Company about any aspect of their insurance or their relationship with their agent or the Company. However, providing a free look offer now (several years later) might have unintended consequences, including tax implications and the forfeiture of policy benefits. Also replacement coverage may be unavailable or less advantageous at the client's current age.*

*The Company enhanced its procedures during the exam period to assure that it will be able to produce evidence that the thirty (30) (sic) free look notice was given to policyholders.*

**(C ) ISSUED LIFE REVIEW**

As discussed in **Section (I) (B)**, the examiners requested a listing of all life policies which were issued during the examination period. The listing contained an approximate total of four hundred and sixty-two (462) records including an approximate total of fifty (50) income disability policies as discussed in the referenced section. The final total of policy files representing issued life policies selected for the review was fifty (50). The examiners observed that 32% of the sample files reviewed contained evidence of various violations of Vermont's Replacement Regulation. A total of thirty-three (33) violations were noted as detailed below.

**Issued Life Insurance Sample**

<b>Policy Number</b>	<b>Violations (Numbers are keyed to legend)</b>
00Y109453	4, 5, 6, 7
00Z283251	1, 2, 6, 7
00Z283257	2
01Z017299	2
28099236	2
28099242	1, 2, 6, 7
28110255	1, 2, 6, 7
03Y014508	1, 2, 6, 7
38029312	2
03Y014438	2
00Y096183	3
38004185	3
38004162	3
00Y109444	2
03Y022597	2
03Y025813	1,6, 7

## LEGEND

- 1 Failure to require with each application for life insurance or annuity that indicates an existing policy or contract a completed notice regarding replacements as contained in Appendix A- Reg. 2001-3 § 4 D.
- 2 No statement signed by both the applicant and the producer as to whether the applicant has existing policies **or contracts**-Reg. 2001-3 § 4 C.
- 3 No copy of the Replacement Notice (in the form as described in Exhibit B) – Reg. 88-2 § 8 B. (1).
- 4 Failure to include in the right to return notice, in the case of a variable policy, the right to receive a payment of the cash surrender value provided under the policy **plus fees and other charges** deducted from the gross premiums – Reg. 2001-3 § 5 A. (4).
- 5 Notice does not fully conform to Reg. 2001-3 (Appendix A).
- 6 Failure to notify the producer and applicant and fulfill the outstanding requirements of the replacement regulation – Reg. 2001-3 § 4 G.
- 7 Failure to verify that the required forms are received and are in compliance with the Regulation-Reg. 2001-3 § 5 A. (1).

The most common violation observed from the review, was that the Company's application did not fully comply with Regulation 2001-3 § 4 C., in that the section of the application entitled "Existing Insurance" states: "Indicate life insurance policies in force for the Proposed Insured", thus failing to inquire as to whether the applicant had any existing annuity contracts as required by the Regulation. (Emphasis added) There were eleven (11) such violations of Regulation 2001-3 § 4 C (violation "2" on the Legend). The examiners recommend that the application be amended in order to fully comply with the requirements of Regulation 2001-3 § 4 C.

**Note: Company's comments subsequent to the examination:**

The following comments with respect to the above recommendation were received from the Company:

*Since the examination period the Company has discontinued the applications used for the referenced policies that inquired as to existing life insurance policies but not as to existing annuity contracts. The Company has replaced these applications with a new application that also inquires about existing contracts in accordance with Regulation 2001-3 § 4 C. The Company will revise one additional application, used in a small number of situations, to comply with Regulation 2001-3 § 4 C.*

There were five (5) issued life files in which the applicant indicated that they had existing life insurance policies, however, there was no evidence that the required notice regarding replacement was completed, violating Regulation 2001-3 § 4 D. and § 4 G. (violations “1” and “6” on the Legend).

The examiners recommend that the Company amend its procedures in order to assure that the specific requirements of Regulation 2001-3 § 4 D. are met.

**Note: Company’s comments subsequent to the examination:**

The following comments were received from the Company with respect to the above recommendation:

*The Company has enhanced its procedures to assure that the producer and applicant are notified when necessary to fulfill the requirements of Regulation 2001-3 § 4 D.*

Three (3) issued life files from the sample, did not contain copies of the replacement notice in the form as prescribed by Exhibit B in violation of Regulation 88-2 § 8 B (1) (violation “3” on the Legend). The Company’s response to the examiners’ criticism was that they currently package the “Important Notice: Replacement of Life Insurance or Annuities” with the application for life insurance and therefore do not anticipate a reoccurrence of such findings.

The sample life file for policy number 00Y109453 contained a replacement notice that did not conform to Regulation 2001-3 (Appendix A) in that it failed to include the required disclosure regarding financed purchases. Additionally, the right to return notice stated that the Company would refund the account balance if the contract was returned within 30 days (Emphasis added). The referenced policy was a variable policy, which according to the Regulation, the applicant is entitled to receive not only the account balance but any fees and other charges deducted from the gross premiums or considerations imposed under the contract. The applicant was not afforded this information as required by Regulation 2001-3 § 5 (A) 4.

**(D) VIOLATION OF REGULATION 2001-3 § 6 C**

Regulation 2001-3 § 6 C. requires that upon receipt of a request to borrow, surrender or withdraw any policy values, where a replacement is involved, the Company must send a notice advising the policy owner that the release of policy values may affect the guaranteed elements, non-guaranteed elements, face amount or surrender value of the policy. The examiners requested that the Company demonstrate compliance with Regulation 2001-3 § 6 C. by providing copies of the notice required by the regulation.

The Company stated in a memorandum to the examiners that they would not be able to provide copies of the notice nor were procedures in place ensuring compliance with the regulation, violating Regulation 2001-3 § 6 C.

The Company acknowledged that it would modify its procedures and begin sending the required notice.

**(E) REPLACEMENT NOTICES RECEIVED**

The examiners reviewed a sample of six (6) replacement notices received from the replacing company with respect to existing life policies and a sample of four (4) replacement notices received on existing annuity contracts in order to determine compliance with Regulation 88-2 § 8 B 3 or Regulation 2001-3 § 6 B. Regulation 88-2 § 8 B 3 requires that each existing insurer who undertakes a conservation shall, within twenty (20) days from the date that written communication is received from the replacing insurer, furnish the policy owner with a policy summary or ledger statement and the data as outlined in Exhibit C of the regulation. Regulation 2001-3 § 6 B requires that the existing insurer send a letter to the policy or contract owner of the right to receive information regarding the existing policy or contract values including an in force illustration or policy summary within five (5) business days of receipt of a notice that an existing policy or contract is being replaced. The following chart details violations which the examiners observed during the review.

**Violations  
Replacement Notices Received**

<b>Policy/Contract Number</b>	<b>Violation</b>	<b>Comment</b>
00Z228219	Reg. 88-2 § 8 B 3	No evidence of compliance
028063612	Reg. 2001-3 § 6 B	No letter sent to policy owner regarding right to receive information on existing policy.
V218966	Reg. 2001-3 § 6 B	No letter sent to policy owner regarding right to receive information on existing policy.
V437173	Reg. 2001-3 § 6 B	No letter sent to policy owner regarding right to receive information on existing policy.
V236314	Reg. 2001-3 § 6 B	No letter sent to policy owner regarding right to receive information on existing policy.

The Company's response to the examiners' criticism was as follows:

*The process of notifying the policy owner of the right to receive information regarding existing policy or contract values including, if available, an in force illustration or policy summary, has been instituted and the letter is sent from our MetLife Warwick Customer Service Center. In addition, since the Company now images all documents, we expect to be able to produce evidence of compliance. Therefore, we do not anticipate a reoccurrence of such findings.*

#### **(F) SALES MATERIAL**

The examiners reviewed a sample of five (5) policies/contracts in order to determine compliance with Vermont's replacement regulations. The review of the sales materials used in this sample revealed the following violations.

- Policy #28099246 contained an old replacement form which did not conform to Appendix A of Regulation 2001-3 and did not contain a statement identifying any preprinted or electronically presented company approved sales materials in violation of Regulation 2001-3 § 3 E.

The Company responded that the following corrective action would be taken:

*The Company currently packages the "Important Notice: Replacement of Life Insurance or Annuities" replacement notice and a form for identification of any company approved sales materials used during the sale with the application for life insurance and therefore does not anticipate reoccurrence of such findings.*

- Policy #4400354672 did not contain evidence that the Company notified the existing insurer within five (5) business days as required by Regulation 2001-3 § 5 A. (2).

The Company responded that the following corrective action would be taken:

*The Company is aware of the requirement and will remind New Business Operations of the need to ensure that notice is timely provided to the existing insurer. Isolated instances of delay beyond five business days are usually due to outstanding application requirements in which case the Company does not yet know whether processing of the application and the proposed replacement transaction will continue.*

- Policy #3Y014074 contained a sales illustration used in the state of Massachusetts, however, the policy was written in Vermont and the insured resided in Vermont.

The Company responded that the following corrective action would be taken:

*The Company will remind New Business Operations to ensure that an illustration for the state in which the policy is to be issued is submitted with the application for insurance.*

## **(G) SYSTEM TO REVIEW REPLACEMENTS**

Regulation 2001-3 § 4 A. requires an insurer to: *maintain a system of supervision and control to insure compliance with the requirements of this regulation that shall include at least the following:*

### **(Reference 2001-3 § 4 A. (2) )**

*Provide to each producer a written statement of the company's position with respect to the acceptability of replacements providing guidance to its producer as to the appropriateness of these transactions.*

### **(Reference 2001-3 § 4 A. (3) )**

*A system to review the appropriateness of each replacement transaction that the producer does not indicate is in accord with Paragraph (2) above. (Emphasis added)*

The examiners requested that the Company demonstrate compliance with Regulation 2001-3 § 4 A. (3).

The Company responded: *both the Managing Partner and one of the Company's Registered Principals review all replacements. The Company further referred to its New England Financial Supervision Guide which states *although the Company has systems in place designed to detect potential replacement activity, the Company relies on the managing partner and his/her staff to manage replacement activity at the agency level. The guide contains step-by-step procedures for the Managing Partner to follow when reviewing replacements for appropriateness. The final step is if properly satisfied that the replacement is suitable for the client's objectives, Managing Partners must sign the NEF replacement form.**

Additionally, the examiners requested a detailed explanation of the Company's system designed to detect replacement transactions that do not comply with the Company's position with respect to the acceptability of replacements. The Company responded that they use the Annuity Replacement and Transfer Disclosure and the Replacement Questionnaire and Disclosure forms to *gather information about all replacements. The producer, the client, and the Managing Partner are all required to sign the completed forms and these forms require the producer to justify the rationale of the replacement.*

The attached listing details irregularities with the Company's system of reviewing the appropriateness of each replacement transaction in accordance with Regulation 2001-3 § 4 A. (3). The sample files which were reviewed for this compliance test consisted of the issued annuity and life insurance sample files in addition to the annuity and life insurance replacements' sample. The numbers to the right of the contract/policy numbers represent the irregularities observed and are keyed to the legend that identifies the type of irregularity.

**Irregularities from review of the issued and replacement annuity and life insurance samples:**

<b>Contract/Policy Number</b>	<b>Irregularity (Numbers are keyed to legend)</b>
4400383531	3
4400187031	4
4400246688	4
06820780	3
4400263386	4
0Z274073	1
38004198	3
0Y098318	4
38048919	3
28099255	4
38004162	2,4
38017553	4
38044520	3
38017537	4
0Y116584	1
3Y014090	4
3Y014426	2
38046322	2,3
38044942	3
0Y109449	4
0Y087928	4
0Y087927	4
0Y100833	3
38049969	3
38047282	3,5
38049802	3
38049544	3
38048888	3
38047653	3
03Y024638	3,5
00Y109453	4
0Y096183	1
38004185	4

## LEGEND

- 1 No Annuity Replacement and Transfer Disclosure form or Replacement Questionnaire and Disclosure form in the file.
- 2 No reason for replacement provided on the Annuity Replacement and Transfer Disclosure form or Replacement Questionnaire and Disclosure form.
- 3 Managing Partner did not sign the Annuity Replacement and Transfer Disclosure form or Replacement Questionnaire and Disclosure form.
- 4 Application was originally submitted without the Managing Partner's signature on the Annuity Replacement and Transfer Disclosure form or Replacement Questionnaire and Disclosure form and was later signed by the Managing Partner and resubmitted to the Company.
- 5 The applicant did not sign the Annuity Replacement and Transfer Disclosure form or Replacement Questionnaire and Disclosure form.

The Company's response to the examiners' criticism regarding the cited irregularities was:

*The Company will remind all Managing Partners and New Business Operations associates of the importance of accurately completing these internal replacement forms. The Company has a thorough process in place, which includes a review of replacement transactions in the New Business area (and the processes outlined in our May 5, 2005 email), to ensure the appropriateness of replacements; and, therefore believes it is in compliance with Regulation 2001-3 § 4 A (3).*

*Further: If the Annuity Replacement and Transfer Disclosure form does not have the proper signature, the Annuity New Business area requests the Managing Partner's review and approval, and does not approve the replacement until the Managing Partner's signature is obtained.*

The Company added that: *The Company's new Underwriting and Issue system provides the underwriter with information concerning the forms required. Outstanding forms are requested from the producer and must be received.*

## (IV) COMPLAINTS

The Company reported that they received eight (8) complaints during the examination period from Vermont consumers. The examiners noted the following from their review of the files:

Two (2) of the files showed indications of apparent unreasonable delays in responding.

1. In the case # 03289027022, the insured's letter dated October 5, 2003 was received and acknowledged on October 16, 2003, however, it was not followed up with a substantive reply until January 9, 2004, a period of nearly three (3) months later. The agent involved had furnished complete written information to the Company by letter dated October 20, 2003.
2. The file for complaint # 03130004757 shows that the insured's letter dated August 14, 2002, was received in the Company's Compliance Department on August 20, 2002. Although a letter of acknowledgement was sent on August 21, 2002, there was no substantive response until the Company's letter of October 21, 2002, a period of two (2) months.

The examiners recommend that the Company improve its procedures for responding to consumer complaints so as to avoid further unreasonable delays in furnishing substantive replies to complaints from its policyholders.

Complaint # 03288044193 involved a situation where the original writing agent (since retired) furnished the insured (applicant) with an illustration which was grossly misleading, e.g., it showed an increase from \$ 11,331 to \$ 13,218 in the cash value between the ends of the sixth and seventh policy years, an increase of 16.65%, without the insured having to pay any premiums during the seventh year. Although the solicitation took place back in July, 1994 and the Company did refund the insured's premiums when he complained, the examiners were concerned to find that the Company's system was capable of producing such erroneous and misleading errors and wondered how many others were out there where the insured had not yet discovered the errors.

Because of this concern the examiners requested that the Company furnish some sample illustrations prepared by this writing agent during the same approximate time period. The Company reported back that they had no record of any other complaints for this agent who terminated voluntarily in 1999. A sample of illustrations prepared by this agent during the same time period did not appear to contain any errors.

**Note: Company's comments subsequent to the examination:**

The following comments were received from the Company with respect to the above recommendation:

*The Company maintained appropriate complaint procedures throughout the examination period. Nevertheless, the Company acknowledges that the 2 complaints cited by the Examiner should have been resolved more quickly. The Company has since enhanced its procedures for responding to consumer complaints by increasing the number of employees dedicated to reviewing and responding to complaints, streamlining procedures and providing additional training to the Company's Consumer Relations staff. In addition, since the examination period, the Company has installed a new electronic complaint recording and monitoring system.*

## SUMMARY OF RECOMMENDATIONS

**1.**

**Page 11**

The examiners recommend that an audit of the Company's records be conducted under the auspices of the Vermont Department and that the Company implement procedures to assure that information and documents, which may be requested by the Commissioner and subject to examination, are accurate and readily available.

**2.**

**Page 14**

It is recommended that the Company go back as far as the Vermont Department deems appropriate and perform an audit on those claims which are subject to Vermont statutes and recalculate and pay the additional interest due using the statutory rate including interest on the additional amounts due, from the date of the initial claim payment to the date the corrective action is taken.

**3.**

**Pages 17 - 19**

The examiners recommend that those persons for which the Company failed to provide the right to return the policy within thirty (30) days of the delivery of the contract be afforded a new "free look" period equal to twenty (20) days (thirty (30) days minus the ten (10) day originally afforded).. During the new "free look" period, those affected policyholders should be allowed an opportunity to return their contracts and receive refunds as prescribed by Regulation 2001-3 § 5 A (4).

**4.**

**Page 20**

The Company's application should be amended in order to fully comply with the requirements of Regulation 2001-3 § 4 C. including an inquiry as whether the applicant has any existing annuity contracts.

**5.**

**Page 21**

It is recommended that the Company amend its procedures in order to assure that the specific requirements of Regulation 2001-3 § 4 D. are met by notifying the producer and applicant when necessary to fulfill the outstanding requirements of the replacement regulation.

**6.**

**Pages 21 & 22**

The Company should modify its procedures by sending the notices required by Regulation 2001-3 § 6 C., upon receipt of a request to borrow, surrender or withdraw any policy values where a replacement is involved.

**7.**

**Page 23**

The Company should ensure that they retain evidence that they notified the existing insurer within five (5) business days as required by Regulation 2001-3 §5 A. (2) and retain copies of the statement identifying any preprinted or electronically preserved Company approved sales materials used as required by Regulation 2001-3 § 3 E.

**8.**

**Page 27**

The Company should improve its procedures for responding to consumer complaints so as to avoid further unreasonable delays in furnishing substantive replies to complaints from its policyholders.

## APPENDIX

### Production of Records:

#### Life Replacements (Documents Company failed to produce)

##### Policy #

0Y087746

0Y129555

0Y121253

0Y096184