

**REPORT ON**  
**TARGET MARKET CONDUCT EXAMINATION**  
**OF**  
**AMERICAN EQUITY INVESTMENT LIFE**  
**INSURANCE COMPANY**  
**AS OF DECEMBER 31, 2014**

**Conducted from March 26, 2015**  
**through**  
**June 8, 2016**

**By**

**Market Conduct Section**  
**Life and Health Market Regulation Division**  
**BUREAU OF INSURANCE**  
**STATE CORPORATION COMMISSION**  
**COMMONWEALTH OF VIRGINIA**

FEIN: 42-1153896  
NAIC: 92738

# COMMONWEALTH OF VIRGINIA



JACQUELINE K. CUNNINGHAM  
COMMISSIONER OF INSURANCE  
STATE CORPORATION COMMISSION  
BUREAU OF INSURANCE

P.O. BOX 1157  
RICHMOND, VIRGINIA 23218  
1300 E. MAIN STREET  
RICHMOND, VIRGINIA 23219  
TELEPHONE: (804) 371-9741  
[www.scc.virginia.gov/boi](http://www.scc.virginia.gov/boi)

## STATE CORPORATION COMMISSION BUREAU OF INSURANCE

I, Melissa Gerachis, Senior Insurance Market Examiner of the Bureau of Insurance (Bureau), do hereby certify that the attached copy of the Target Market Conduct Examination Report of American Equity Investment Life Insurance Company as of December 31, 2014, conducted at the State Corporation Commission in Richmond, VA is a true copy of the original Report on file with the Bureau and also includes a true copy of the Company's response to the findings set forth therein, and of the Bureau's review letters and the State Corporation Commission's Order in Case No. INS-2016-00268 finalizing the Report.

IN WITNESS WHEREOF, I have  
hereunto set my hand and affixed  
the official seal of the Bureau at  
the City of Richmond, Virginia,  
this 4th day of January, 2017.

A handwritten signature in black ink, appearing to read 'Melissa Gerachis', written over a horizontal line.

Melissa Gerachis

Examiner in Charge

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## **I. SCOPE OF EXAMINATION**

The Target Market Conduct Examination of American Equity Investment Life Insurance Company, (hereinafter referred to as “American Equity”), was conducted under the authority of various sections of the Code of Virginia and regulations found in the Virginia Administrative Code, including but not necessarily limited to, the following: §§ 38.2-200, 38.2-515, 38.2-614, 38.2-1317, 38.2-1317.1 and 38.2-1809 of the Code of Virginia, (hereinafter referred to as “the Code”), as well as 14 VAC 5-41-150 C.

A previous Market Analysis inquiry was conducted to review policy form filings and surrender practices. As a result of this inquiry, American Equity made a monetary settlement offer which was accepted by the State Corporation Commission on April 19, 2012, in Case No. INS-2012-00042.

The current examination revealed violations that were also noted in the previous inquiry. Although American Equity had agreed after the previous inquiry to change its practices to comply with the Code and regulations, the current examination revealed a number of instances where American Equity had not done so. Therefore, it appears that in some instances, American Equity knowingly and willfully violated certain sections of the Code and regulations. Section 38.2-218 A of the Code sets forth the penalties that may be imposed for knowing or willful violations.

The period of time covered for the current examination, generally, was January 1, 2014, through December 31, 2014. The desk examination was initiated on March 26, 2015, at the office of the State Corporation Commission's Bureau of Insurance in Richmond, Virginia, and concluded on June 8, 2016. The violations cited and the comments included in this Report are the opinions of the examiners. The

examiners may not have discovered every unacceptable or non-compliant activity in which the company is engaged. Failure to identify, comment on, or criticize specific company practices in Virginia or in other jurisdictions does not constitute acceptance of such practices.

The purpose of the examination was to determine whether American Equity was in compliance with various provisions of the Code and regulations found in the Virginia Administrative Code. Compliance with the following regulations was considered in this examination process:

- 14 VAC 5-30-10 et seq. Rules Governing Life Insurance and Annuity Replacements;
- 14 VAC 5-41-10 et seq. Rules Governing Advertisement of Life Insurance and Annuities;
- 14 VAC 5-43-10 et seq. Rules Governing Use of Senior-Specific Certifications and Professional Designations in Sale of Life or Accident and Sickness Insurance or Annuities;
- 14 VAC 5-45-10 et seq. Rules Governing Suitability in Annuity Transactions;
- 14 VAC 5-100-10 et seq. Rules Governing the Submission for Approval of Life, Accident and Sickness, Annuity, Credit Life and Credit Accident and Sickness Policy Forms;
- 14 VAC 5-180-10 et seq. Rules Governing Underwriting Practices and Coverage Limitations and Exclusions for Acquired Immunodeficiency Syndrome (AIDS); and
- 14 VAC 5-400-10 et seq. Rules Governing Unfair Claim Settlement Practices.

The examination included the following areas:

- Advertising
- Policy and Other Forms
- Agents
- Underwriting/Unfair Discrimination/Insurance Information and Privacy Protection Act
- Premium Notices/Collections/Reinstatements/Policy Loans & Loan Interest/Cash Withdrawals
- Cancellations/Non-Renewals/Conversions
- Complaints
- Claim Practices

**Examples referred to in this Report are keyed to the numbers of the examiners' Review Sheets furnished to American Equity during the course of the examination.**



## II. COMPANY HISTORY

American Equity Investment Life Insurance Company (American Equity) is wholly owned by American Equity Investment Life Holding Company, an insurance holding company domiciled in the State of Iowa. On September 30, 1996, American Equity merged into Century Life Insurance Company (Century Life). The survivor of the merger, Century Life, immediately changed its name to American Equity Investment Life Insurance Company. Prior to the merger, Century Life transferred all of its policies and reserves to its parent, Century Life of American, leaving only business from the original American Equity. Through the merger, Century Life's state licenses along with its NAIC and Federal ID numbers were transferred to the new American Equity.

American Equity owns 100% of the outstanding common stock of American Equity Investment Life Insurance Company of New York and Eagle Life Insurance Company. The Company is the sole owner of AERL, LLC which is a limited liability company that operates in the mortgage and real estate business.

American Equity is licensed to sell products in 49 states and the District of Columbia. The Company's business consists primarily of the development and sale of fixed index and fixed rate annuity products. American Equity also markets small amounts of whole life and group term life insurance, which are sold as accommodation products.

American Equity markets its products through a variable cost brokerage distribution network of approximately 38 national marketing organizations and, through them, 30,000 independent agents as of December 31, 2014. Independent agents and agencies range in profile from national sales organizations to personal producing

general agents. The insurance distribution system is comprised of insurance brokers and marketing organizations. These organizations bear most of the cost incurred in marketing American Equity's products. American Equity compensates the marketing organizations by paying them a percentage of the commissions earned on new annuity policy sales generated by the agents recruited by such organizations.

Net admitted assets as of December 31, 2014, totaled \$36,129,668,298. As of December 31, 2014, total life insurance premiums in Virginia were \$55,639 and annuity considerations were \$84,994,253.

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### III. ADVERTISING

A review was conducted of American Equity's advertising materials to determine compliance with the Unfair Trade Practices Act, to include §§ 38.2-502, 38.2-503 and 38.2-504 of the Code, as well as 14 VAC 5-41-10 et seq., Rules Governing Advertisement of Life Insurance and Annuities and 14 VAC 5-43-10 et seq., Rules Governing Use of Senior-Specific Certifications and Professional Designations in Sale of Life or Accident and Sickness Insurance or Annuities.

14 VAC 5-41-150 C requires an insurer to maintain at its home or principal office a complete file of all advertisements with a notation indicating the manner and extent of distribution and the form number of any policy referred to in the advertisement.

The review revealed that American Equity was in substantial compliance.

A sample of 40 was selected from a population of 704 advertisements distributed in Virginia during the examination time frame.

The review revealed that American Equity was in substantial compliance.

## **IV. POLICY AND OTHER FORMS**

A review was conducted to determine if American Equity complied with various statutory, regulatory and administrative requirements governing the filing and approval of forms. Section 38.2-316 of the Code sets forth the filing and approval requirements for forms and rates that are to be issued or issued for delivery in Virginia.

### **LIFE INSURANCE POLICIES**

The examiners reviewed the total population of 2 life insurance policies issued during the examination time frame.

The review revealed that the policies and amendments/riders issued were filed with and approved by the Commission.

### **ANNUITY CONTRACTS**

The examiners reviewed a sample of 94 from the total population of 1,103 annuity contracts issued during the examination time frame.

The review revealed that the contracts and amendments/riders issued were filed with and approved by the Commission.

### **APPLICATION FORMS**

Sections 38.2-316 B and 38.2-316 C 1 of the Code set forth the requirements for the filing and approval of application forms prior to use.

The review revealed that the application forms used by American Equity were filed with and approved by the Commission.

## **V. AGENTS**

A review was conducted to determine compliance with various sections of Title 38.2, Chapter 18 of the Code. A sample of 15 from an unknown population of agent and agency appointments in effect during the examination time frame was selected for review. In addition, the writing agents or agencies designated in the 96 new business files were also reviewed.

### **LICENSED AGENT REVIEW**

Section 38.2-1822 A of the Code requires that a person be licensed prior to soliciting insurance contracts or receiving or sharing, directly or indirectly, any commission or other valuable consideration.

The review revealed that American Equity was in substantial compliance with this section.

### **APPOINTED AGENT REVIEW**

Section 38.2-1833 A 1 of the Code requires that an insurer, within 30 calendar days of the date of execution of the first application submitted by a licensed but not yet appointed agent, either reject such application or appoint the agent.

The review revealed that American Equity was in substantial compliance with this section.

## **COMMISSIONS**

Section 38.2-1812 A of the Code prohibits the payment of commission or other valuable consideration to an agent that was not appointed at the time of the transaction.

The review revealed that American Equity was in substantial compliance with this section.

## **TERMINATED AGENT APPOINTMENT REVIEW**

Section 38.2-1834 D of the Code requires that an insurer notify the agent within 5 calendar days, and the Commission within 30 calendar days, upon termination of the agent's appointment. A sample of 15 was selected from an unknown population of agents whose appointments terminated during the examination time frame.

The review revealed that American Equity was in substantial compliance with this section.

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## **VI. UNDERWRITING/UNFAIR DISCRIMINATION/INSURANCE INFORMATION AND PRIVACY PROTECTION ACT/ INSURANCE REPLACEMENT**

The examination included a review of American Equity's underwriting practices to determine compliance with the Unfair Trade Practices Act, §§ 38.2-500 through 38.2-514; and the Insurance Information and Privacy Protection Act, §§ 38.2-600 through 38.2-620 of the Code, as well as 14 VAC 5-30-10 et seq., Rules Governing Life Insurance and Annuity Replacements, 14 VAC 5-45-10 et seq., Rules Governing Suitability in Annuity Transactions and 14 VAC 5-180-10 et seq., Rules Governing Underwriting Practices and Coverage Limitations and Exclusions for Acquired Immunodeficiency Syndrome (AIDS).

### **UNDERWRITING/UNFAIR DISCRIMINATION**

A review was conducted to determine whether American Equity's underwriting guidelines were unfairly discriminatory, whether applications were underwritten in accordance with American Equity's procedures, and that correct premiums were being charged.

### **UNDERWRITING REVIEW**

The examiners reviewed the total population of 2 life insurance policies issued during the examination time frame and a sample of 66 from the total population of 781 annuity contracts issued during the examination time frame.

The review revealed no evidence of unfair discrimination.

## **UNDERWRITING PRACTICES – AIDS**

14 VAC 5-180-10 et seq. sets forth rules and procedural requirements that the Commission deems necessary to regulate underwriting practices and policy limitations and exclusions with regard to HIV infection and AIDS.

The review revealed that American Equity was in substantial compliance.

## **MECHANICAL RATING REVIEW**

The review revealed that American Equity calculated premium amounts in accordance with its established guidelines.

## **INSURANCE INFORMATION AND PRIVACY PROTECTION ACT**

Title 38.2, Chapter 6 of the Code requires a company to establish standards for collection, use, and disclosure of personal/privileged information gathered in connection with insurance transactions.

## **NOTICE OF INSURANCE INFORMATION PRACTICES (NIP)**

Section 38.2-604 of the Code sets forth the requirements for a NIP, either full or abbreviated, to be provided to all applicants that are individually underwritten.

The review revealed that the NIP forms provided to applicants for coverage complied with the requirements of this section.

## **DISCLOSURE AUTHORIZATION FORMS**

Section 38.2-606 of the Code sets forth standards for the content and use of the disclosure authorization forms to be used when collecting personal or privileged information about individuals in connection with insurance transactions.



The examiners reviewed the disclosure authorization forms used during the underwriting process and found them to be in substantial compliance with this section.

### **ACCESS TO RECORDED PERSONAL INFORMATION**

Section 38.2-608 of the Code sets forth the requirements of providing access to personal information and the correction or amendment of such information.

The review revealed that American Equity was in substantial compliance.

### **ADVERSE UNDERWRITING DECISIONS (AUD)**

Section 38.2-610 A of the Code requires that, in the event of an adverse underwriting decision, the insurance institution responsible for the decision shall give a written notice in a form approved by the Commission.

The review revealed that American Equity was in substantial compliance with this section.

### **INSURANCE REPLACEMENT**

A review was conducted to determine if American Equity was in compliance with the requirements of 14 VAC 5-30-10 et seq., Rules Governing Life Insurance and Annuity Replacements.

14 VAC 5-30-51 A 2 states that when a replacement is involved in the transaction, the replacing insurer shall notify any other existing insurer that may be affected by the proposed replacement within 5 business days of receipt of a completed application indicating replacement.

The review revealed that American Equity was in substantial compliance.

14 VAC 5-30-60 A 2 states that each insurer shall maintain a system of supervision and control to insure compliance with the requirements of this chapter, and

shall provide to each agent a written statement of the company's position with respect to the acceptability of replacements, providing guidance to its agents as to the appropriateness of these transactions.

The review revealed that American Equity was in substantial compliance.

### **SUITABILITY**

A review was conducted to determine if American Equity was in compliance with the requirements of 14 VAC 5-45-10 et seq., Rules Governing Suitability in Annuity Transactions.

The examiners reviewed a sample of 66 from a total population of 781 annuity contracts issued during the examination time frame.

14 VAC 5-45-40 B requires that prior to the purchase of an annuity, an insurer shall make reasonable efforts to obtain information concerning the consumer's financial status, tax status, investment objectives and other information considered to be reasonable by the insurer, in making recommendations to the consumer.

The review revealed that American Equity was in substantial compliance.

14 VAC 5-45-40 D 1 requires that an insurer establish and maintain a system to supervise recommendations that is reasonably designed to achieve compliance with this chapter. Such system shall include, but is not limited to maintaining written procedures and conducting periodic reviews of its records.

The review revealed that American Equity was in substantial compliance.

### **ADMINISTRATIVE LETTER 2010-12**

The purpose of this Administrative Letter was to inform life and accident and sickness insurers of the disclaimer required to be attached to policies in order to comply

with § 38.2-1715 B of the Code, which states that an insurer may not deliver a policy or contract to a policy or contract owner unless the summary document is delivered to the policy or contract owner at the time of delivery of the policy or contract. The summary document, Notice of Protection Provided by the Virginia Life, Accident and Sickness Insurance Guaranty Association, was approved effective November 1, 2010.

The review revealed that American Equity was in substantial compliance.

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## **VII. PREMIUM NOTICES/REINSTATEMENTS POLICY LOANS AND LOAN INTEREST/CASH WITHDRAWALS**

The examiners reviewed American Equity's procedures and practices for processing premium notices and reinstatements.

### **PREMIUM NOTICES**

American Equity provided the examiners with the established premium billing procedures for its Life Products.

The review revealed that American Equity was in substantial compliance with its premium billing procedures.

### **REINSTATEMENTS**

Reinstatement is available for group term insurance within three years of the lapse date. A completed Evidence of Insurability form is required. American Equity requests a Medical Information Bureau (MIB) report and may perform a telephone interview to verify medical history. If reinstatement is approved, notice is sent to the group administrator and back premiums are requested. If reinstatement is denied, a declination letter is sent to the group member and the group administrator.

Reinstatement is available for ordinary life insurance within five years of the lapse date. A completed Evidence of Insurability form and the full modal premium is required. American Equity requests an MIB report and a telephone interview is performed to verify medical history. Medical records may be ordered at the discretion of the underwriter. If reinstatement is approved, a letter is sent to the applicant. If reinstatement is denied, a declination letter is sent to the policyholder with a refund of the premium received with the reinstatement application.

American Equity advised the examiners that no reinstatements were requested during the examination time frame.

### **POLICY LOANS AND LOAN INTEREST**

American Equity's procedures state that a loan request must be in writing from the owner of the policy. When the loan request is received, the policy file is pulled and a check is requested from LifePro. A check request is completed and given to a Vice President to sign. The check request is given to Accounting and the check is generated the next day. A letter and the check are mailed to the owner of the policy and a copy of the letter is sent to the agent. The Automatic Premium Loan option borrows money from the policy's cash value to pay the premium if the premium is not paid within 60 days of the anniversary.

The examiners reviewed a sample of 5 policy loan transactions from a total population of 9 life insurance policies with loan activity.

The review revealed that policy loans and loan interest were calculated in accordance with established procedures and the policy provisions.

### **CASH WITHDRAWALS**

American Equity's annuity contracts allow the withdrawal of proceeds that include amounts withdrawn under both the penalty free withdrawal and the partial withdraw options. Most of American Equity's annuity contracts allow for a 10% penalty free withdrawal starting in the 2<sup>nd</sup> contract year, and no surrender charges are applied to the penalty free withdrawal. Partial withdrawals may be taken at any time and are subject to surrender charges and minimum values.

The examiners reviewed a sample of 22 withdrawals from a total population of 44 annuity contracts with withdrawal activity.

The review revealed that withdrawals were calculated in accordance with established procedures and the contract provisions.

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## VIII. CANCELLATIONS/NONRENEWALS AND CONVERSIONS

The examination included a review of American Equity's cancellation/nonrenewal practices and procedures to determine compliance with its policy provisions and the requirements of § 38.2-508 of the Code concerning unfair discrimination.

A sample of 108 from a total population of 402 surrenders, cancellations, conversions and extended term/reduced paid-up policies was reviewed.

### **Surrenders**

A sample of 41 from a total population of 216 contracts surrendered for cash during the examination time frame was reviewed. The examiners reviewed the contract values and calculations for each surrender.

Section 38.2-510 A 1 of the Code states that no person shall, with such frequency as to indicate a general business practice, misrepresent pertinent facts or insurance policy provisions relating to coverages at issue. Section 38.2-510 A 8 of the Code states that no person shall, with such frequency as to indicate a general business practice, attempt to settle claims for less than the amount to which a reasonable man would have believed he was entitled by reference to written or printed advertising material accompanying or made part of an application. 14 VAC 5-400-70 D states, in part, that an insurer must offer to a first party claimant an amount which is fair and reasonable. Six of American Equity's annuity contracts contained the following language:

#### **CASH SURRENDER VALUE**

This is the amount available if You Surrender this Contract any time during the Surrender Charge Period:

1. The Contract Value; less
2. The Surrender Charge calculated as described on Page 7.

The Cash Surrender Value is never less than the Guaranteed Minimum Cash Surrender Value or more than the Contract Value on the date of Surrender.

### **MARKET VALUE ADJUSTMENT**

....

$t$  is [(Number of days from date of Surrender or Partial Withdrawal to the next Contract Anniversary, divided by 365) plus number of whole years remaining in Surrender Charge period shown on Page 3.]

....

### **SURRENDER CHARGE**

We take a Surrender Charge on Partial Withdrawals or full Surrenders during the Surrender Charge period. We calculate Surrender Charges as follows:

1. At Partial Withdrawal, the Partial Withdrawal amount requested, times the MVA, times the applicable Surrender Charge Percentage shown on Page 3; or
2. At Surrender, the Contract Value, plus any Penalty-free Withdrawal proceeds taken in the last 12 months, times the MVA, times the Surrender Charge percentage shown on Page 3.

### **LIMITATIONS**

- (1) No portion of a Surrender taken during the Surrender Charge Period can be Penalty-free.
- (2) We treat any Penalty-free Withdrawal You take within the 12 months before Surrender as having been made in anticipation of Surrender. Therefore, We apply an MVA and a Surrender Charge on that amount at Surrender.  
You may not take a Withdrawal, unless Your Contract Value is large enough to leave a balance, after the Withdrawal, of at least the Minimum Contract Value Allowed shown on Page 3.

One of American Equity's annuity contracts shared the same language as above, except it contained this Cash Surrender Value language:

### **CASH SURRENDER VALUE**

This is the amount available if You Surrender this Contract any time during the Surrender Charge Period:

1. The Contract Value; times
2. The MVA; less
3. The Surrender Charge on the contract value; less
4. The Surrender Charge on any penalty-free Withdrawals taken in the last 12 months.



The Cash Surrender Value is never less than the Guaranteed Minimum Cash Surrender Value or more than the Contract Value on the date of Surrender.

The review revealed 7 instances of non-compliance with §§ 38.2-510 A 1 and 38.2-510 A 8 of the Code, 14 VAC 5-400-70 D, and American Equity's contracts. An example is discussed in Review Sheet CN01, where American Equity incorrectly calculated the Cash Surrender Value by failing to apply the MVA in a manner consistent with the terms of the annuity contract and incorrectly calculating the value of  $t$  in the MVA. American Equity agreed, in part, with the examiners' observations and sent additional proceeds to some of the affected contract holders or beneficiaries. The examiners continue to have concerns that additional remediation may be necessary and this issue will be addressed in the corrective action plan.

The instances of noncompliance with §§ 38.2-510 A 1 and 38.2-510 A 8 of the Code and 14 VAC 5-400-70 D occurred with such frequency as to indicate a general business practice, placing American Equity in violation of the above Code sections and regulation. In addition, as a result of a previous market conduct inquiry regarding these same issues, American Equity made a monetary settlement offer which was accepted by the State Corporation Commission on April 19, 2012, in Case No. INS-2012-00042. As a part of the settlement order, American Equity agreed to take corrective action; however, as the violations cited above demonstrate, it has largely failed to do so. Therefore, American Equity has violated the settlement order and these violations appear to be knowing and willful.

### **Cancellations**

A sample of 41 from a total population of 137 cancellations processed during the examination time frame was reviewed.

The review revealed that the cancellations were handled in accordance with the established procedures and policy provisions.

### **Conversions**

A sample of 18 was selected from a total population of 18 policies that involved a conversion during the examination time frame.

The review revealed that the conversions were handled in accordance with the established procedures and policy provisions.

### **Reduced Paid-Up and Extended Term Insurance**

A sample of 9 policies was selected from a total population of 31 policies converted to reduced paid-up or extended term insurance during the examination time frame. It was determined that one of the sample policies was not reduced paid-up or extended term insurance; therefore, the examiners reviewed a total of 8 sample policies.

Subsection 1 of § 38.2-502 states that no person shall make, issue, circulate, cause or knowingly allow to be made, issued or circulated, any statement that misrepresents the benefits, advantages, conditions or terms of any insurance policy. Subsection 1 of § 38.2-508 states that no person shall unfairly discriminate or permit any unfair discrimination between individuals of the same class and equal expectation of life (i) in the rates charged for any life insurance or annuity contract, or (ii) in the

dividends or other benefits payable on the contract, or (iii) in any other of the terms and conditions of the contract. American Equity's policies include a Table of Values that is used in determining the amount of reduced paid-up insurance.

The review revealed 3 violations of subsection 1 of § 38.2-502 of the Code, 3 violations of subsection 1 of § 38.2-508 of the Code, and 3 instances of noncompliance with American Equity's policies. An example is discussed in Review Sheet CN07, where American Equity failed to provide the appropriate amount of reduced paid-up insurance. American Equity disagreed, responding:

The tables and values for this policy were set up in our administration system based on information from American Life and Casualty at the inception of the administrative agreement dated in 1996. The individual policy files we received from the previous company did not contain the tables of guaranteed values by plan code, only the information specific to the insured.

Based on a re-computation of the RPU by the actuarial department using the information in our administrative system, the reduced paid up amount appears to be reasonable. The tables in the admin system have not been changed since the beginning of the agreement and we therefore think they are accurate. The tables that were previously provided you do not appear to be tables associated with the respective plan codes. We are searching through our archived files to locate the correct tables.

The examiners responded:

Although American Equity indicates that it provided the incorrect Table of Values, the document provided to the examiners contains the insured's name and policy number, and it appears to be a copy of what was issued to the insured. American Equity indicates that the information that was loaded into American Equity's computer system does not match the information that was contained in the copy of the policy. Therefore, the fact that a re-computation of the reduced paid-up amount using the information in American Equity's system resulted in the same amount that American Equity previously calculated is not persuasive. American Equity also indicates that it is searching through its archives to locate a different table; however, based upon the information furnished to the examiners, American Equity did not provide the appropriate reduced paid-up insurance, in noncompliance with the policy and in violation of the Code.

As of the writing of the report, American Equity has failed to provide the examiners with additional Table of Values pages; therefore, American Equity remains in violation of the Code and in noncompliance with its policies.

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## **IX. COMPLAINTS**

American Equity's complaint records were reviewed for compliance with § 38.2-511 of the Code. This section sets forth the requirements for maintaining complete records of complaints to include the number of complaints, the classification by line of insurance, the nature of each complaint, the disposition of each complaint, and the time it took to process each complaint. A "complaint" is defined by this section as "any written communication from a policyholder, subscriber or claimant primarily expressing a grievance."

The total population of 7 written complaints received during the examination time frame was reviewed. The review revealed that American Equity was in substantial compliance.

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## **X. CLAIM PRACTICES**

The examination included a review of American Equity's claim practices for compliance with §§ 38.2-510 and 38.2-3115 of the Code and 14 VAC 5-400-10 et seq., Rules Governing Unfair Claim Settlement Practices.

### **GENERAL HANDLING STUDY**

The review consisted of a sampling of closed annuity death claims. American Equity advised the examiners that there were no closed life insurance death claims during the examination time frame. The examiners were provided access to American Equity's claim handling procedures.

### **PAID CLAIM REVIEW**

A sample of 40 from a total population of 110 annuity death claims paid during the examination time frame was reviewed.

The review revealed that the claims were paid in accordance with the contract provisions.

### **Statutory Interest**

Section 38.2-3115 B of the Code states that interest upon the principal sum shall be paid at an annual rate of 2.5% or the annual rate currently paid by the insurer on proceeds left under the interest settlement option, whichever is greater.

The review of paid annuity death claims revealed 35 violations of this section. An example is discussed in Review Sheet CL02, where American Equity paid the amount of interest upon the principal sum at an annual rate of 2.25%. American Equity agreed with the examiners' observations and stated that:

Interest was paid on this contract at 2.25% from the date of death to date of payment. As explained earlier, the information sent to the claims department when the declared interest rate on death claims was reduced from 3.0% to 1.50% incorrectly showed Virginia death claims to be paid at 2.25% instead of 2.50%. This has been corrected and interest is now being computed using the interest rate of 2.50% for death claims paid in Virginia. Attached is a spreadsheet showing the interest recomputed at the rate of 2.50%, a difference of \$487.82.

The examiners responded that the formula American Equity used to re-compute the interest calculates a daily interest rate that is less than 2.5% annually and is not in compliance with Section 38.2-3115 B of the Code. American Equity should revise its formula for calculating interest to bring it into compliance with the Code.

Another example is discussed in Review Sheet CL29, where American Equity paid the amount of interest upon the principal sum at an annual rate of 1.5%. American Equity disagreed with the examiners' observation and stated that:

The deceased was a resident of Nebraska and all three beneficiaries are residents of Nebraska. Interest paid on the death claim meets the required interest under the state of Nebraska.

The examiners responded that annuity contracts issued in the state of Virginia are subject to the provisions of various sections of the Code of Virginia and Virginia Administrative Code, notwithstanding the state of residence on the date of the annuitant's death. American Equity subsequently responded that "The interest rate paid on death claims should be controlled by the state of issue. We are correcting this is [sic] our procedures."

### **TIME PAYMENT STUDY**

The time payment study was computed by measuring the time it took American Equity, after receiving the properly executed proof of loss, to issue a check for payment.

The term “working days” does not include Saturdays, Sundays, or holidays. The study was conducted on the total sample of 40 paid claims.

Of the 40 paid claims reviewed for the time study, 100% were settled within 15 working days after receipt of a properly executed proof of loss.

### **DENIED CLAIM REVIEW**

American Equity advised the examiners that there were no claims denied during the examination time frame.

### **UNFAIR CLAIM SETTLEMENT PRACTICES REVIEW**

A total sample of 40 paid claims was reviewed for compliance with 14 VAC 5-400-10 et seq., Rules Governing Unfair Claim Settlement Practices which requires that an insurer maintain adequate claim files and that all claims be settled as soon as possible in accordance with the terms of the insurance contract.

The review was conducted using the date the check was mailed as the settlement date. The review revealed that American Equity was in substantial compliance.

### **THREATENED LITIGATION**

American Equity advised the examiners that there were no claims with respect to threatened litigation during the examination time frame.



## **XI. CORRECTIVE ACTION PLAN**

Based on the findings of the Report, it is recommended that American Equity implement the following corrective actions:

1. Review and revise its procedures and systems to ensure that the value of the days for “t” within the Market Value Adjustment calculation is consistently calculated correctly and in accordance with the issued annuity contract language and policy provisions;
2. Review and revise its procedures and systems to ensure that the Cash Surrender Value is calculated correctly and in accordance with the issued annuity contract language and policy provisions;
3. Review and recalculate, in accordance with the terms of the issued annuity contract language and the correct value of “t”, the Cash Surrender Value for all annuity contracts issued in Virginia that include a Market Value Adjustment and have been surrendered in 2013, 2014, 2015 and the current year. Remit any difference between the revised calculation and the original payment to the payee. Send checks for the remittances along with letters of explanation stating, “As a result of a target market conduct examination initiated by the Virginia State Corporation Commission’s Bureau of Insurance, it was determined that additional monies were owed on the Cash Surrender of the annuity. Please accept the enclosed check for the additional amount due.”;
4. Review and revise its procedures and systems to ensure that Reduced Paid-Up insurance is calculated in accordance with the Table of Values contained in the policy issued to the insured;

5. Review and recalculate, in accordance with the terms of the issued Table of Values, the Reduced Paid-Up insurance for all policies issued in Virginia that converted to Reduced Paid-Up insurance in 2013, 2014, 2015 and the current year. Provide additional insurance for any affected insureds and, in the case of a claim, remit any difference between the revised Reduced Paid-Up insurance amount and the original payment to the payee. Send checks for the remittances along with letters of explanation stating, “As a result of a target market conduct examination initiated by the Virginia State Corporation Commission’s Bureau of Insurance, it was determined that additional monies were owed on this claim. Please accept the enclosed check for the additional amount due.” In the case of policies that have not had a claim, send letters to the insureds/policy owners with an explanation stating, “As a result of a target market conduct examination initiated by the Virginia State Corporation Commission’s Bureau of Insurance, it was determined that additional Reduced Paid-Up insurance should be provided. Please note that the Reduced Paid-Up insurance amount has been increased to (insert new total Reduced Paid-Up amount).”;
6. Strengthen its procedures for the payment of interest due on life insurance and annuity claims, as required by § 38.2-3115 B of the Code;
7. Review and revise its formula for calculating interest due on life insurance and annuity claims as required by § 38.2-3115 B of the Code;
8. Review all life insurance and annuity death claims for the years 2013, 2014, 2015 and the current year and make additional interest payments where

necessary, as required by § 38.2-3115 B of the Code. Send checks for the required statutory interest to the appropriate beneficiaries along with letters of explanation stating that “As the result of a Target Market Conduct Examination conducted by the Virginia State Corporation Commission’s Bureau of Insurance, it was determined that additional statutory interest was payable. Please accept the enclosed check for the additional amount due;” and

9. Within 90 days of this Report being finalized, furnish the examiners with documentation that each of the above actions has been completed.

COPY

## **XII. ACKNOWLEDGMENT**

The courteous cooperation extended to the examiners by American Equity's officers and employees during the course of this examination is gratefully acknowledged.

Melissa Gerachis, FLMI, AMCM, AIRC, Bryan Wachter, FLMI, CIE, MCM, AIRC, and Arthur Dodd, MBA, FLMI, AMCM, CIE, AIRC, of the Bureau of Insurance participated in the work of the examination and writing of the Report.

Respectfully submitted,



Julie Fairbanks, AIE, FLMI, AIRC, MCM  
BOI Manager  
Market Conduct Section  
Life and Health Division

### XIII. AREA VIOLATIONS SUMMARY BY REVIEW SHEET

#### **CANCELLATIONS/NONRENEWALS AND CONVERSIONS**

Subsection 1 of § 38.2-502, **3** violations, CN07, CN08, CN09

Subsection 1 of § 38.2-508, **3** violations, CN07, CN08, CN09

§ 38.2-510 A 1, **7** instances of noncompliance, CN01, CN02, CN03, CN04, CN05, CN06, CN10

§ 38.2-510 A 8, **7** instances of noncompliance, CN01, CN02, CN03, CN04, CN05, CN06, CN10

14 VAC 5-400-70 D, **7** instances of noncompliance, CN01, CN02, CN03, CN04, CN05, CN06, CN10

#### **CLAIM PRACTICES**

§ 38.2-3115 B, **35** violations, CL01, CL02, CL03, CL04, CL05, CL06, CL07, CL08, CL09, CL10, CL11, CL12, CL13, CL14, CL15, CL16, CL17, CL18, CL19, CL20, CL21, CL22, CL23, CL24, CL25, CL26, CL28, CL29, CL30, CL31, CL32, CL33, CL34, CL35, CL36

# COMMONWEALTH OF VIRGINIA

JACQUELINE K. CUNNINGHAM  
COMMISSIONER OF INSURANCE  
STATE CORPORATION COMMISSION  
BUREAU OF INSURANCE



P.O. BOX 1157  
RICHMOND, VIRGINIA 23218  
TELEPHONE: (804) 371-9741  
TDD/VOICE: (804) 371-9206  
[www.scc.virginia.gov/boi](http://www.scc.virginia.gov/boi)

September 20, 2016

**CERTIFIED MAIL 7015 1520 0003 0918 9687**  
**RETURN RECEIPT REQUESTED**

Ms. Brenda Westvold  
Vice President  
American Equity Investment Life Insurance Company  
6000 Westown Parkway  
West Des Moines, IA 50266

RE: Market Conduct Examination Report  
**Exposure Draft**

Dear Ms. Westvold:

Recently, the Bureau of Insurance conducted a Market Conduct Examination of American Equity Investment Life Insurance Company (American Equity) for the period of January 1, 2014 through December 31, 2014. A preliminary draft of the Report is enclosed for your review.

Since it appears from a reading of the Report that there have been violations of Virginia Insurance Laws and Regulations on the part of American Equity, I would urge you to read the enclosed draft and furnish me with your written response within 30 days of the date of this letter. Please specify in your response those items with which you agree, giving me your intended method of compliance, and those items with which you disagree, giving your specific reasons for disagreement. American Equity's response(s) to the draft Report will be attached to and become part of the final Report.

Once we have received and reviewed your response, we will make any justified revisions to the Report and will then be in a position to determine the appropriate disposition of this matter.

Thank you for your prompt attention to this matter.

Yours truly,

Julie Fairbanks, AIE, FLMI, AIRC, MCM  
BOI Manager  
Market Conduct Section  
Life and Health Division  
Bureau of Insurance  
(804) 371-9385

JRF:mhh  
Enclosure  
cc: Althelia Battle



October 27, 2016

Via email: [Julie.Fairbanks@scc.virginia.gov](mailto:Julie.Fairbanks@scc.virginia.gov)

Julie R. Fairbanks  
BOI Manager  
Market Conduct Section  
Life and Health Division  
Bureau of Insurance  
PO Box 1157  
Richmond, Virginia 23218

Subject: Response to preliminary draft Report for the period 1/1/14 – 12/31/2014  
Market Conduct Examination of American Equity Investment Life Insurance Company

Dear Ms. Fairbanks:

We are providing this information as our response to the preliminary draft Report referenced above. The examination covered multiple areas with a majority of the areas indicating we were in substantial compliance and/or handled transactions in accordance with established procedures and policy provisions.

Three areas reviewed in the examination noted exceptions. These areas included (1) annuity contracts with market value adjustments; (2) reduced paid up provisions on life policies; and (3) interest payments on death claims. We are addressing the items you noted in the correction action plan section of the report.

Market value adjustments:

1. We have a project in place to change the programming for computing the “t” value within the market value adjustment calculation. This calculation is computing the number of days from the date of surrender to the end of the surrender charge period. Our current program was attempting to adjust for leap years, however in several instances the calculation was off by one or two days. We are generating a daily report which shows surrendered contracts. We will monitor surrenders for any applicable plan codes and make any adjustments to the cash surrender value until the programming is tested and in place to have this computation automated.
2. We have identified any remaining active contracts with altered language regarding the market value adjustment. Of the 35 active contracts, six remain within the surrender charge period where there is potential for a market value adjustment. The surrender charge period for these six contracts will expire at various times between now and March 22, 2017. We will monitor these contracts through the respective surrender charge period.
3. For contracts with a market value adjustment, we will review and recalculate the cash surrender value for contracts surrendered in 2013, 2014, 2015 and the current year to confirm the cash surrender value was correctly computed. If there is any difference between the revised calculation and the original payment to the payee, we will remit this difference along with a letter of explanation as stated in the report.

*We're the One!*  
People Service Future

Reduced paid up provisions on life policies:

4. We will review and revise procedures for calculating the reduced paid up provision for the block of life policies we are administering under the American Life and Casualty Agreement. This will include policies converted to reduced paid up insurance during the period 2013, 2014, 2015 and the current year. If there is any difference we will adjust the benefit on our system and inform the policyowner of this adjustment. Should any of the policies have been paid out in death claims during this period and the recalculation of the reduced paid up provision results in additional benefits, we will send checks to the beneficiaries with the explanation as stated in the report.

Interest payments on death claims:

5. We have already adjusted the interest calculation and procedures on death claims paid to beneficiaries for contracts issued in Virginia to use the statutory interest rate of 2.5%. We will review all life and annuity deaths claims paid for the years 2013, 2014, 2015 and the current year and recompute interest on the death claim. The additional interest adjusting the rate from 2.25% to 2.5% will be sent to the beneficiaries along with an explanation as stated in the report.

As soon as we have completed our reviews and paid out any monies as required we will provide you with documentation that each action has been completed. Should you have any questions, please contact me.

Sincerely,

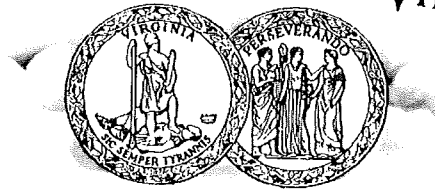


Brenda Westvold  
Vice President - Corporate Audit  
Phone: 515-457-1787  
Fax: 515-457-1937  
Email: [bwestvold@american-equity.com](mailto:bwestvold@american-equity.com)



# COMMONWEALTH OF VIRGINIA

JACQUELINE K. CUNNINGHAM  
COMMISSIONER OF INSURANCE  
STATE CORPORATION COMMISSION  
BUREAU OF INSURANCE



P.O. BOX 1157  
RICHMOND, VIRGINIA 23218  
TELEPHONE: (804) 371-9741  
TDD/VOICE: (804) 371-9206  
[www.scc.virginia.gov/boi](http://www.scc.virginia.gov/boi)

November 3, 2016

**CERTIFIED MAIL 7015 1520 0003 0918 9700**  
**RETURN RECEIPT REQUESTED**

Ms. Brenda Westvold  
Vice President  
American Equity Investment Life Insurance Company  
6000 Westown Parkway  
West Des Moines, IA 50266

RE: American Equity Investment Life Insurance Company's (American Equity)  
Response to the Draft Examination Report

Dear Ms. Westvold:

The Bureau of Insurance (BOI) has completed its review of your October 27, 2016, response to the Target Market Conduct Examination Report of American Equity Investment Life Insurance Company (American Equity) sent with my letter of September 20, 2016. American Equity did not indicate disagreement with any of the examination findings and has agreed to take the corrective actions prescribed in the Report, several of which are already in process. As noted in the Report and in your response, we ask that American Equity document compliance with each item in the Corrective Action Plan within 90 days of the finalization of this examination.

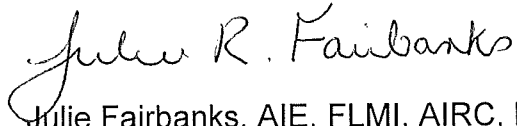
On the basis of our review of the entire file, it appears that American Equity has violated the Unfair Trade Practices Act, specifically Subsection 1 of § 38.2-502, Subsection 1 of § 38.2-508, § 38.2-510 A 1 and § 38.2-510 A 8 of the Code of Virginia (the Code).

In addition, there were violations of § 38.2-3115 B of the Code, as well as 14 VAC 5-400-70 D of Rules Governing Unfair Claims Settlement Practices.

Violations of the above sections of the Code can subject American Equity to monetary penalties of up to \$5,000 for each violation and the suspension or revocation of its license to transact business in Virginia.

In light of the foregoing, this office will be in further communication with you shortly regarding the appropriate disposition of this matter.

Yours truly,



Julie Fairbanks, AIE, FLMI, AIRC, MCM  
BOI Manager  
Market Conduct Section  
Life and Health Division  
Bureau of Insurance  
(804) 371-9385

cc: Bob Grissom

COPY

Ms. Brenda Westvold  
Vice President  
American Equity Investment Life Insurance Company  
6000 Westown Parkway  
West Des Moines, IA 50266

---

Althelia P. Battle, FLMI, HIA, AIE, MHP, AIRC, ACS  
Deputy Commissioner  
Bureau of Insurance  
Post Office Box 1157  
Richmond, VA 23218

**RE: Alleged violations of the Unfair Trade Practices Act**, specifically Subsection 1 of § 38.2-502, Subsection 1 of § 38.2-508, § 38.2-510 A 1 and § 38.2-510 A 8 of the Code of Virginia, as well as, violations of § 38.2-3115 B of the Code and 14 VAC 5-400-70 D of Rules Governing Unfair Claims Settlement Practices.

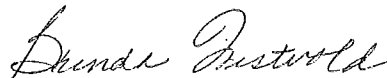
Dear Ms. Battle:

This will acknowledge receipt of your letter dated November 8, 2016, concerning the above-captioned matter.

American Equity wishes to make a settlement offer for the alleged violations cited above. Enclosed with this letter is a check (certified, cashier's or company) in the amount of \$43,000, payable to the Treasurer of Virginia. The Company further understands that as part of the Commission's Order accepting the offer of settlement; it is entitled to a hearing in this matter and waives its right to such a hearing and agrees to cease and desist from future violations of § 38.2-510 A 1 and § 38.2 510 A 8 of the Code and 14 VAC 5-400-70 D, and agrees to comply with the Corrective Action Plan contained in the Market Conduct Examination Report as of December 31, 2014.

This offer is being made solely for the purpose of a settlement and does not constitute, nor should it be construed as, an admission of any violation of law.

Yours very truly,



\_\_\_\_\_  
Company Representative

*11-29-16*

\_\_\_\_\_  
Date

Enclosure (check)

STATE CORPORATION COMMISSION

AT RICHMOND, DECEMBER 20, 2016

SCC-CLERK'S OFFICE  
DOCUMENT CONTROL CENTER

2016 DEC 20 P 3:29

COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

v.

CASE NO. INS-2016-00268

AMERICAN EQUITY INVESTMENT LIFE  
INSURANCE COMPANY,  
DefendantSETTLEMENT ORDER

Based on a target market conduct examination performed by the Bureau of Insurance ("Bureau"), it is alleged that American Equity Investment Life Insurance Company ("Defendant"), duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia ("Virginia"), violated: § 38.2-502 (1) of the Code of Virginia ("Code") by misrepresenting the benefits, advantages, conditions or terms of insurance policies; § 38.2-508 (1) of the Code by unfairly discriminating or permitting any unfair discrimination between individuals of the same class; §§ 38.2-510 A (1) and 38.2-510 A (8) of the Code, as well as 14 VAC 5-400-70 D of the Commission's Rules Governing Unfair Claim Settlement Practices, 14 VAC 5-400-10 *et seq.* ("Rules"), by failing to properly handle claims; and § 38.2-3115 B of the Code by failing to properly pay interest on life insurance proceeds.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1040 of the Code to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke a defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that a defendant has committed the aforesaid alleged violations.

The Defendant has been advised of its right to a hearing in this matter whereupon the Defendant, without admitting any violation of Virginia law, has made an offer of settlement to the Commission wherein the Defendant has tendered to Virginia the sum of Forty-three Thousand Dollars (\$43,000) and waived its right to a hearing, agreed to the entry by the Commission of a cease and desist order, and agreed to comply with the corrective action plan contained in the Target Market Conduct Examination Report as of December 31, 2014.

The Bureau has recommended that the Commission accept the offer of settlement of the Defendant pursuant to the authority granted the Commission in § 12.1-15 of the Code.

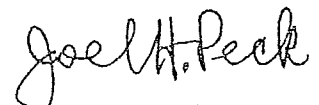
NOW THE COMMISSION, having considered the record herein, the offer of settlement of the Defendant, and the recommendation of the Bureau, is of the opinion that the Defendant's offer should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The offer of the Defendant in settlement of the matter set forth herein is hereby accepted.
- (2) The Defendant shall cease and desist from future violations of §§ 38.2-510 A (1) or 38.2-510 A (8) of the Code, or Rule 14 VAC 5-400-70 D.
- (3) This case is dismissed, and the papers herein shall be placed in the file for ended causes.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: Brenda Westvold, Vice President, American Equity Investment Life Insurance Company, 6000 Westown Parkway, West Des Moines, Iowa 50266; and a copy shall be delivered to the Commission's Office of General Counsel and the Bureau of Insurance in care of Deputy Commissioner Althelia P. Battle.

A True Copy  
Teste:



Clerk of the  
State Corporation Commission