

# **OHIO DEPARTMENT OF INSURANCE**

**A  
TARGETED  
MARKET CONDUCT EXAMINATION  
OF  
THE MIDLAND NATIONAL LIFE INSURANCE COMPANY  
NAIC #66044**

**As Of**

**December 31, 2002**





Bob Taft, Governor

Ann Womer Benjamin, Director

2100 Stella Court, Columbus, OH 43215-1067

(614) 644-2658

www.ohioinsurance.gov

Honorable Ann Womer Benjamin  
Director  
Ohio Department of Insurance  
2100 Stella Court  
Columbus, Ohio 43215-1067

Director:

Pursuant to your instructions and in accordance with the powers vested under Title 39 of the Ohio Revised Code, a target market conduct examination was conducted on the Ohio business of:

The Midland National Life Insurance Company  
NAIC Company Code 66044

The examination was conducted at the Company's statutory home office located at:

One Midland Plaza, Sioux Falls, SD 57193

A report of the examination is enclosed.

Respectfully submitted,

A handwritten signature in cursive script that reads 'David R. Beck'.

David R. Beck

Chief, Market Conduct Division

Date: *July 28<sup>th</sup> 2004*



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## **SCOPE OF EXAMINATION**

The examination of the Midland National Life Insurance Company (the Company) commenced on May 19, 2003, at the Company's home office in Sioux Falls, South Dakota. The examination was restricted to Company activities for individual ordinary life insurance business and individual annuity business from the period of January 1, 2000 through December 31, 2002. The examination is reported by test.

This examination was conducted in accordance with the standards and procedures established by the National Association of Insurance Commissioners (NAIC) and Ohio's applicable statutes, rules, and regulations. Accordingly, the examination included the following areas of the Company's operations:

- A. Company Operations/Management
- B. Marketing and Sales
- C. Policyholder Service
- D. Underwriting
- E. Claims
- F. Complaint Handling

## **METHODOLOGY**

The examination was conducted through a review of the Company's individual ordinary life insurance and individual annuity policy files and claim files. A review was also conducted on the Company's corresponding procedure manuals and replacement logs. This information was supplemented, as necessary, with written inquiries to the Company requesting clarification and/or additional information.

Only files with Ohio insureds, policyholders or claimants were reviewed. A series of tests were designed and applied to the files reviewed to determine the Company's level of compliance to the Ohio insurance statutes, rules and regulations. These tests are described and the results noted in this report.

The Examiners used the National Association of Insurance Commissioners' standard of:

7% error ratio on claim files (93% compliance rate)

10% error ratio on all other files (90% compliance rate)

to determine whether or not an apparent pattern or practice of non-compliance existed for any given test.

The results of each test applied to a sample are reported separately. Each test is expressed as a "yes/no" question. A "yes" response indicates compliance and a "no" response indicates a failure to comply.

In any instance where errors were noted, the Examiners submitted to the Company a request for information describing the apparent error. Response to these inquiries were returned to the Examiners with notes as to whether the Company:

- concurred with the findings,
- had additional information for the Examiners to consider, and/or
- proposed remedial action(s) to correct the apparent deficiency.

The Company's responses and the Examiners' recommendations, as applicable, are included in this report.

### **SAMPLING**

The Examiners requested, and the Company supplied, reports of policy and claim data in file formats specified by the Examiners, which could be reviewed on an IBM compatible personal computer. Except as otherwise noted, all tests were conducted on a sample of files randomly selected from a given report. These samples were selected using a standard business database application that provides a true random sample since it supplies a random starting point from which to pull the sample.

## COMPANY HISTORY

The Company was incorporated as the Dakota Mutual Life Insurance Company under the laws of the state of South Dakota on August 30, 1906. The name was changed on January 27, 1915, to Dakota Life Insurance Company. On July 1, 1925, the Company's name was changed to Midland National Life Insurance Company. Over the years, ownership was transferred to Sammons Enterprises, Inc and various companies have been bought, sold or merged into Midland National Life Insurance Company. Effective July 1, 1999, Midland National Life Insurance Company was redomesticated from South Dakota to Iowa.

## COMPANY OPERATIONS

The Company's reported direct premiums written and direct losses paid during the examination period as reported on Life Insurance Part 1 of the Company's Annual Financial Statements are as follows:

<i>2000 Life Insurance Pt. 1</i>	<b>Ohio</b>	<b>Ohio</b>	<b>National</b>	<b>National</b>
<u>Line</u>	<u>Ordinary</u>	<u>Total</u>	<u>Ordinary</u>	<u>Total</u>
Life insurance	\$18,347,560	\$18,347,560	\$371,394,925	\$371,404,733
Annuity Considerations	5,712,218	85,483,450	314,680,861	749,408,397
Deposit-type funds	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Totals (direct premiums and annuity considerations)	<u>\$24,059,778</u>	<u>\$103,831,010</u>	<u>\$686,075,786</u>	<u>\$1,120,813,130</u>
Totals (direct claims and benefits paid)	<u>\$20,687,057</u>	<u>\$20,719,112</u>	<u>\$419,100,237</u>	<u>\$425,210,074</u>
<i>2001 Life Insurance Pt. 1</i>	<b>Ohio</b>	<b>Ohio</b>	<b>National</b>	<b>National</b>
<u>Line</u>	<u>Ordinary</u>	<u>Total</u>	<u>Ordinary</u>	<u>Total</u>
Life insurance	\$18,947,168	\$18,947,168	\$376,252,223	\$376,258,401
Annuity Considerations	4,259,254	136,370,218	520,710,995	1,418,250,119
Deposit-type contract funds	<u>1,753,162</u>	<u>1,753,162</u>	<u>40,512,277</u>	<u>40,512,277</u>
Totals (direct premiums and annuity considerations)	<u>\$24,959,585</u>	<u>\$157,070,549</u>	<u>\$937,475,494</u>	<u>\$1,835,020,796</u>
Totals (direct claims and benefits paid)	<u>\$20,723,782</u>	<u>\$20,779,699</u>	<u>\$401,734,511</u>	<u>\$404,537,474</u>

As of December 31, 2002, the officers of the Company were:

President:	John James Craig, II
Treasurer:	Steven Craig Palmitier
Secretary:	Stephen Paul Horvat, Jr.
Actuary:	Donald John Iverson

### **CERTIFICATE OF AUTHORITY**

The Company operates under a Certificate of Authority issued in accordance with the statutes, rules and regulations of Ohio. In the course of the examination, the Examiners found the Ohio operations of the Company to be in compliance with its Certificate of Authority for the state.

### **MARKETING**

Life insurance products are distributed through independent agents utilizing a regional director system. Fixed annuities are distributed through independent agents in 48 states and the District of Columbia. These agents are mostly contracted directly with the Company.

Variable annuities are distributed through representatives of Sammons Securities and representatives of 100+ independent broker dealers in the same 48 states and the District of Columbia. The Company does not use managing general agents or third party administrators in its distribution of either fixed or variable annuities.

## LIFE INSURANCE

### REPLACEMENTS

#### **Reported Replacements-Internal**

##### **Methodology:**

- The Examiners reviewed all written policies and procedures that instructed the agents on the Company's replacement procedures and requirements.
- The Company supplied the following data files:
  1. The Company's replacement register for all replacements applied for in Ohio during the exam period. This data file stated for each record whether or not there was an internal or external replacement.
  2. Ordinary individual life new business applied for in Ohio during the examination period. This data file stated for each record whether or not it was replacing another existing life insurance policy for this insured as well as whether the policy was issued, declined or not taken.
- The above data files supplied were compared to each other to verify the total number of reported replacements for the Company during the exam period.
- A file was produced based on the following:
  1. Records indicated as internal replacements,
  2. Records with an effective date or closed date during the exam period, and
  3. Records indicated as Ohio applications.
- A random sample of fifty (50) files was selected for review.

**Standard:** Company rules pertaining to agent requirements in connection with replacements are in compliance with applicable statutes, rules and regulations.

**Test:** Did the Company require their agents to comply with the replacement requirements for life insurance according to Rule 3901-6-05 of the Ohio Administrative Code?

**Test Methodology:**

- A file was considered an exception if it did not comply with the portion of the agent requirement section of the replacement laws tested.

**Findings: Life Internal Replacements- Agent Requirements**

Test	Population	Sample	Yes	No	Standard	Compliance
Did the agent submit a statement signed by the applicant as to whether a replacement was involved?	261	50	48	2	90%	96%
Did the agent submit a statement signed by the agent as to whether he/she knew that a replacement was involved?	261	50	34	16	90%	68%
Did the agent present to the applicant a "Notice Regarding Replacement"?	261	50	47	3	90%	94%
Was the "Notice Regarding Replacement" signed not later than the time of taking the application?	261	50	43	7	90%	86%
Did the agent submit a copy of the "Notice Regarding Replacement" to the replacing company?	261	50	47	3	90%	94%
Was the "Notice Regarding Replacement" signed by both the applicant and the agent?	261	50	47	3	90%	94%
Did the agent submit a completed application to the replacing company?	261	50	36	14	90%	72%
Did the agent obtain a list of all existing life insurance to be replaced and was the list properly identified by name of insurer, the insured and contract number?	261	50	26	24	90%	52%

The standard of compliance is 90%. The Company's performance was below the minimum standard in four (4) tests.

**Standard:** Company rules pertaining to Company requirements in connection with replacements are in compliance with applicable statutes, rules and regulations.

**Test:** Did the Company's practices of handling replacement policies comply with the replacement requirements for life insurance according to Rule 3901-6-05 of the Ohio Administrative Code?

**Test Methodology:**

- A file was considered an exception if it did not comply with the company requirement section of the replacement laws tested.

**Findings: Life Internal Replacements-Company Requirements**

Test	Population	Sample	Yes	No	Standard	Compliance
Did the Company require a statement by the applicant as to whether the proposed insurance would replace existing life insurance?	261	50	49	1	90%	98%
Did the Company require a statement signed by the agent as to whether the agent knew a replacement was or could be involved?	261	50	34	16	90%	68%
Did the Company require from the agent, with the application, a list of all the applicant's existing life insurance to be replaced and was that list properly identified by the name of the insurer, insured and contract number?	261	50	26	24	90%	52%
Did the Company require from the agent, with the application, a copy of the "Notice Regarding Replacement"?	261	50	47	3	90%	94%
Did the Company maintain evidence in the file of the "Notice Regarding Replacement", the policy and contract summary or any ledger statement used?	261	50	47	3	90%	94%
Did the Company provide notification in or with the policy about the 20-day "free look" period and premium refund?	261	50	18	32	90%	36%

The standard of compliance is 90%. The Company's performance was below the minimum standard in three (3) tests.

**Reported Replacements-External****Methodology:**

- The Examiners reviewed all written policies and procedures that instructed the agents on the Company's replacement procedures and requirements.
- The Company supplied the following data files:

1. The Company's replacement register for all replacements applied for in Ohio during the exam period. This data file stated for each record whether or not there was an internal or external replacement.
  2. Ordinary individual life new business applied for in Ohio during the examination period. This data file stated for each record whether or not it was replacing another existing life insurance policy for this insured as well as whether the policy was issued, declined or not taken.
- The above data files supplied were compared to each other to verify the total number of reported replacements for the Company during the exam period.
  - A file was produced based on the following:
    1. Records indicated as external replacements,
    2. Records with an effective date or closed date during the exam period, and
    3. Records indicated as Ohio applications.
  - A random sample of fifty (50) files listed as external replacements either on the replacement register or indicated in new business as replacements were selected for review.

**Standard:** Company rules pertaining to agent requirements in connection with replacements are in compliance with applicable statutes, rules and regulations.

**Test:** Did the Company require their agents to comply with the replacement requirements for life insurance according to Rule 3901-6-05 of the Ohio Administrative Code?

**Test Methodology:**

- A file was considered an exception if it did not comply with the portion of the agent requirement section of the replacement laws tested.

**Findings: Life External Replacements-Agent Requirements**

Test	Population	Sample	Yes	No	Standard	Compliance
Did the agent submit a statement signed by the applicant as to whether a replacement was involved?	2,573	50	46	4	90%	92%
Did the agent submit a statement signed by the agent as to whether he/she knew that a replacement was involved?	2,573	50	34	16	90%	68%
Did the agent present to the applicant a "Notice Regarding Replacement"?	2,573	50	48	2	90%	96%
Was the "Notice Regarding Replacement" signed not later than the time of taking the application?	2,573	50	44	6	90%	88%
Did the agent submit a copy of the "Notice Regarding Replacement" to the replacing company?	2,573	50	48	2	90%	96%
Was the "Notice Regarding Replacement" signed by both the applicant and the agent?	2,573	50	46	4	90%	92%
Did the agent submit a completed application to the replacing company?	2,573	50	34	16	90%	68%
Did the agent obtain a list of all existing life insurance to be replaced and was the list properly identified by name of insurer, the insured and contract number?	2,573	50	13	37	90%	26%

The standard of compliance is 90%. The Company's performance was below the minimum standard in four (4) tests.

**Standard:** Company rules pertaining to Company requirements in connection with replacements are in compliance with applicable statutes, rules and regulations.

**Test:** Did the Company's practices of handling replacement policies comply with the replacement requirements for life insurance according to Rule 3901-6-05 of the Ohio Administrative Code?

**Test Methodology:**

- A file was considered an exception if it did not comply with the company requirement section of the replacement laws tested.

**Findings: Life External Replacements-Company Requirements**

Test	Population	Sample	Yes	No	Standard	Compliance
Did the Company require a statement by the applicant as to whether the proposed insurance would replace existing life insurance?	2,573	50	46	4	90%	92%
Did the Company require a statement signed by the agent as to whether the agent knew a replacement was or could be involved?	2,573	50	34	16	90%	68%
Did the Company require from the agent, with the application, a list of all the applicant's existing life insurance to be replaced and was that list properly identified by the name of the insurer, insured and contract number?	2,573	50	13	37	90%	26%
Did the Company require from the agent, with the application, a copy of the "Notice Regarding Replacement"?	2,573	50	48	2	90%	96%
Did the Company maintain evidence in the file of the "Notice Regarding Replacement", the policy and contract summary or any ledger statement used?	2,573	50	48	2	90%	96%
Did the Company provide notification in or with the policy about the 20-day "free look" period and premium refund?	2,573	50	20	30	90%	40%
Did the Company send a written communication to the existing insurer advising of the replacement within three (3) working days of receipt of the application?	2,573	50	19	31	90%	38%
Did the Company include in the written communication a policy or contract summary or ledger statement to each existing insurer?	2,573	50	40	10	90%	80%

The standard of compliance is 90%. The Company's performance was below the minimum standard in five (5) tests.

**Examiners' Recommendations:**

1. The Company needs to implement changes to the font size of the current applications. Pursuant to Ohio Revised Code 3902.04, the font size cannot be less than 10-point type. It is recommended that the agent question regarding replacements be removed from the agent signature box and be placed elsewhere in the application.
2. The Company needs to implement changes to their current guidelines regarding presenting the applicant a "Notice Regarding Replacement" at the time of application. These changes should include procedures to ensure the applicant is presented a "Notice Regarding Replacement" at the time of application.
3. The Company needs to implement changes to ensure their agents fully complete applications before forwarding to the Company for processing.
4. The Company needs to implement changes to their current procedures of obtaining the applicants' existing life insurance information. These changes should include revisions to the application to include this information or include a separate form that contains this information.
5. The Company should revise current products to provide a 20-day "free look" period and premium refund for replacements.
6. The Company needs to implement changes to their current procedures of sending written communication to each existing insurer advising of the replacement within three (3) working days of receipt of the application. These changes should include implementing procedures to assure that written communication is sent in the required time frame.
7. The Company needs to implement changes to their current guidelines regarding including a policy or contract summary or ledger statement in the written communications to each existing insurer. These changes should include procedures to ensure that a policy, contract summary or ledger statement is included with the written communication to each existing insurer. Additionally, the Company should maintain copies of the written communication, including all attachments, for three years.
8. The Company shall supply the Examiners with copies of these procedures.

## ILLUSTRATIONS

### **Methodology:**

- The Company supplied the following data files:
  1. Individual ordinary life new business applied for in Ohio during the examination period. This data file stated for each record whether or not the policy was issued, declined or not taken.
  2. A file of all individual ordinary life policy forms and plan codes used to write individual ordinary life new business during the exam period. This data file stated for each record whether or not the Company considered the form illustratable.
    - The above data files were compared to each other to verify that the Examiners received a complete listing of all policy forms and plan codes.
    - The file of all policy forms and plan codes was then compared to the Illustration Certification filed annually by the Company with the Department to verify that the two documents matched.
- A file was produced based on the following:
  1. Records indicated as illustratable,
  2. Records with an effective date during the exam period (no declines or not takens); and
  3. Records indicated as Ohio applications.
- A random sample of one hundred (100) files was selected for review.
- Each policy file was reviewed to verify that all required information was contained in the illustration and that it was delivered according to the illustration law.

**Standard:** The Company files all illustration certifications with the Department of Insurance as required by statutes, rules, and regulations.

**Test:** Did the Company file annual life illustrations certifications as required by Rule 3901-6-04 (K) (4) of the Ohio Administrative Code and did it accurately state which policies were being marketed with illustrations?

**Test Methodology:**

- A file was considered an exception if either:
  1. A policy form was listed in the Company supplied data files as using an illustration but was not listed as using an illustration per the Company-supplied annual life illustration certifications,
  2. A policy form was listed on the annual life insurance illustration certification, but not marked accordingly in the Company supplied data files.

**Findings:**

The Examiners found no illustrated policy forms that were not identified on the annual life insurance illustration certification.

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

**Test:** Did the Company's illustrations comply with the life insurance illustration requirements of Rule 3901-6-04 of the Ohio Administrative Code?

**Test Methodology:**

- A file was considered an exception if it did not comply with the section of the illustration rule tested.

**Findings:**

Illustrations

Test	Population	Sample	Yes	No	Standard	Compliance
Did the file contain the required illustration?	6,793	100	100	0	90%	100%
Was the agent issued illustration or certification signed at the date of the application?	6,793	100	89	11	90%	89%
Was the illustration clearly labeled “Life Insurance Illustration”, did it contain the name of the insurer, the name, age, and sex of the insured, the name and business address of the agent or other authorized representative, the underwriting/rating class, the generic policy name, product name and form number, the initial death benefit, when applicable the dividend option election or application of non-guaranteed elements and were the terms defined in language understood by the typical public?	6,793	100	98	2	90%	98%
Did the illustration not include prohibited misleading representations?	6,793	100	99	1	90%	99%
Did the basic illustration contain all parts required?	6,793	100	99	1	90%	99%
Did the Narrative Summary contain all parts required?	6,793	100	99	1	90%	99%
Did the Numeric Summary contain the required statements that were signed and dated by both the agent and the policy owner; include policy maturity and final expiration if premium was to change; contain the correct guaranteed death benefit and surrender value corresponding to the policy year for which the contract premium has been paid; and were non-guaranteed elements shown for the same duration as guaranteed elements?	6,793	100	22	78	90%	44%
Was the revised illustration sent with the policy marked as “Revised Illustration”, signed and dated by the applicant or policy owner no later than the policy delivery date and did the Company receive a signed copy of the revised illustration?	6,793	100	70	30	90%	70%

The standard of compliance is 90%. The Company’s performance was below the minimum standard in three (3) tests.

**Examiners' Recommendations:**

1. The Company should develop and implement procedures to have the illustration or certification signed and dated by the applicant and the agent at the time of policy application.
2. The Company needs to implement procedures to ensure the agent and the applicant both sign and date the Numeric Summary. The Company shall maintain evidence of the 'complete' illustration or certification in the file.
3. The Company should develop and implement procedures to ensure that any revisions to the illustration are clearly marked as "Revised Illustration," signed and dated by the applicant or policyholder no later than the policy delivery date.
4. The Company shall submit copies of the new procedures to the Examiners.

**TERMINATIONS****New Business Terminations****Methodology:**

- The Examiners requested, and the Company supplied, a data file containing all life insurance new business that occurred during the exam period.
- The Company supplied a data file containing individual ordinary life new business applied for in Ohio during the examination period. This data file stated for each record whether or not the policy was issued, declined or not taken.
- Files were provided based on the following:
  1. Records indicated as declined or not taken,
  2. Records with a closed date during the exam period, and
  3. Records indicated as Ohio applications.
- A random sample of fifty (50) declined files and a separate random sample of fifty (50) not taken files were selected for review.

**Standard:** Policy transactions are processed accurately and completely.

**Test:** Did the Company process terminated new business life insurance policies according to the policy provisions and Ohio Revised Code §3904.10?

**Test Methodology:**

- A declined file would be considered an exception if:
  1. The Company did not provide the specific reason(s) for the adverse underwriting decision or advise this information may be requested.
  2. The Company did not provide the individual with a summary of his rights regarding the adverse underwriting decision.

**Findings for Declined Business:** Did the Company provide the specific reason(s) for the adverse underwriting decision or advise this information may be requested?

Population	Sample	Yes	No	Standard	Compliance
6,835	50	2	48	90%	4%

The standard of compliance is 90%. The Company's performance was below the minimum standard.

**Findings for Declined Business:** Did the Company provide the individual with a summary of his rights regarding the adverse underwriting decision?

Population	Sample	Yes	No	Standard	Compliance
6,835	50	0	50	90%	0%

The standard of compliance is 90%. The Company's performance was below the minimum standard.

**Findings for Policies Not Taken:**

The Examiners' reviewed a sample of fifty (50) new business terminations files from a population size of 476, which were coded as not taken. The review was done determine if any

abnormal trends exist for the termination reason code not taken. The review concluded that the files were being handled appropriately, and the Examiners did not discover any abnormal trends.

**Examiners' Recommendations:**

1. The Company should revise the wording of denial letters to include the specific reason(s) for the denial or advise that this information may be requested.
2. The Company should implement procedures to provide the individual with a summary of his rights regarding the adverse underwriting decision for all life insurance new business terminations and maintain documentation on the file.
3. The Company shall submit copies of the new procedures to the Examiners.

## **Policy Terminations**

**Methodology:**

- The Examiners requested, and the Company supplied, a data file containing all life insurance terminations that occurred during the exam period.
- The Company supplied a data file containing all individual ordinary life terminations that occurred during the exam period. This file indicated for each record the reason for termination.
- Files were produced based on the following:
  1. Records indicated as surrendered, lapsed or converted,
  2. Records with a termination date during the exam period, and
  3. Records indicated as Ohio policies.
- A random sample of fifty (50) policies was selected for review.

**Standard:** Policy transactions are processed accurately and completely.

**Test:** Did the Company process terminated life insurance policies according to the policy provisions and §3915.05, 3915.06, 3915.07, 3915.071, 3915.072 of the Ohio Revised Code?

**Test Methodology:**

- A surrendered file would be considered an exception if:
  1. The policy was not terminated according to policy provisions.
  2. Nonforfeiture benefits were not offered to the policyholder according to the policy provisions.
  3. Cash surrender values were not calculated correctly or not provided when required.
- A lapsed file would be considered an exception if:
  1. The policy was not terminated according to policy provisions.
  2. Nonforfeiture benefits were not offered to the policyholder according to the policy provisions.
- A converted file would be considered an exception if:
  1. The original policy was not terminated according to policy provisions.

**Findings for Surrendered Policies:** Did the Company process terminated policies according to the policy provisions?

Population	Sample	Yes	No	Standard	Compliance
1,667	50	50	0	90%	100%

The standard of compliance is 90%. The Company's performance was above the minimum standard.

**Findings for Surrendered Policies:** Did the Company calculate the surrender value correctly?

Population	Sample	Yes	No	Standard	Compliance
1,667	50	50	0	90%	100%

The standard of compliance is 90%. The Company's performance was above the minimum standard.

**Findings for Lapsed Policies:** Did the Company process terminated policies according to the policy provisions?

Population	Sample	Yes	No	Standard	Compliance
3,841	50	49	1	90%	98%

The standard of compliance is 90%. The Company's performance was above the minimum standard.

**Findings for Lapsed Policies:** Did the Company process terminated policies according to state law?

Population	Sample	Yes	No	Standard	Compliance
3,841	50	49	1	90%	98%

The standard of compliance is 90%. The Company's performance was above the minimum standard.

**Findings for Converted Policies:** Did the Company process terminated policies according to the policy provisions?

Population	Sample	Yes	No	Standard	Compliance
198	50	46	4	90%	92%

The standard of compliance is 90%. The Company's performance was above the minimum standard.

**Examiners' Recommendations:**

While it is not required under §3915.05, 3915.06, 3915.07, 3915.071, and 3915.072 of the Ohio Revised Code, the Examiners recommend that the Company provide a detailed cash surrender calculation to its insured's at the time of surrender. This detailed cash surrender calculation could avoid possible confusion on the part of the insured and protect the Company from allegations of misrepresentation, misappropriate and/or unfair and deceptive acts.

**PAID CLAIMS**

**Methodology:**

- The Company supplied a data file containing all ordinary individual life claims that occurred during the exam period. This file indicated for each record whether the claim was paid or denied as well as the type of claim.
- A file was produced based on the following:
  1. Records with a paid date during the exam period,
  2. Records indicated as death claims, and
  3. Records indicated as Ohio residents at time of death.
- A random sample of fifty (50) unique claims was selected for review.
- The claim files were reviewed to verify dates in the claim process, the insured’s resident state at the time of death, and the issue state of the policy was Ohio.
- A payment set up as a separate account/checking account for the beneficiary was considered a lump sum payment.
- Canceled benefit checks were reviewed and compared to claim files to verify correct payee, payment amounts and payment dates.

**Standard:** Claim files are adequately documented.

**Test:** Were the claim files adequately documented to determine the date of death, receipt date of notification of the death, receipt date of proof of death and the dates of all correspondence?

**Test Methodology:**

- A claim was considered an exception if proper documentation could not be found within the claim file.

**Findings:**

Population	Sample	Yes	No	Standard	Compliance
729	50	37	13	93%	74%

The standard of compliance is 93%. The Company's performance was below the minimum standard.

**Standard:** The initial contact by the Company with the claimant is within the required time frame.

**Test:** Upon receiving notification of claim, did the Company contact the claimant within fifteen (15) working days of receiving notice of the claim according to Ohio Administrative Code Section 3901-1-07 (C) (5)?

**Test Methodology:**

- A claim was considered an exception if the Company did not contact the claimant within the prescribed number of days from the date of notification of the insured's death.

**Findings:**

Population	Sample	Yes	No	Standard	Compliance
729	50	43	7	93%	86%

The standard of compliance is 93%. The Company's performance was below the minimum standard.

**Standard:** Investigations are conducted in a timely manner.

**Test:** Did the Company begin investigating the claim within fifteen (15) working days of receiving notice of the claim according to Rule 3901-1-07 (C) (4) of the Ohio Administrative Code?

**Test Methodology:**

- A claim was considered an exception if the Company did not begin investigating the claim within the required time frame or could not document investigating the claim with the required time frame.

**Findings:**

Population	Sample	Yes	No	Standard	Compliance
729	50	49	1	93%	98%

The standard of compliance is 93%. The Company's performance was above the minimum standard.

**Standard:** Claims are settled in a timely manner.

**Test:** Was the claim settled not later than two months after the receipt of due proof of death according to Ohio Revised Code Section 3915.05 (K)?

**Test Methodology:**

- A claim was considered an exception if the Company did not settle the claim within the required time frame.

**Findings:**

Population	Sample	Yes	No	Standard	Compliance
729	50	50	0	93%	100%

The standard of compliance is 93%. The Company's performance was above the minimum standard.

**Standard:** The Company responds to claim correspondence in a timely manner.

**Test:** Did the Company respond to all claim correspondence within 15 days according to Ohio Administrative Code Section 3901-1-07 (C) (2)?

**Test Methodology:**

- A claim was considered an exception if the file showed that the Company did not respond to subsequent, not the initial contact, claim correspondence within the required time frame.

**Findings:**

Population	Sample	Yes	No	Standard	Compliance
729	50	49	1	93%	98%

The standard of compliance is 93%. The Company's performance was above the minimum standard.

**Standard:** Claim files are handled in accordance with policy provisions and state law.

**Test:** Were the claims correctly paid with interest from the date of the death for policies where both the insured was an Ohio resident at the time of death, and the proceeds were paid in a lump sum according to Ohio Revised Code Section 3915.052 (A)?

**Test Methodology:**

- A claim file was considered an exception if the Company did not accurately calculate interest payments due.

**Findings:**

Population	Sample	Yes	No	Standard	Compliance
729	50	50	0	93%	100%

The standard of compliance is 93%. The Company's performance was above the minimum standard.

**Standard:** Canceled benefit checks and drafts reflect appropriate claim handling practices.

**Test:** Do the canceled checks and drafts show that the claim was paid according to Company policies and beneficiary requests?

**Test Methodology:**

- A claim was considered an exception if the Company did not follow Company procedures for claim payments or the provisions in the initial policy and if information on the canceled benefit check did not match information in the claim file itself.
- A claim was also considered an exception if a copy of the canceled check or proof of payment was not available.

**Findings:**

Population	Sample	Yes	No	Standard	Compliance
142	50	50	0	93%	100%

The standard of compliance is 93%. The Company's performance was above the minimum standard.

**Examiners' Comments:**

1. The Company should develop and implement procedures to adequately document the claims file from the opening of the claim until the claim has been settled. This should include documenting phone calls and all written correspondence to the claimant.
2. The Company should revise procedures to assure that contact is made with the claimant within fifteen (15) working days of receiving notice of the claim according to Ohio Administrative Code Section 3901-1-07 (C) (5).
3. The Company should forward these procedures to the Examiners for review.

**VARIABLE LIFE**

**Methodology:**

- The Company supplied the following data files:
  1. Ordinary individual life new business written during the exam period
  2. A file of all policy forms and plan codes used to write new ordinary individual life business.
- From the ordinary individual life new business data file, a population of variable life new business was generated.
- A sample of fifty (50) files was pulled for review.

**Standard:** All mandated disclosures for individual insurance are documented and in accordance with applicable statutes, rules and regulations.

**Test:** Did the Company process new business variable life insurance policies according to Rule 3901-6-08 (H) & (I) of the Ohio Administrative Code?

**Test Methodology:**

- A file was considered an exception if it did not comply with the portion of the variable life insurance law tested.

**Findings:** Did the insurer deliver a prospectus coincident with or prior to the execution of the application and did the insurer obtain a signed acknowledgement from the applicant confirming receipt of the prospectus?

Population	Sample	Yes	No	Standard	Compliance
1,870	50	49	1	90%	98%

The standard of compliance is 90%. The Company’s performance was above the minimum standard.

**Findings:** Did the application contain a prominent statement that the death benefit may be variable or fixed under specified conditions, did the application contain a prominent statement that cash values may increase or decrease in accordance with the experience of the separate account, and did the application contain questions that will enable the insurer to determine the suitability of variable life insurance for the applicant?

Population	Sample	Yes	No	Standard	Compliance
1,870	50	47	3	90%	94%

The standard of compliance is 90%. The Company's performance was above the minimum standard.

## ANNUITIES

### REPLACEMENTS

#### **Reported Replacements-External**

**Methodology:**

- The Examiners reviewed all written policies and procedures that instructed the agents on the Company's replacement procedures and requirements.
- The Company supplied the following data files:
  1. The Company's replacement register for all replacements applied for in Ohio during the exam period. This data file stated for each record whether or not there was an internal or external replacement. A replacement register was not kept prior to March 19, 2001.
  2. Individual annuity new business applied for in Ohio during the examination period. This data file stated for each record whether or not it was replacing another existing

annuity policy for this insured, as well as whether the policy was issued, declined or not taken.

- The above data files supplied were compared to each other to verify the total number of reported replacements for the Company during the exam period.
- A file was produced based on the following:
  1. Records indicated as external replacements,
  2. Records with an effective date or closed date during the exam period, and
  3. Records indicated as Ohio applications.

A random sample of fifty (50) unique files listed as external replacements either on the replacement register or indicated in new business as replacements were selected for review.

**Standard:** Company rules pertaining to agent requirements in connection with replacements are in compliance with applicable statutes, rules and regulations.

**Test:** Did the Company require their agents to comply with the replacement requirements for annuities according to Rule 3901-6-05 of the Ohio Administrative Code?

**Test Methodology:**

- A file was considered an exception if it did not comply with the portion of the agent requirement section of the replacement laws tested.
- Annuities that were not subject to Rule 3901-6-05 of the Ohio Administrative Code were removed from the sample.

**Findings: Annuity External Replacements-Agent Requirements**

Test	Population	Sample	Yes	No	Standard	Compliance
Did the agent submit a statement signed by the applicant as to whether a replacement was involved?	123	50	48	2	90%	96%
Did the agent submit a statement signed by the agent as to whether he/she knew that a replacement was involved?	123	50	44	6	90%	88%
Did the agent present to the applicant a "Notice Regarding Replacement"?	123	50	46	4	90%	92%
Was the "Notice Regarding Replacement" signed not later than the time of taking the application?	123	50	48	2	90%	96%
Did the agent submit a copy of the "Notice Regarding Replacement" to the replacing company?	123	50	46	4	90%	92%
Was the "Notice Regarding Replacement" signed by both the applicant and the agent?	123	50	46	4	90%	92%
Did the agent submit a completed application to the replacing company?	123	50	44	6	90%	88%
Did the agent obtain a list of all existing annuities to be replaced and was the list properly identified by name of insurer, the insured and contract number?	123	50	44	6	90%	88%

The standard of compliance is 90%. The Company's performance was below the minimum standard in three (3) tests.

**Standard:** Company rules pertaining to Company requirements in connection with replacements are in compliance with applicable statutes, rules and regulations.

**Test:** Did the Company's practices of handling replacement policies comply with the replacement requirements for life insurance according to Rule 3901-6-05 of the Ohio Administrative Code?

**Test Methodology:**

- A file was considered an exception if it did not comply with the company requirement section of the replacement laws tested.

- Annuities that were not subject to Rule 3901-6-05 of the Ohio Administrative Code were removed from the sample.

**Findings: Annuity External Replacements-Company Requirements**

Test	Population	Sample	Yes	No	Standard	Compliance
Did the Company require a statement by the applicant as to whether the proposed annuity would replace existing annuities?	123	50	48	2	90%	96%
Did the Company require a statement signed by the agent as to whether the agent knew a replacement was or could be involved?	123	50	44	6	90%	88%
Did the Company require from the agent, with the application, a list of all the applicant's existing annuities to be replaced and was that list properly identified by the name of the insurer, insured and contract number?	123	50	44	6	90%	88%
Did the Company require from the agent, with the application, a copy of the "Notice Regarding Replacement"?	123	50	46	4	90%	92%
Did the Company maintain evidence in the file of the "Notice Regarding Replacement," the policy and contract summary or any ledger statement used?	123	50	46	4	90%	92%
Did the Company provide notification in or with the contract about the 20-day "free look" period and premium refund?	123	50	0	50	90%	0%
Did the Company send a written communication to the existing insurer advising of the replacement within three (3) working days of receipt of the application?	123	50	28	22	90%	56%
Did the Company include in the written communication a policy or contract summary or ledger statement to each existing insurer?	123	50	0	50	90%	0%

The standard of compliance is 90%. The Company's performance was below the minimum standard in five (5) tests.

**Examiners' Recommendations:**

1. Pursuant to Ohio Revised Code 3902.04, the Company needs to implement changes to the font size of the current applications. The font size cannot be less than 10-point type. It is recommended that the agent question regarding replacements be removed from the agent signature box and be placed elsewhere in the application.
2. The Company needs to implement changes to their current procedures of obtaining the applicants' existing life insurance information. These changes should include revisions to the application to include this information or include a separate form that contains this information.
3. The Company needs to implement changes to ensure their agents fully complete applications before forwarding to the Company for processing.
4. The Company shall revise current products to provide a 20-day "free look" period and premium refund for replacements.
5. The Company needs to implement changes to their current procedures of sending written communication to each existing insurer advising of the replacement within three (3) working days of receipt of the application. These changes should include implementing procedures to assure that written communication is sent in the required time frame.
6. The Company needs to implement changes to their current guidelines regarding including a policy or contract summary or ledger statement in the written communications to each existing insurer. These changes should include procedures to ensure that a policy, contract summary or ledger statement is included with the written communication to each existing insurer. Additionally, the Company should maintain copies of the written communication, including all attachments for three years.
7. The Company shall supply the Examiners with copies of these procedures.

## **TERMINATIONS**

### **Methodology:**

- The Examiners requested, and the Company supplied, a data file containing all annuity policy terminations that occurred during the exam period.
- The Company supplied a data file containing all individual annuity terminations that occurred during the exam period. This file indicated for each record the reason for termination.
- A file was produced based on the following:
  1. Records with a termination date during the exam period, and
  2. Records indicated as Ohio policies.
- Due to population size, it was determined that all files would be reviewed and that sampling was not needed.

**Standard:** Policy transactions are processed accurately and completely.

**Test:** Did the Company process terminated annuity contracts according to the policy provisions and §3915.073 of the Ohio Revised Code?

### **Test Methodology:**

- A terminated file would be considered an exception if the annuity contract was not terminated according to company procedures.
- A terminated file would be considered an exception if the annuity contract was not terminated according to state law.
- A terminated file would be considered an exception if the surrender value was not calculated correctly.

**Findings:** Did the Company process terminated annuities according to the annuity provisions?

Population	Sample	Yes	No	Standard	Compliance
16	16	16	0	90%	100%

The standard of compliance is 90%. The Company's performance was above the minimum standard.

**Findings:** Did the Company calculate the surrender value correctly?

Population	Sample	Yes	No	Standard	Compliance
16	16	16	0	90%	100%

The standard of compliance is 90%. The Company's performance was above the minimum standard.

**Examiners' Recommendations:**

While it is not required under §3915.073 of the Ohio Revised Code, the Examiners recommend that the Company provide a termination letter reflecting surrender charges and any other fees, along with the surrender value of the terminated annuity. This detailed cash surrender calculation could avoid possible confusion on the part of the insured and protect the Company from allegations of misrepresentation, misappropriate and/or unfair and deceptive acts.

**PAID CLAIMS**

**Methodology:**

- The Company supplied a data file containing all individual annuity claims that occurred during the exam period. This file indicated for each record whether the claim was paid or denied.
- A file was produced based on the following:
  1. Records with a paid date during the exam period, and
  2. Records indicated as Ohio annuitants at time of death.

- Due to population size, it was determined that all files would be reviewed and that sampling was not needed.
- The claim files were reviewed to verify dates in the claim process.
- Canceled benefit checks were reviewed and compared to claim files to verify correct payee, payment amounts and payment dates.

**Standard:** Claim files are adequately documented.

**Test:** Were the claim files adequately documented from the first notice of loss to resolution of the claim to adequately justify the Company’s claims handling practices?

**Test Methodology:**

- A claim was considered an exception if proper documentation could not be found within the claim file.

**Findings:**

Population	Sample	Yes	No	Standard	Compliance
91	91	71	20	93%	78%

The standard of compliance is 93%. The Company’s performance was below the minimum standard.

**Standard:** The initial contact by the Company with the claimant is within the required time frame.

**Test:** Upon receiving notification of claim, did the Company contact the claimant within fifteen (15) working days of receiving notice of the claim according to Ohio Administrative Code Section 3901-1-07 (C) (5)?

**Test Methodology:**

- A claim was considered an exception if the Company did not contact the claimant within the prescribed number of days from the date of notification of the insured's death.

**Findings:**

Population	Sample	Yes	No	Standard	Compliance
91	91	75	16	93%	82%

The standard of compliance is 93%. The Company's performance was below the minimum standard.

**Standard:** Investigations are conducted in a timely manner.

**Test:** Did the Company begin investigating the claim within fifteen (15) working days of receiving notice of the claim according to Ohio Administrative Code Section 3901-1-07 (C) (4)?

**Test Methodology:**

- A claim was considered an exception if the Company did not begin investigating the claim within the required time frame or could not document investigating the claim with the required time frame.

**Findings:**

Population	Sample	Yes	No	Standard	Compliance
91	91	77	14	93%	85%

The standard of compliance is 93%. The Company's performance was below the minimum standard.

**Standard:** The Company responds to claim correspondence in a timely manner.

**Test:** Did the Company respond to all claim correspondence within 15 days according to Ohio Administrative Code Section 3901-1-07 (C) (2)?

**Test Methodology:**

- A claim was considered an exception if the file showed that the Company did not respond to subsequent, not the initial contact, claim correspondence within the required time frame.

**Findings:**

Population	Sample	Yes	No	Standard	Compliance
91	91	72	19	93%	79%

The standard of compliance is 93%. The Company’s performance was below the minimum standard.

**Standard:** Canceled benefit checks and drafts reflect appropriate claim handling practices.

**Test:** Do the canceled checks and drafts show that the claim was paid according to Company policies, policy provisions, beneficiary requests and documentation within the claim file?

**Test Methodology:**

- A claim was considered an exception if the Company did not follow Company procedures for claim payments or the provisions in the initial policy and if information on the canceled benefit check did not match information in the claim file itself.
- A claim was also considered an exception if a copy of the canceled check was not available.

**Findings:**

Population	Sample	Yes	No	Standard	Compliance
91	91	90	1	93%	99%

The standard of compliance is 93%. The Company's performance was above the minimum standard.

**Examiners' Recommendations:**

1. The Company should develop and implement procedures to adequately document the claims file from the opening of the claim until the claim has been settled. This should include documenting phone calls and all written correspondence to the claimant.
2. The Company should revise procedures to assure that contact is made with the claimant within fifteen (15) working days of receiving notice of the claim according to Ohio Administrative Code Section 3901-1-07 (C) (5).
3. The Company should revise procedures to assure that claim investigations begin within fifteen (15) working days of receiving notice of the claim according to according to Ohio Administrative Code Section 3901-1-07 (C) (4).
4. The Company should revise procedures to assure that all correspondence received is handled in a timely manner and within state regulations. Sending the "Estate Tax" form at the same time as the "Proof of Death Claimant's Statement" form would speed up the claims process.
5. The Company should review the changes effective January 1, 2001, for tax release requirements.
6. The Company shall forward these procedures to the Examiners for review.

**COMPLAINT REGISTER**

The Company provided a listing of 72 complaint files. Three files were duplicate complaints. The complaint files consisted of both departmental and non-departmental complaints. The Examiners reviewed the complaint files to determine if any trends exist for any particular line of business or for

any particular product offered from the Company. Of the 69 complaint files, the reason for the complaints were as follows:

Surrender charges	1
Underwriting denial	1
Policyholder service	15
Premium refund/increase	3
Annuity suitability/deceptive sales practices	49

Approximately 93% of the complaints concerned either policyholder service related issues or annuity suitability/deceptive sales practices issues. The review of the complaints that focused on policyholder service issues did not reveal any trends that are of concern to the Examiners. Many of the complaints were either due to policyholder misunderstanding or were resolved in the policyholders favor. The review of the complaints that focused on annuity suitability/deceptive sales practices issues did reveal trends that are of concern.

Of the 69 total complaints, 49 or approximately 71% concern annuity suitability and/or deceptive sales practices. This figure is a high percentage of the total. The majority of the complaints focused on the suitability of various annuity products for elderly clients.

**Examiners' Comments:**

The Company's complaint files have been collected and further investigation into the sales practices of the Company and their agents will continue. The duration of this investigation is not known at this time. At the conclusion of the Market Conduct examination, the investigation into the sales practices of the Company and their agents will remain open and will be concluded separately.

## SUMMARY

The examination found the Company to be out of compliance in the following areas:

<u>Areas of Review</u>	<u>Compliance Standard</u>	<u>Compliance Rate</u>
<b>LIFE INSURANCE</b>		
<b>Internal Replacements</b>		
<b>Life Insurance Replacements – Agent Requirements</b>		
Did agent submit signed statement regarding replacement	90%	68%
Was the ‘Notice’ signed at time of application	90%	86%
Did agent submit completed application	90%	72%
Did agent obtain a list of all life insurance to be replaced	90%	52%
<b>Life Insurance Replacements – Company Requirements</b>		
Did Company require agent statement regarding replacement	90%	68%
Did agent obtain a list of all life insurance to be replaced	90%	52%
Did Company provide 20 day free look period	90%	36%
<b>External Replacements</b>		
<b>Life Insurance Replacements – Agent Requirements</b>		
Did agent submit signed statement regarding replacement	90%	68%
Was the ‘Notice’ signed at time of application	90%	88%
Did agent submit completed application	90%	68%
Did agent obtain a list of all life insurance to be replaced	90%	26%
<b>Life Insurance Replacements – Company Requirements</b>		
Did Company require agent statement regarding replacement	90%	68%
Did agent obtain a list of all life insurance to be replaced	90%	26%
Did Company provide 20 day free look period	90%	40%
Sent a written communication to existing insurer within 3 days	90%	38%
Written communication included a contract summary	90%	80%
<b>Illustrations</b>		
Illustration/Certification signed as of application date	90%	89%
Numeric Summary contained all required information	90%	44%
Revised illustration clearly marked “Revised Illustration”	90%	70%

**Terminations**

Company provides specific reasons for denial	90%	4%
Company provides individuals with summary of rights regarding adverse underwriting decision	90%	0%

**Paid Claims**

Were claim files adequately documented	93%	74%
Did Company contact claimant within 15 working days	93%	86%

**ANNUITIES****Annuity Replacements – Agent Requirements**

Did agent submit signed statement regarding replacement	90%	88%
Did agent submit completed application	90%	88%
Did agent obtain a list of all annuities to be replaced	90%	88%

**Annuity Replacements – Company Requirements**

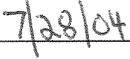
Did Company require agent statement regarding replacement	90%	88%
Did agent obtain a list of all annuities to be replaced	90%	88%
Company provide 20 day free look period	90%	0%
Sent a written communication to existing insurer within 3 days	90%	56%
Written communication included a contract summary	90%	0%

**Paid Claims**

Adequately documented claims files	93%	78%
Initial contact within 15 working days	93%	82%
Initial investigation within 15 working days	93%	85%
Respond to claims correspondence within 15 days	93%	79%

This concludes the report of the Market Conduct Examination of the Midland National Life Insurance Company. The Examiners, Bob Baker, John Pollock, Rob Stroup, Cheryl Davis and Brett Helf would like to acknowledge the assistance and cooperation provided by the management and the employees of the Company.

  
 Brett C. Helf, MBA, FCLS, API  
 Examiner in Charge

  
 Date

**Meg Taylor**  
*Vice President & Chief Compliance Officer*  
525 W. Van Buren • Chicago, IL 60607  
Phone: (312) 648-7712 • (800) 800-3656 Ext. 87712  
Fax: (312) 648-7778 • Email: mtaylor@nacolah.com

February 27, 2004

Mr. Rodney E. Beetch  
Insurance Compliance Supervisor  
Market Conduct Division  
Ohio Department of Insurance  
2100 Stella Court  
Columbus, Ohio 43215

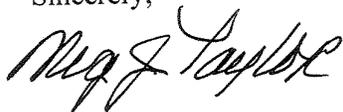
RECEIVED  
MAR 01 2004  
OHIO DEPT. OF INSURANCE  
MARKET CONDUCT DIVISION

Dear Mr. Beetch:

Attached are the responses to the final draft report for the market conduct exam of the Midland National Life Insurance Company.

We enjoyed working with you and your staff during this exam. Should you have any questions regarding the enclosed, please feel free to contact me.

Sincerely,



Meg J. Taylor

enclosure



*A Member of the Sammons Financial Group*

## Page 12 – Responses to Examiner’s Recommendations for Life Replacements

### Page 12, Recommendation 1:

We filed new applications in August 2003. They were approved September 2003 and implemented December 2003. The point size is larger than our previous application and the agent question regarding replacement is located in a separate box above the agent’s signature. See applications attached.

### Page 12, Recommendation 2:

The notice regarding replacement has a place for the applicant’s signature as well as the agent’s signature. We currently provide a four-part replacement form; two forms are for the Midland National office, one for the applicant and one for the agent. See replacement form attached.

### Page 12, Recommendation 3:

If an agent does not fully complete an application, a requirement is added to the case. We then verify the information that should have been included on the application. When the policy is approved, the case is then amended or endorsed and the amendment or endorsement become part of the policy.

### Page 12, Recommendation 4:

Currently our application asks for the name of the insured, the Company, the amount and whether it is pending or issued. Our replacement form asks for the Company name and the policy number. See applications attached and replacement form attached.

### Page 12, Recommendation 5:

In replacement situations, if we know that the applicant intends to replace a policy, we need to code in replacement in our system that will generate the 20 day free look notice. All products filed from 2000 forward do have a 20 free look period. See example of front of policy provided.

### Page 12, Recommendation 6:

Currently the replacement is processed at the time of coding the application. The notice goes out within a day of coding. Attached is a copy of our replacement screen.

### Page 12, Recommendation 7:

We do supply each existing insurer with a ledger or contract summary at the time of notice for replacement goes out to the insurer.

### Page 12, Recommendation 8:

Copies are attached



Page 16 – Responses to Examiner’s Recommendations - Illustrations

Page 16, Recommendation 1:

The agent has the option to send in a signed certification or the proposal that is shown to the applicant at the time of application. If we do not receive a copy of either document, a requirement is added to the case and an expeditor generated and sent to the agent.

Page 16, Recommendation 2:

See “New Illustration Processing Requirements” document attached.

Page 16, Recommendation 3:

See “New Illustration Processing Requirements” document attached.



February 25, 2004

To whom it may concern:

Page 16, New Business Terminations

Page 18, recommendation 1, see attached "procedure for AUD states and letters"

Page 18, recommendation 2, see attached "procedure for AUD states and letters"

Page 18, recommendation 3, see attached "procedure for AUD states and letters"

Thank you.



February 24, 2004

To: Meg Taylor

From: Douglas J Schwartz

RE: Ohio Market Conduct Examination  
Response to Examiner's Recommendations on Page 20

With regards to sending detailed cash surrender calculation to the insured at the time of a surrender. Since this is not required under 3915.05, 3915.06, 3915.07, 3915.071 and 3915.072, it has been decided that we will not make any changes to our current operating system or procedures. We are in the process of installing a new system over the next several years. With this, we do not have any available resources for the programming of such a change. This will certainly be something that we will take into account when converting over to the new operating system.

Douglas J Schwartz  
Manager, Policy Accounting

## Interoffice Communication



**To:** All Examiners  
**From:** Elaine Nash  
**Re:** Claims file documentation  
**Date:** February 23, 2004

The Ohio Insurance Department's examination noted occasions where the file lacked documentation to confirm that we were in compliance with Ohio Administrative Code Section 3901-1-07(L)(5), which requires that we make contact with the claimant within 15 working days of receiving notice of the claim.

Most of those occasions occurred when we were notified of the death by the agent or funeral home who indicated that they already have or would be providing the claim form to the claimant, and thus the Claims Department did not communicate directly with the claimant or his legal representative in response to the notification of death.

We will immediately revise our procedure relative to Ohio Claims, (and other states if research shows they have similar administrative codes) to send acknowledgement of notification of claim directly to the claimant when someone other than the claimant notifies us. This will be done at the time the claim file is setup. We will be initiating a program to prompt and create a letter through the claim system. In the meantime, the letter will be sent manually through a word document (sample attached). Attached also is our file documentation procedure.

page 51  
1 1-6

**Ohio Market Conduct Examination – Midland National Life**  
**(Company Response Concerning Final Draft Report Annuity Findings)**  
**[02/27/04]**

**A. Replacements:**

The final draft report noted that “[a] replacement register was not kept prior to March 19, 2001.”

**Company Response:** As indicated in an e-mail exchange with the Department in March of 2003, Midland National’s Annuity Division did not utilize a system indicator for automated tracking of replacements on the fixed annuity side of its operations, similar to what is presently being utilized, prior to November 1, 2001. However, Midland National has been and is capable of tracking replacements prior to March 19, 2001.

**Examiners’ Recommendations:**

1. Pursuant to Ohio Revised Code 3902.04, the Company needs to implement changes to the font size of the current applications. The font size cannot be less than 10-point type. It is recommended that the agent question regarding replacements be removed from the agent signature box and be placed elsewhere in the application.

**Company Response:** Both current and previous applications utilize a font size of at least 10-point type. A sample application with a revision date of 12/99 is enclosed. A review of that application, together with those that were previously provided to the Department for the applicable time period of the examination, should reveal consistent compliance with font size requirements.

We have not been able to locate regulations that mandate positioning the aforementioned agent question elsewhere on the application. The regulation regarding replacements requires “*a statement signed by the agent as to whether the agent knows replacement is or may be involved.*” Nonetheless, we will consider repositioning the agent question regarding replacements at the time of our next revision of our application.

**Encl:** A copy of one of our applications that has been filed with the Ohio Department of Insurance is enclosed.

2. The Company needs to implement changes to their current procedures of obtaining the applicants' existing life insurance information. These changes should include revisions to the application to include this information or include a separate form that contains this information.

**Company Response:** As previously stated on August 27, 2003, this information is obtained at the time of sale. Our records reveal that we were 100% compliant, with regard to the sample reviewed. We obtain the existing life insurance information on our transfer forms (Authorization to Transfer Funds, Section 1035 Exchange/Absolute Assignment and Request to Transfer/Rollover Qualified Funds). We ask the source company's name, insured's name and the account/contract number at the source company, in addition to the other pertinent information.

3. The Company needs to implement changes to ensure their agents fully complete applications before forwarding to the Company for processing.

**Company Response:** Midland National has taken steps to educate agents on the proper ways to complete its forms. First, we have periodically reminded agents, via live presentations or field memos, about the Top 5 Ways to Get Business Issued Faster. Secondly, we published a New Business Procedures Manual in 2002, which has been sent to all contracted agents. This manual lists the forms necessary for an annuity sale, and explains how to complete the forms. Thirdly, we have implemented a new Good Order Team in our New Business Department. Their primary function is to review new business paperwork and verify that all forms are present and properly completed. Finally, Midland National offers guidance to its agents on its website via a monthly E-News letter which describes, among other things, changes to required forms, and directs them to the detailed instructions for completion of those changed forms.

**Encl:** Enclosed are copies of the above referenced presentation, New Business Manual, New Business Procedures, and an example of what is contained in the monthly E-News Letter.

4. The Company shall revise current products to provide a 20-day “free look” period and premium refund for replacements.

**Company Response:** The front page of our contract was revised in 2002 and reads: “RIGHT TO EXAMINE CERTIFICATE - It is important to Us that You are satisfied with this Certificate and that it meets Your insurance Goals. Read it carefully. If You are not satisfied with it, You may return it to Our Principal office or to Your agent within 10 Days after You receive it. We will then cancel it as of the Issue Date and refund the premium, less partial surrenders, within 10 days after the Certificate is returned. If this Contract is issued as a replacement Contract, the Right to Examine period is changed from 10 days to 20 days.

**Encl:** A sample copy of the above referenced contract cover page is enclosed.

5. The Company needs to implement changes to their current procedures of sending written communication to each existing insurer advising of the replacement within three (3) working days of receipt of the application. These changes should include implementing procedures to assure that written communication is sent in the required time frame.

**Company Response:** We have revised our procedures and they reflect the request set forth above. If the transfer paperwork is received and is in good order, the forms are forwarded to the existing insurer within 3 days of receipt of the application. If the transfer paperwork is not in good order, a replacement letter is sent within 3 days to the existing insurer, in lieu of the transfer paperwork.

**Encl:** We have enclosed a copy of the above referenced procedure and a sample replacement letter.

6. The Company needs to implement changes to their current guidelines regarding including a policy or contract summary or ledger statement in the written communications to each existing insurer. These changes should include procedures to ensure that a policy, contract summary or ledger statement is included with the written communication to each existing insurer. Additionally, the Company should maintain copies of the written communication, including all attachments for three years.

**Company Response:** Midland National revised its procedures, effective June 2003, and is in compliance with the applicable regulation. We provide a Policy Summary to the existing company along with the Replacement Notification Letter. Copies of the written communication, including any attachments, will be maintained for at least the required period of three years.

**Encl:** A copy of the procedure and a sample Policy Summary are enclosed.

*Page 00*

**B. Terminations**

**Examiners' Recommendations:**

1. The Company needs to implement changes to their current procedures of processing annuity terminations. The Company shall revise current procedures to ensure that each policyholder receives a termination letter reflecting surrender charges and any other fees, along with the surrender value of the terminated annuity.

**Company Response:** The above-mentioned procedure change request by the Department is made in response to a review pursuant to OH ST §3915.073. However, OH ST §3915.073, which pertains to nonforfeiture values for individual deferred annuities, appears to be concerned with required provisions of annuity policies that are delivered or issued for delivery in the state of Ohio. It does not appear that any of the information required therein must be contained in a termination letter sent to policyholders. Our annuity policies are presented to the state prior to them being offered for sale and are in compliance with the aforementioned statute. Therefore, we do not believe that anything further is required on the part of Midland National with regard to this recommendation.

**Encl:** A copy of OH ST §3915.073 is enclosed. Any of our previously filed policy forms are on file with the Department.

## Annuity-Paid Claims

Recommendation 1:

Procedures have been revised according our recommendations.

Recommendation 2:

The Company states that most of the occasions when they failed to make contact with the  
Procedures have been revised according our recommendations.

Recommendation 3:

Procedures have been revised according our recommendations.

Recommendation 4:

Procedures have been revised according our recommendations; however, sending the estate tax  
form at the time of the proof of death statement is not going to work for the Company due to not  
having a complete file at that time.

Recommendation 5:

Company has reviewed changes.

Recommendation 6:

Procedures have been received.

C. Claims

Examiners' Recommendations:

1. The Company should develop and implement procedures to adequately document the claims file from the opening of the claim until the claim has been settled. This should include documenting phone calls and all written correspondence to the claimant.

**Company Response:** Procedures have been revised and reflect this recommendation. These procedures were most recently revised in September and October 2003. When a death claim is reported via the telephone, a Phone Message sheet is completed. A hard copy file is setup in the Claims Department. The beneficiary receives the original paperwork needed to process the death claim and the agent receives a copy if requested.

All telephone calls are documented throughout the course of the claim process. As documents are added to the imaged policy file, a department employee verifies them. When a death claim has been paid, the final documents are sent to the imaged file. A department employee verifies that the imaged policy file is complete after all payments have been made.

**Encl:** Copies of the above referenced procedures and a sample Phone Message sheet are enclosed.

2. The Company should revise procedures to assure that contact is made with the claimant within fifteen (15) working days of receiving notice of the claim according to Ohio Administrative Code Section 3901-07 (C) (5).

**Company Response:** Procedures have been revised and reflect this recommendation. In accordance with current procedures, when claims are reported via the telephone, all paperwork is to be sent to the beneficiary or beneficiaries within 5 business days. If an address is unavailable for some reason, department employees conduct the necessary research to obtain the address and document the file appropriately.

Some annuity death claims are not reported via the telephone and our first notice is received via the submission of our Annuity Death Claimant Statement. This may occur because agents have access to the Annuity Death Claimant Statement through our website.

**Encl:** A copy of the above referenced procedure is enclosed.

3. The Company should revise procedures to assure that claim investigations begin within fifteen (15) working days of receiving notice of the claim according to Ohio Administrative Code Section 3901-1-07 (C) (4).

**Company Response:** Procedures have been revised and reflect this recommendation. Additionally, a variety of new follow-up processes were implemented in 2003, through a new claims payment system as well as Microsoft Access.

**Encl:** A copy of the follow-up procedure currently used in the Claims Department is enclosed.

4. The Company should revise procedures to assure that all correspondence received is handled in a timely manner and within state regulations. Sending the "Estate Tax" form at the same time as the "Proof of Death Claimant's Statement" form would speed up the claims process.

**Company Response:** Procedures have been revised and reflect this recommendation. Under the current procedure, all correspondence is to be responded to within 5 business days and our monitoring process has revealed compliance with that standard on a continuous basis throughout the past several months.

Midland National appreciates the suggestion with regard to the "Estate Tax" form, but does not believe it can send that form at the same time as the "Proof of Death Claimant's Statement" form because our file investigation is not complete at that time. Rather, we feel it is appropriate to send the "Estate Tax" form once we have verified the beneficiary or beneficiaries as well as the precise amount of proceeds.

**Encl:** A copy of the above referenced procedure is enclosed.

**Additional/General Company Response to Recommendations 1-4:**

Midland National has also implemented a process for handling claim files or related issues when those files/issues require or appear to require the assistance of legal counsel.

**Encl:** A copy of the procedure document for the above referenced process is enclosed.

5. The Company should review the changes effective January 1, 2001 for tax release requirements.

**Company Response:** Midland National has reviewed the January 1, 2001 tax release requirements.

**Encl:** A copy of a relevant procedure is enclosed.

February 9, 2004

Mr. Rodney E. Beetch  
Insurance Compliance Supervisor  
Market Conduct Division  
Ohio Department of Insurance  
2100 Stella Court  
Columbus, Ohio 43215

RECEIVED  
FEB 10 2004  
OHIO DEPT. OF INSURANCE  
MARKET CONDUCT DIVISION

Via: UPS Priority Delivery

Re: Market Conduct Examination Report—Midland National Life Insurance Company

Dear Mr. Beetch:

We are in receipt of the final draft report for the market conduct examination of the Midland National Life Insurance Company. The Company is analyzing the report and will provide you with any specific comments it may have with respect to the issues raised in the time provided. After a preliminary review of the report, however, we have an initial comment that I believe should be brought to your attention at this time for consideration by the Department.

On page 38, the report states as follows with respect to the continuing review of annuity complaints and sales: "Many of the products offered did not appear to be a good fit for the client and some of the sales practices used to entice the sale were questionable and did not appear to be in good faith." We believe that this comment is unfairly prejudicial to the Company in a published report at this time. The Department has acknowledged that its review of this area will continue and is not yet closed. Other than this general allegation, there are no specifics offered and the Company has not been provided an opportunity to review specific findings or respond to the specific cases. We respectfully suggest that it is not appropriate to include in this report a conclusion of this nature when the report itself acknowledges that a review of this general area is not complete and will continue separately.

Accordingly, on behalf of the Company I am requesting that the language quoted above be deleted from the report. We believe that it will accomplish the Department's goals and is fairer to the Company to state that the investigation on this aspect of the exam will remain open and a separate report issued.

I look forward to hearing from you.

Sincerely,



Stephen P. Horvat, Jr.  
Senior Vice President, General Counsel and Secretary  
Midland National Life Insurance Company

CC: Meg Taylor

**STATE OF OHIO**  
**DEPARTMENT OF INSURANCE**  
2100 Stella Court  
Columbus, Ohio 43215

**IN THE MATTER OF** : **CONSENT ORDER**  
**THE MIDLAND NATIONAL LIFE** :  
**INSURANCE COMPANY MARKET** :  
**CONDUCT EXAMINATION** :

The Superintendent of the Ohio Department of Insurance (“Department”) is responsible for administering Ohio insurance laws pursuant to Section 3901.011 of the Ohio Revised Code (“R.C.”). The Department conducted a market conduct examination of The Midland National Life Insurance Company (“Company”). The Company is authorized to engage in the business of insurance in the State of Ohio and, as such, is under the jurisdiction of the Superintendent and the Department. The Department examined the Company’s individual ordinary life and annuity insurance business in the State of Ohio for the period of January 1, 2000 through December 31, 2002.

**SECTION I**

As a result of the market conduct examination, the Superintendent alleges:

- A. The Company accepted and processed some life insurance replacement policy applications (internal and external) from its agents that were defective or incomplete; for example, agent statements regarding replacements were not submitted and/or signed, notices were not signed at the date of the application, and failure to obtain a list of existing life insurance policies to be replaced as required under Ohio Administrative Code (“O.A.C.”) 3901-6-05. By accepting and processing incomplete life insurance replacement policy applications from its agents without informing the agents of the defects in these applications, and/or without insuring proper documentation was maintained, the Company failed to meet its statutorily imposed duties outlined in O.A.C. 3901-6-05.
- B. The Company failed to comport with the “three business days” notification rule to existing insurers regarding life insurance replacement policies (external) and failed to include a contract summary in its written communication as required by O.A.C. 3901-6-05.
- C. The Company failed to comply with the illustration requirements of O.A.C. 3901-6-04 in some instances; to wit, agent-issued illustrations or certificates were not signed at the date of the application, numeric summaries were incomplete, and revised illustrations were not clearly marked.

- D. Terminated new business life applications did not comport with R.C. 3904.10 in that the Company did not provide specific reason(s) for adverse underwriting decisions and/or advise an applicant that adverse underwriting decisions may be requested from the Company.
- E. A review of the paid claims files for ordinary life claims during the exam period disclosed that some of these claim files were not adequately documented. As such, the examiners could not determine the date of death, receipt date of notification of the death, receipt date of proof of death and dates of correspondence. Further, if the claim file was complete, it was discovered that the Company failed to contact the claimant within fifteen working days of receiving notice of the claim as required by O.A.C. 3901-1-07(C).
- F. The Company accepted and processed some annuity replacement policy applications from its agents that were defective or incomplete; for example, agent statements regarding replacements were not submitted and/or signed and failure to obtain a list of existing annuity contracts to be replaced as required under O.A.C. 3901-6-05. By accepting and processing incomplete annuity replacement policy applications from its agents without informing the agents of the defects in these applications, and/or without insuring proper documentation was maintained, the Company failed to meet its statutorily imposed duties outlined in O.A.C. 3901-6-05.
- G. The Company failed to comport with the “three business days” notification rule to existing insurers regarding annuity replacement contracts and failed to include a contract summary in its written communication as required by O.A.C. 3901-6-05.
- H. The Company failed to provide the “20-day free look” period in some instances for annuity policy replacements in violation of O.A.C. 3901-6-05.
- I. A review of the paid claims files for annuity claims during the exam period disclosed that some of these claim files were not adequately documented. As such, the examiners could not determine if the Company’s claims handling practices comported with Ohio law. Further, if the claim file was complete, it was discovered that the Company failed to contact the claimant within fifteen working days of receiving notice of the claim, failed to investigate the claim within fifteen working dates of receiving notice of the claim, and failed to respond to all claims correspondence within fifteen days as required by O.A.C. 3901-1-07(C).

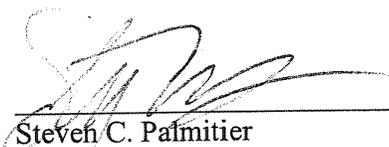
## SECTION II

It is hereby agreed to by the parties that:

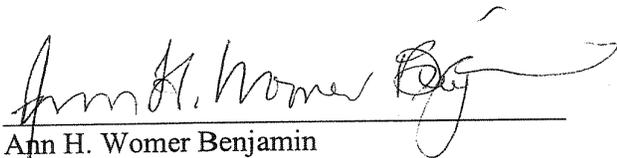
- A. The Superintendent and the Company enter into this Consent Order to resolve the allegations as set forth in Section I of this order. Further, the Company admits to the allegations set forth in Section I.
- B. The Company has been advised that it has a right to a hearing before the Superintendent pursuant to R.C. Chapter 119; that, at a hearing, it would be entitled to appear in person, to be represented by an attorney or other representative who is permitted to practice before the agency; and that, at a hearing, it would be entitled to present its position, arguments or contentions in writing and to present evidence and examine witnesses appearing for and against it. The Company hereby waives all such rights.
- C. The Company consents to the jurisdiction of the Superintendent and the Department to determine the issues set forth herein. The Company expressly waives any prerequisites to jurisdiction that may exist.
- D. The Company will institute policies, procedures and controls to ensure compliance with the illustration requirements of O.A.C. 3901-6-04 and the replacement requirements of O.A.C. 3901-6-05.
- E. The Company has and will continue to institute policies, procedures and controls to ensure compliance with the underwriting notification requirements found in R.C. 3904.10.
- F. The Company will institute policies, procedures and controls to ensure that its claims practices comports with O.A.C. 3901-1-07.
- G. The Company will pay an administrative fine in the amount of \$42,000.00 by check or money order made payable to the "Ohio Department of Insurance" no later than thirty (30) days after the date of execution of this Consent Order.
- H. The Company waives any and all causes of action, claims or rights, known or unknown, which it may have against the Department, and any employees, agents, consultants, contractors or officials of the Department, in their individual and official capacities, as a result of any acts or omissions on the part of such persons or firms arising out of this matter.
- I. The Company has read and understands this Consent Order. The Company further understands that it has the right to seek counsel of its choice and to have counsel review this Consent Order.

- J. This Consent Order has the full force and effect of an Order of the Superintendent. Failure to abide by the terms of this agreement shall constitute an actionable violation in and of itself without further proof and may subject the Company to any and all remedies available to the Superintendent.
- K. This Consent Order shall be entered in the Journal of the Ohio Department of Insurance. All parties understand and acknowledge that this Consent Order is a public document pursuant to R.C. 149.43.

Date: 12/22/04

  
\_\_\_\_\_  
Steven C. Palmitier  
President  
The Midland National Life Insurance Company

Date: 2/11/05

  
\_\_\_\_\_  
Ann H. Womer Benjamin  
Superintendent of Insurance