

**REPORT OF EXAMINATION**

**OF THE**

**NATIONWIDE LIFE AND ANNUITY**

**COMPANY OF AMERICA**

**AS OF**

**DECEMBER 31, 2004**

I, Matthew Denn, Insurance Commissioner of the State of Delaware, do hereby certify that the attached REPORT ON EXAMINATION, made as of DECEMBER 31, 2004 of the

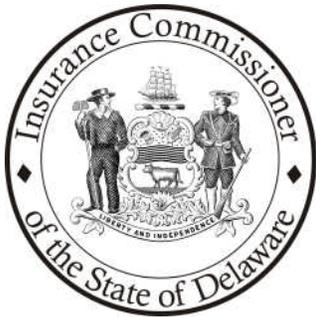
**NATIONWIDE LIFE AND ANNUITY COMPANY OF AMERICA**

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

ATTEST BY:

*Annette Handy*

DATE: 27 JUNE 2006



*In Witness Whereof*, I HAVE HEREUNTO SET MY HAND AND AFFIXED THE OFFICIAL SEAL OF THIS DEPARTMENT AT THE CITY OF DOVER, THIS 26TH DAY OF JUNE 2006.

*Matthew Denn*

*Insurance Commissioner*

**REPORT ON EXAMINATION**  
OF THE  
**NATIONWIDE LIFE AND ANNUITY COMPANY OF AMERICA**  
AS OF  
**December 31, 2004**

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

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

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



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MATTHEW DENN  
INSURANCE COMMISSIONER

DATED this 27TH Day of JUNE 2006.

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## **SALUTATION**

May 2, 2006

Honorable Matthew Denn  
Insurance Commissioner  
State of Delaware, Insurance Department  
841 Silver Lake Boulevard  
Dover, Delaware 19904

Dear Commissioner:

In accordance with instructions and pursuant to statutory provisions contained in Certificate of Authority No.05-026, an examination has been made of the affairs, financial condition and management of the

### **NATIONWIDE LIFE AND ANNUITY COMPANY OF AMERICA**

hereinafter referred to as the "Company", or "NLACA", incorporated under the laws of the State of Delaware. The examination was conducted at the Company's administrative offices at 1000 Chesterbrook Boulevard, Berwyn, Pennsylvania and at the service center at 300 Continental Drive, Newark, Delaware.

The examination report thereon is respectfully submitted.

## **SCOPE OF EXAMINATION**

The last examination of the Company was conducted as of December 31, 2000. This examination covers the four year period of January 1, 2001 through December 31, 2004 and consisted of a general survey of the Company's business policies and practices, management, any corporate matters incident thereto, a verification and evaluation of assets and a determination of liabilities. Transactions subsequent to the latter date were reviewed where deemed necessary. An

Nationwide Life and Annuity Company of America

affiliate of the Company, Nationwide Life Insurance Company of Delaware (NLICD), was examined concurrently with NLACA.

The general procedure of the examination followed the rules established by the National Association of Insurance Commissioners in the Financial Examiners Handbook and generally accepted statutory insurance examination standards consistent with the Insurance Laws and Regulations of the State of Delaware.

In addition to items hereinafter incorporated as a part of the written report, the following were checked and made part of the workpapers of this examination:

- Corporate insurance
- Conflict of interest
- All asset and liability items not mentioned

### **HISTORY**

The Nationwide Life and Annuity Company of America is a stock life Insurance company and a wholly-owned subsidiary of Nationwide Life Insurance Company of America (NLICA), a Pennsylvania domiciled insurer. The Company was incorporated under the laws of the Commonwealth of Pennsylvania on January 8, 1958 as the Washington Square Life Insurance Company. On May 13, 1991, Provident Mutual Life Insurance Company (PMLIC) purchased all of the authorized and outstanding shares of the Company. On October 22, 1992, the Company redomesticated to the State of Delaware in order to obtain favorable tax treatment on its non-qualified annuity business.

On October 1, 2002 the Company, along with PMLIC and Provident Mutual International Life Insurance Company (PMILIC), was acquired by Nationwide Financial Services (NFS), which is a wholly owned subsidiary of Nationwide Mutual Insurance Company and Nationwide Mutual Fire Insurance Company. At the time of the acquisition, which was approved by the

Nationwide Life and Annuity Company of America

Delaware Insurance Department, the Company's name was changed to its current title. PMLIC remained as the Company's parent and its name was changed to Nationwide Life Insurance Company of America (NLICA). PMILIC remained as a Delaware domiciled affiliate of the Company and its name was changed to Nationwide Life Insurance Company of Delaware (NLICD).

### **CAPITALIZATION**

The Company is authorized to issue 500, 000 shares of common stock at a par value of \$10 per share. As of December 31, 2004, the Company had 250,000 share of common stock issued and outstanding and capital was comprised of:

250,000 shares issued and outstanding	\$2,500,000
Gross Paid in and Contributed Surplus:	\$44,164,500

The following changes occurred in the capital accounts since the previous examination as reported in the Company's Annual Statements:

Nationwide Life and Annuity Company of America

	<u>Common Capital Stock</u>	<u>Gross Paid-in &amp; Contributed Surplus</u>	<u>Unassigned Funds (Surplus)</u>	<u>Total</u>
December 31, 2000	<u>\$2,500,000</u>	<u>\$44,164,500</u>	\$ (3,292,510)	<u>\$43,371,990</u>
Net income			7,843,225	7,843,225
Change in net unrealized capital gains			1,441,255	1,441,255
Change in non- admitted assets			5,632,306	5,632,306
Change in AVR			2,210,548	2,210,548
Surplus contributed to Separate Accounts			3,064,809	3,064,809
Other changes in surplus in Separate Accounts			(3,792,915)	(3,792,915)
Net change in deferred tax asset			<u>(5,238,526)</u>	<u>(5,238,526)</u>
Change during period Jan. 1, 2001 thru Dec. 31, 2004			<u>11,160,702</u>	<u>11,160,702</u>
	<u>\$2,500,000</u>	<u>\$44,164,500</u>	<u>\$7,868,192</u>	<u>\$54,532,692</u>

**DIVIDENDS TO STOCKHOLDERS**

The Company did not pay any dividends to stockholders during the current examination period.

### **CORPORATE RECORDS**

The only change to the Company's corporate records during the examination period pertained to the change in the Company's name (as previously discussed). The change was reflected in both the Corporate Bylaws and the Articles of Incorporation.

During the review of the minutes of meetings of the Board of Directors, it was noted that the Board did not approve or accept the annual Independent Audit Report issued by its third-part CPA's. In addition, the Board did not approve or accept the Actuarial Opinion issued by the Company's Chief Actuary. Therefore;

**It is recommended that the Board of Directors review and approve the Independent CPA Audit Report and the Actuarial Opinion each year at its Annual Meeting.**

### **HOLDING COMPANY SYSTEM**

NLACA is a member of an Insurance Holding Company System as defined in Section 5001 of the Delaware Insurance Code. Nationwide Mutual Insurance Company (NMIC) and Nationwide Mutual Fire Insurance Company (NMFIC) are named as the ultimate controlling persons of the Holding Company System.

The combined financial results of NMIC and NMFIC, on a statutory basis, as of December 31, 2004 are as follows:

Assets	\$28,462,698,385
Surplus	\$ 9,071,942,548
Net Income for 2004	\$ 1,216,804,880

The following chart shows the Nationwide organization as respects the ownership of NLACA as of December 31, 2004:

Nationwide Mutual Insurance Company (Casualty)  
 Nationwide Mutual Fire Insurance Company (Fire)  
 Nationwide Corporations  
 Nationwide Financial Services, Inc  
 Nationwide Life Insurance Company of America  
**Nationwide Life and Annuity Company of America**  
 Nationwide Insurance Company of Delaware

**MANAGEMENT AND CONTROL**

The Bylaws require the Board of Directors to consist of not less than seven members. The following directors were elected and serving as of December 31, 2004:

<u>Name</u>	<u>Principal Occupation</u>
Peter A. Golato	President of NLACA
Mary E. Kennedy	Senior VP & Asst Treasurer of NLACA
Mark R. Thresher	Chief Operating Officer of Nationwide Financial Services
William G Jurgensen	Chairman & Chief Executive Officer of NLACA
Robert A. Rosholt	EVP & Chief Investment Officer of NLACA
Richard A. Karas	Senior VP of Non-affiliated Sales
Robert C. Thompson	VP of Affiliated Sales

The following officers had been elected by the Board of Directors and were serving at December 31, 2004:

<u>Officer</u>	<u>Position</u>
Peter A. Golato	President
William G. Jurgensen	Chief Executive Officer
James D. Benson	Senior VP & Treasurer
Thomas E. Barnes	VP & Secretary
Patricia R. Halter	EVP, General Counsel & Asst. Secretary
Robert A. Rosholt	EVP & Chief Investment Officer
Terri L. Hill	EVP
Denise M. Sortino	Senior VP of Information Technology
Richard M. Klenk	Associate VP & Chief Actuary
Mary E. Kennedy	Senior VP & Asst. Treasurer
Brian W. Nocco	Senior VP & Asst. Treasurer
Carol L. Dove	VP & Asst. Treasurer

### **GROWTH OF COMPANY**

The following information was taken from the Company's filed Annual Statements:

<u>Year</u>	<u>Admitted Assets (Excluding SA Business)</u>	<u>Separate Accounts Assets</u>	<u>Capital &amp; Surplus</u>	<u>Premium Income</u>	<u>Net Income</u>
2000	\$437,103,941	\$1,107,658,843	\$43,371,990	\$228,220,926	\$602,906
2001	440,508,935	966,755,697	39,180,382	184,067,652	(4,211,803)
2002	427,167,354	674,378,015	32,180,121	76,625,449	(10,088,808)
2003	412,615,718	704,380,707	46,318,752	41,539,851	10,013,818
2004	412,511,875	639,899,402	54,532,692	36,840,821	12,130,018

The two significant changes during the examination period that are demonstrated in the above chart are the decreases in Separate Account Assets and Premium Income. These accounts reported decreases of 42.2% and 83.7%, respectively between December 31, 2000 and December 31, 2004. The decreases in both accounts were attributable to the significant decrease in individual variable annuities being written by the Company. In 2000, 2001 and most of 2002 the Company continued to write a significant amount of individual variable annuity business. Subsequent to the Company's acquisition by Nationwide Financial Services in late 2002 (previously discussed), the Company essentially discontinued the acquisition of new individual variable annuity business. This decision was approved by the Company's Board of Directors.

### **TERRITORY AND PLAN OF OPERATION**

The Company is licensed in 49 states (including Delaware), the District of Columbia and Puerto Rico. The Company is not licensed in the State of New York.

NLACA is authorized to write the following lines of business in the State of Delaware:

Life, including annuities  
Variable Annuities  
Variable Life  
Credit Life  
Health  
Credit Health

The Company was admitted to the State of Delaware on March 2, 1966. On October 1, 2002, Providentmutual Life and Annuity Company of America changed its name to Nationwide Life and Annuity Company of America. On October 8, 2002 the Company's Delaware Certificate of Authority was changed to recognize this change in corporate title.

NLACA specialized in the development and sale of various life and annuity products principally through Personal Producing General Agents (PPGAs) and brokerage sales forces. The Company's product portfolio consisted primarily of variable and traditional life insurance and single and flexible premium deferred annuities. The Company previously offered both fixed and variable annuities.

Subsequent to the October 1, 2002 acquisition of the Company by NFS, a strategic decision was made to write all future individual fixed and variable annuity products through other life insurance subsidiaries of NFS. However, the Company continues to maintain blocks of individual variable and fixed annuities. As a result of this decision the Company experienced a shift in its product mix. In the year prior to the acquisition, the Company's individual life insurance represented 27% of total individual and annuity consideration; in 2004 the amount increased to 85% of the total.

The Company reported total Direct Premiums Written for all life, health and annuity business in the State of Delaware of \$227,338 for 2004.

Premiums written by line of business are shown below:

**Direct & Assumed**

Ordinary Life (direct)	\$ 41,646,832
Ordinary Life (assumed)	29,079
Individual Annuities (direct)	6,924,560
Individual Annuities (assumed)	0
Group A&H (direct)	614
Group A&H (assumed)	0
Other A&H (direct)	3,047
Other A&H (assumed)	0
<b>Total Gross</b>	<b><u>\$ 48,604,132</u></b>

**Ceded**

Ordinary Life	\$ 11,300,607
Individual Annuities	462,704
Group A&H	0
Other A&H	0
<b>Total Ceded</b>	<b><u>\$ 11,763,311</u></b>

**Net Premiums Written** **\$ 36,840,821**

The Company does not currently intend to significantly alter its existing plan of acquiring business.

**REINSURANCE**

For the year ended December 31, 2004 the Company reported to following premium and annuity considerations:

Direct	\$48,575,053
Assumed	29,079
Ceded	<u>( 11,763,311)</u>
Net	<u>\$36,840,821</u>

**Assumed**

The only significant change noted in the Company's assumed reinsurance program during the examination period was the addition of a Yearly Renewable Term assumption agreement with

Transamerica International Re (Bermuda) Ltd, whereby NLACA assumes back 10% of reinsurance it originally ceded to Transamerica Occidental. This agreement was effective on August 26, 2002. The amount of assumed reinsurance in-force as of December 31, 2004 was \$81,874,000 with assumed reserves in the amount of \$23,933.

### Ceded

As of December 31, 2004, the Company reported \$5,561,062,000 of ordinary life insurance in-force; of that amount \$4,566,325,000 or over 82% was ceded. Ceded reserves increased from \$5,025,119 in 2000 to \$15,690,796 in 2004. The Company did not enter into any new significant ceded reinsurance contracts during the current examination period, though significant ceded reinsurance agreements remain in effect from prior examination periods.

A significant portion of the reinsurance coverage, \$1,763,478,000 was provided under a Modified Coinsurance Agreement with NLICA, the Company's parent. This agreement, which has been in effect since January 1, 1994, provides NLACA with substantial surplus relief since the policy reserves remain with NLACA and a large commission/expense allowance is paid. The significant ceding commission on the first year premium absorbs the cost of writing the new business while the recapture fees are spread over a period of seven years. The modified coinsurance reserve under this agreement of December 31, 2004, amounted to \$28,770,121. This compares to \$22,345,924 as of the December 31, 2000 examination date.

As of the prior examination date the Company retained the first \$300,000 on a single life and reinsured any loss in excess of that amount. Effective from October 2001 to July 2003, the Company's single life retention changed to a quota share arrangement whereby the Company retains 20% of a single life up to a maximum of \$300,000. All excess losses over \$300,000 were reinsured. Effective from July 2003 to January 2005, the Company increased their quota share

retention from 20% to 40%, but continued the single life limit of \$300,000 with losses in excess of \$300,000 being reinsured.

Subsequent to the examination date and effective in January 2005 the Company increased their quota share limits from 40% to 55% but continued the single life limit of \$300,000.

## **INTER-COMPANY AGREEMENTS**

### **Cost Sharing Agreement**

The Company entered into a Cost Sharing Agreement with Nationwide Mutual Insurance Company (Nationwide) and various affiliates of Nationwide on July 1, 2002. Although the stated effective date was July 1, 2002, the agreement did not become legally effective as it applies to NLACA until October 2, 2002, when the approval from the Delaware Insurance Department became effective. The Company terminated its previous Cost Sharing Agreement in its entirety. The current agreement notes the parties desire to have each other perform certain operational services and administrative services on behalf of one another. The purpose of the agreement is to properly distribute and allocate expenses to various parties receiving services. Among the services provided to NLACA under the Cost Sharing Agreement are the following:

#### **Operational Services**

- Advertising
- Underwriting
- Policy Processing
- Claims Adjustment and Claims Administration
- Data Processing
- Accounting
- Actuarial
- Investment
- Other necessary operational services

Administrative

Payroll  
Benefits  
Investment Management  
Legal administration  
Human Resources  
Financial (financial reporting, budgeting, tax planning, etc.)  
Other necessary administrative services

With regards to the allocation of costs for services provided under this agreement the terms appear to be equitable. The agreement calls for the costs associated with the services provided to the Company to be allocated based on standard allocation techniques and procedures. Settlement of invoices associated with services provided is required within ninety (90) days following the receipt of invoices from the intercompany providers. The Company paid NLICA \$9,820,930 under the Cost Sharing Agreement during 2004.

Tax Sharing Agreement

Effective October 1, 2002, NLICA, NLACA and NLICD agreed to file consolidated federal income tax returns along with combined state, local income, and franchise tax returns. The terms of the agreement appear to be equitable. The agreement requires that the Company's tax liability be determined on a separate company basis as if the Company was filing its own return.

Support Agreement

In this agreement dated December 31, 1997, NLICA agreed to maintain NLACA's total adjusted capital at a minimum level of 200% for risk based capital (RBC). The company action level for life & health companies is 200%. If NLACA's statutory total adjusted capital falls below this level, NLICA agrees to contribute sufficient capital to NLACA to return the RBC level to 200%.

**ACCOUNTS AND RECORDS**

Prior to its acquisition by Nationwide Financial Services, the Company's accounts and records were audited by the firm of Coopers & Lybrand. Subsequent thereto, they have been audited by KPMG. The Company's December 31, 2004 Statutory Financial Statements were audited by KPMG. The audited Statutory Financial Statements were reviewed for all years under examination and it was noted that the CPA firms issued unqualified opinions for each year under review. Workpapers from KPMG's 2004 audit files were utilized to the fullest extent possible.

**FINANCIAL STATEMENTS**

The financial condition of the Company as of December 31, 2004 and the results of the Company's operations during the year then ended are reflected in the following financial statements:

**ASSETS**

	Ledger <u>Assets</u>	Assets Not <u>Admitted</u>	Examination <u>Adjustments</u>	Net Admitted <u>Assets</u>	<u>Notes</u>
Bonds	\$314,089,953	\$0	\$0	\$314,089,953	1
Common stocks	656,758	0	0	656,758	
Mortgage loans	67,114,276	0	0	67,114,276	2
Policy/Contract Loans	12,949,498	5,216	0	12,944,282	
Cash and short term Investments	7,177,833	0	0	7,177,833	
Other invested assets	80,537	0	0	80,537	
Receivable for securities	292,490	113,331	0	179,159	
Reinsurance ceded:					
Amounts recoverable from Reinsurers	545,205	0	0	545,205	
Other amounts receivable under reinsurance contracts	244,340	0	0	244,340	
Guaranty funds receivable or on Deposit	681,247	0	0	681,247	
Uncollected Premiums in the Course of collection	(2,117)	0	0	(2,117)	
Deferred Premiums booked but Deferred and not yet due	2,291,565	0	0	2,291,565	
Investment income due and Accrued	4,222,473	0	0	4,222,473	
Net deferred tax asset	13,872,320	11,585,956	0	2,286,364	
Other Receivables	<u>493,597</u>	<u>493,597</u>	<u>0</u>	<u>0</u>	
Total assets excluding Separate Accounts	\$424,709,975	\$12,198,100	\$ 0	\$412,511,875	
From Separate Accounts Statement	<u>639,899,402</u>	<u>0</u>	<u>0</u>	<u>639,899,402</u>	3
<b>TOTALS</b>	<b><u>\$1,064,609,377</u></b>	<b><u>\$12,198,100</u></b>	<b><u>\$0</u></b>	<b><u>\$1,052,411,277</u></b>	

**LIABILITIES, SURPLUS AND OTHER FUNDS**

Aggregate reserve for life policies and contracts	\$337,542,621	4
Aggregate reserve for accident and health policies	0	
Liability for Deposit-Type Contracts	20,148,612	
Policy and contract claims:		
Life	924,193	
Policyholder dividends due & unpaid	53,181	
Policyholder dividends apportioned for payment	910,000	
Premiums and annuity considerations received in Advance	25,973	
Other amounts payable on reinsurance	3,122	
Interest maintenance reserve	5,228,228	
General expenses due or accrued	1,301,324	
Transfers to Separate Accounts due or accrued	(30,066,528)	
Taxes, licenses and fees due or accrued	1,692,463	
Federal income taxes due or accrued	317,677	
Unearned Investment Income	715	
Amounts withheld or retained by company	353,326	
Amounts held for agents' account	285,385	
Remittances and items not allocated	2,432,762	
Asset valuation reserve	3,144,460	
Payable to parent, subsidiaries and affiliates	14,099,958	
Aggregate write-ins for liabilities:		
Interest accrued on policy and contract claims	<u>19,337</u>	
Total Liabilities excluding Separate Accounts Business	358,416,809	
 From Separate Accounts Statement	 <u>639,461,776</u>	 3
Total Liabilities	\$997,878,585	
 Common Capital Stock	 2,500,000	
Gross paid in and contributed surplus	44,164,500	
Unassigned funds (surplus)	<u>7,868,192</u>	
Capital and Surplus	<u>\$54,532,692</u>	
 TOTAL	 <u>\$1,052,411,277</u>	

**SUMMARY OF OPERATIONS**

Premiums and annuity considerations	\$36,840,822
Deposit-type funds	
Considerations for supplementary contracts with life contingencies	1,837,342
Considerations for supplementary contracts without life contingencies	
Net investment income	21,657,354
Amortization of Interest Maintenance Reserve	970,892
Separate Accounts net gain from operations excluding unrealized capital gains	453,563
Commissions and expense allowances on reinsurance ceded	1,672,645
Income from fees associated with investment management, administrative and contract guarantees for Separate Accounts	<u>8,039,182</u>
 Total Income	 <u>\$71,471,800</u>
 Death benefits	 \$1,812,881
Matured endowments	22,545
Annuity benefits	11,957,410
Disability benefits and benefits under Accident & health policies	(46,229)
Surrender benefits and other fund withdrawals	164,677,335
Interest on policy or contract funds	1,412,148
Payments on supplementary contracts with life contingencies	1,026,391
Payments on supplementary contracts without life contingencies and of dividend accumulations	
Increase in aggregate reserves for life and accident and health policies and contracts	<u>(24,927,595)</u>
Increase in reserve for supplementary contracts without life contingencies and for dividend and coupon accumulations	
 Total Benefits	 <u>\$155,934,886</u>
 Commissions on premiums, annuity considerations and deposit-type funds	 \$6,661,108
Commissions and expense allowances on reinsurance assumed	41,722
General insurance expenses	8,950,906
Insurance taxes, licenses and fees, excluding federal income taxes	1,810,487
Increase in loading on and cost of collection in excess of loading on deferred and uncollected premiums	22,886
Net transfers to Separate Accounts	(114,341,710)
Aggregate Write-Ins for Deductions	<u>7,177</u>
Total Expenses	<u>\$59,087,462</u>
 Net gain from operations before dividends to policyholders and federal income taxes	 \$12,384,338
Dividends to policyholders	<u>888,782</u>

Nationwide Life and Annuity Company of America

Net gain from operations after dividends to policyholders and before federal income taxes	11,495,556
Federal income taxes incurred	<u>\$3,271,855</u>
Net gain from operations after dividends to policyholders and federal income taxes and before realized capital losses	\$8,223,701
Net realized capital gains	<u>3,906,317</u>
NET INCOME	<u>\$12,130,018</u>

**CAPITAL AND SURLUS ACCOUNT**

Capital and Surplus, December 31, 2003	\$46,318,752
Net income	12,130,018
Change in net unrealized capital gains	164,859
Change in nonadmitted assets and related items	1,273,449
Change in asset valuation reserve	471,893
Surplus contributed to Separate Account during period	3,071,877
Other changes in surplus in Separate Accounts Statement	(3,550,093)
Net change in deferred Tax Asset	<u>(5,348,063)</u>
Capital and Surplus, December 31, 2004	<u>\$54,532,692</u>

**SCHEDULE OF EXAMINATION ADJUSTMENTS**

The examiners have not made any adjustments to the Company's December 31, 2004 financial statements.

**NOTES TO FINANCIAL STATEMENTS**

**Note 1. Bonds** **\$314,089,953**

The admitted value of bonds was \$314,089,953 and comprises 76.1% of NLACA's total assets (excluding Separate Accounts). Over 96% of these investments are rated 1 and 2 by the NAIC and less than 4% are rated between 3 and 6. The Company's bond portfolio is comprised of U.S. Government securities and investment grade public utility and corporate securities.

NAIC Jumpstart exception reports were reviewed and it was noted that multiple investments had not been submitted to the NAIC SVO for evaluation in a timely manner. A similar exception was noted during the prior examination. Therefore,

**It is again recommended that the Company comply with NAIC investment guidelines by submitting newly acquired unlisted securities to the NAIC SVO within 120 days of purchase.**

The review of the Company's custody agreement with the Bank of New York noted that the agreement does not include the required indemnification clause. The indemnification clause provides that the bank should be responsible to make the Company whole in the event that securities are lost or stolen as a result of the banks negligence and/or misconduct. As such,

**It is recommended that the Company amend its custody agreement with the Bank of New York to include language substantially similar to the language included in the NAIC's Indemnification Clause.**

**Note 2. Mortgage Loans**

**\$67,114,276**

The admitted value of mortgage loans was \$67,114,276 and comprised 16.3% of the Company NLACA's total assets (excluding separate accounts). The Company continues their Master Loan Participation Agreement with the parent NLICA which was updated in 2002 to reflect the ownership changes from the Provident Group to the Nationwide Group. The Master Loan Participation Agreement, which is updated from time to time as mortgages are added to NLACA's mortgage portfolio, provides for the purchase of a continuing, undivided, fractional participation interest in mortgage loans held by NLICA. For this proportionate share, NLACA receives a Participation Certificate evidencing its share in the equity of the applicable loan.

The mortgage portfolio changes regularly as new mortgages are added and old ones mature. NLACA's share of participation in each loan is to be approved by the Board of

Directors. The Company could not provide documentation demonstrating the Company's compliance with Section 1323(e) of the Delaware Insurance Code. This section establishes the legal requirements for an insurance company to invest in mortgage participations. This concern was noted during the prior examination. Therefore,

**It is again recommended that the Company develop and retain documentation demonstrating compliance with Section 1323(e) of the Delaware Insurance Code for investments in mortgage participations.**

**Note 3**

**Separate Accounts**

(Assets) **\$639,899,402**  
(Liabilities) **\$639,899,402**

The NLACA Separate Accounts as of December 31, 2004, represented segregated funds and investments by the Company for the benefit of variable annuity contract owners and variable life insurance policyholders. Historically the Company has offered variable annuity and life insurance products to the public through agents and brokers. The Company discontinued active sales of its variable annuity products subsequent to its acquisition by NFS in late 2002. As of the December 31, 2004, a significant amount of this business remains on the Company's books.

The Variable Annuity and the Variable Life Separate Accounts of NLACA were established by the Board Directors on May 9, 1991, under Pennsylvania Law though NLACA subsequently redomesticated as a Delaware Insurance Company, the Variable Accounts are now subject to regulation by the Delaware Insurance Department. NLACA has registered the Variable Accounts with the Securities and Exchange Commission (the "SEC") as Unit Investment Trusts under the Investment Company Act of 1940.

The assets of the Variable Account are owned by NLACA; however, these assets are held separate from other assets and are not part of NLACA's General Account. The portion of the assets of the Variable Account equal to the reserve or other contract liabilities of the Variable

Account will not be charged with the liabilities that arise from any other business NLACA conducts.

The Separate Account Asset balance is comprised of the following two assets:

Common Stocks	\$639,899,434
Miscellaneous Receivables	(32)

The Company has multiple sub-accounts in its Separate Account. Each sub-account has the flexibility to invest in a variety of common stock mutual funds depending upon the investment objectives.

Separate Account liabilities were comprised of the following four accounts:

Aggregate Reserves	\$ 609,395,037
Other Transfer to General Accounts	30,066,528
Remittances and Items not Allocated	211
Company Participation in Separate Account.	<u>437,626</u>
Total	<u>\$ 639,899,402</u>

The income, gains or losses, whether or not realized, from the assets of each Sub-account of the Variable Account are credited to or charged against the Sub-account without regard to any other income, gains or losses. NLACA may accumulate the charge for expenses and expense risk, mortality gains or losses and investment results in the variable account applicable to those assets that are in excess of the net assets supporting the contract.

**Note 4. Aggregate Reserves for Life Policies and Contracts**

**\$337,542,621**

Per Exhibit 5 of the 2004 Annual Statement, the Company's reserves were comprised of the following:

Nationwide Life and Annuity Company of America

	<u>Total</u>	<u>Ordinary</u>	<u>Group</u>
Life insurance	\$73,231,361	\$73,231,361	\$0
Reinsurance ceded	<u>(12,814,117)</u>	<u>(12,814,117)</u>	
Net	\$60,417,244	\$60,417,244	
Annuities	\$267,195,261	\$267,104,072	\$91,189
Supplemental contract with life contingencies	\$7,265,808	\$7,265,808	
Accidental death benefits	\$0	\$0	
Disability- Active lives	\$223,991	\$223,991	
Reinsurance ceded	<u>(191,773)</u>	<u>(191,773)</u>	
Net	\$32,218	\$32,218	
Disability- Disabled lives	\$1,633,997	\$1,248,448	\$385,549
Reinsurance ceded	<u>(753,757)</u>	<u>(368,208)</u>	(\$385,549)
Net	\$880,240	\$880,240	
Miscellaneous	\$3,683,002	\$3,683,002	
Reinsurance ceded	<u>(1,931,152)</u>	<u>(1,931,152)</u>	
Net	<u>\$1,751,850</u>	<u>\$1,751,850</u>	
TOTALS	<u>\$337,542,621</u>	<u>\$337,451,432</u>	<u>\$91,189</u>

The firm of INS Consultants, Inc. was retained by the Delaware Insurance Department to perform the review of the aggregate reserve reported by the Company. The underlying data which supports these reserves was tested by the examiners using statistical samples selected by the actuaries. No material exceptions were noted during the testing.

In addition, the actuaries reviewed the reserve factors and methodologies, Company's cash flow testing results, and other actuarial assumptions. The Company's reserves were accepted as reported by the Company.

**STATUS OF PRIOR EXAMINATION RECOMMENDATIONS**

The prior examination report as of December 31, 2000, contained eight recommendations. The recommendations along with their current status are as follows:

- It is recommended that the Company comply with Section 4919 of the Insurance Code by promptly notifying the Insurance Commissioner of any change of personnel among its directors or principal officers.

*The Company has complied with this recommendation.*

- It is recommended that the Company comply with investment guidelines by submitting newly acquired securities to the NAIC SVO within 120 days of purchase.

*The Company has not complied with this recommendation. See the Notes to Financial Statements Section of this Report for additional details.*

- It is recommended that in the near future the Company have in place supporting documentation showing proof of approved percentage allocations for new mortgage loans between PLACA and PMLIC.

*PLACA and PMLIC now being NLACA and NLICA, respectively. The Company has not complied with this recommendation. See the Notes to Financial Statements section of this Report for additional details.*

- It is recommended that the Company classify expenses paid by PMLIC on behalf of PLACA as Payable to Parent, Subsidiaries and Affiliates until reimbursed.

*The Company has complied with this recommendation.*

- It is recommended that the Company take actions to clear reconciling items in a timelier manner.

*The Company has complied with this recommendation.*

- It is recommended that the Company improve its future Actuarial Opinion Memoranda.

*The Company has complied with this recommendation.*

- It is recommended that the Company review its methodology utilized in the year end estimation for Guaranty Fund Assessments so a more accurate estimation will be made for future Annual Statement reporting.

*The Company has complied with this recommendation.*

- It is recommended that the Company modify its Service Agreement to incorporate the expense allocation guidelines which are currently being used.

*The Company has complied with this recommendation.*

### **RECOMMENDATIONS**

The Company's attention is directed to the following examination recommendations:

- 1) It is recommended that the Company's Board of Directors review and approve the Independent CPA Audit Report and the Actuarial Opinion each year at its Annual Meeting (Page 5 - Corporate Records).**
- 2) It is again recommended that the Company comply with investment guidelines by submitting newly acquired unlisted securities to the NAIC SVO within 120 days of purchase (Page 18 - Notes to Financial Statements).**
- 3) It is recommended that the Company amend its custody agreement with the Bank of New York to include language substantially similar to the language included in the NAIC's Indemnification Clause (Page 18 - Notes to Financial Statements).**
- 4) It is again recommended that the Company develop and retain documentation demonstrating compliance with Section 1323(e) of the Delaware Insurance Code for investments in mortgage participations (Page 19 - Notes to Financial Statements).**

### **SUMMARY COMMENTS**

The following significant events were noted by the examination:

- On October 1, 2002 the Company along with PMLIC and Provident Mutual International Life Insurance Company (PMILIC) were acquired by Nationwide Financial Services (NFS), which is an operating division of Nationwide Mutual Insurance Company and Nationwide Mutual Fire Insurance Company. At the time of the acquisition, which was approved by the Delaware Insurance Department, the Company's name was changed to its current title. PMLIC remained as the Company's parent and its name was changed to Nationwide Life Insurance Company of America (NLICA). PMILIC remained as a Delaware domiciled affiliate of the Company and its name was changed to Nationwide Life Insurance Company of Delaware (NLICD).

- Although the Company still maintains blocks of individual variable and fixed annuities, a strategic decision was made at the time of the Company's acquisition by NFS to write all future individual fixed and variable annuity products through other life insurance subsidiaries of NFS. As a result the Company experienced a shift in its product mix. In the year prior to the acquisition, the Company's individual life insurance represented 27% of total individual and annuity considerations; by 2004 the amount increased to 85% of the total because the Company was not actively writing variable annuities.
- Although separate accounts decreased significantly during the examination period, it continues to be significant to the operations of the Company. As of December 31, 2004 the \$639,899,402 in Separate Accounts Assets constituted 60.8% of NLACA's total admitted assets.

**CONCLUSION**

The following schedule shows the changes between the current and prior examinations using the results of the prior examination with changes between the examination periods:

Description	<u>Current Examination</u>	<u>December 31, 2000 Examination</u>	Changes Increases (Decreases)
Assets	\$1,052,411,277	\$1,552,564,294	(\$500,153,017)
Liabilities	\$997,878,585	\$1,509,192,304	(\$511,313,719)
Capital & Surplus	\$54,532,692	\$43,371,990	\$11,160,702

In addition to the undersigned, J. Ray Hartsfield, CFE, and John White participated in the examination. James J. Blair Jr., CPA, CFE, served as the examination supervisor. Actuarial assistance was provided by Tom Bickerstaff, ASA, MAAA, of INS Consultants, Inc.

Respectfully submitted,




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Gregg S Bealuk, CFE  
Examiner in Charge  
Department of Insurance  
State of Delaware