



NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES
REPORT ON MARKET CONDUCT EXAMINATION
OF THE
NEW YORK LIFE INSURANCE COMPANY

CONDITION:

DECEMBER 31, 2014

DATE OF REPORT:

DECEMBER 23, 2016

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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EXAMINER:

VICTOR AGBU

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NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Maria T. Vullo
Superintendent

July 25, 2018

Honorable Maria T. Vullo
Superintendent of Financial Services
New York, New York 10004

Madam:

In accordance with instructions contained in Appointment No. 31290, dated March 16, 2015 and annexed hereto, an examination has been made into the condition and affairs of New York Life Insurance Company, hereinafter referred to as “the Company” or “NYLIC,” at its home office located at 51 Madison Avenue, New York, NY 10010.

Wherever “Department” appears in this report, it refers to the New York State Department of Financial Services.

The report indicating the results of this examination is respectfully submitted.

1. EXECUTIVE SUMMARY

The material violations and recommendations contained in this report are summarized below.

- The Company violated Insurance Regulation No. 74, 11 NYCRR Section 53-3.5(b) by failing to provide a basic illustration conforming to the policy as issued and signed no later than the time the policy was delivered. (See item 5B of this report.)
- The examiner recommends that the Company take the following steps to comply with Insurance Regulation No. 74, 11 NYCRR Sections 53-3.1(d) and 53-3.5(a):
 1. Develop a system for monitoring the activities of its producers or other authorized representatives, specifically regarding disclosure requirements, and subsequently taking appropriate action where producers fail to submit a signed illustration at the point of sale with the application.
 2. Immediately discontinue the use of Company Form No. 23004 as the use of a computer screen illustration is contrary to Department Regulation No. 74.
 3. Use the certification referred to in Section 53-3.5(b) of Department Regulation No. 74 that only allows a single option to be used in rare instances where the printed illustration that the producer or the authorized representative of the insurer brought with him/her for the potential sale does not match what the applicant actually applies for.
 4. Communicate to its producers the requirements of Department Regulation No. 74 with respect to products identified as those that will be marketed with an illustration. (See item 5B of this report.)
- The Company violated Section 3201(b)(1) of the New York Insurance Law by altering approved policy forms and failing to file such policy forms with the superintendent for approval, and by utilizing forms not approved by the superintendent for use in New York State. (See item 5B of this report.)
- The Company violated Section 3211(b)(2) of the New York Insurance Law by failing to include the required statement in the premium due notice. (See item 5C of this report.)
- The examiner recommends that the Company conduct a study to identify insureds who have died within one year of the lapse of their policy and who received premium notice that failed to comply with Section 3211 of the New York Insurance Law. The study should include a crosscheck through the social security death master file.
- The examiner also recommends that the Company pay the appropriate beneficiary or beneficiaries the total death benefit due under the policies where death occurred within one year of policy lapse processing. (See item 5C of this report)

- The Company violated Sections 3227(a) and (b) of the New York Insurance Law when it failed to calculate and pay the appropriate rate of interest on certain surrenders where the contract rate of interest exceeded the statutory rate. (See item 5C of this report.)

2. SCOPE OF EXAMINATION

This examination covers the 5-year period from January 1, 2010, through December 31, 2014. As necessary, the examiner reviewed matters occurring after December 31, 2014, but prior to the date of this report (i.e., the completion date of the examination). The last examination of the Company covered the period of January 1, 2005, through December 31, 2009.

The examination comprised a review of market conduct activities and utilized the National Association of Insurance Commissioners' *Market Regulations Handbook* or such other examination procedures, as deemed appropriate, in such review.

The examiner reviewed the corrective actions taken by the Company with respect to the market conduct violations and recommendations contained in the prior report on examination. The results of the examiner's review are contained in item 6 of this report.

This report on examination is confined to comments on matters which involve departure from laws, regulations or rules, or which require explanation or description.

3. DESCRIPTION OF COMPANY

The Company was originally chartered in May 1841 as Nautilus Insurance Company and was authorized to write fire and marine insurance, inland navigation and transportation risks. The charter was amended in April 1843 to permit Nautilus Insurance Company to organize as a mutual company and write life insurance. The by-laws were amended in June 1845 to restrict the Company's business to "insurance on life and all and every insurance pertaining to life." The Company's name was officially changed to New York Life Insurance Company on April 5, 1849.

4. TERRITORY AND PLAN OF OPERATIONS

The Company is authorized to write life insurance, annuities and accident and health insurance as defined in paragraphs 1, 2 and 3 of Section 1113(a) of the New York Insurance Law.

The Company is licensed to transact business in all 50 states, the District of Columbia, Canada and Puerto Rico.

The following tables show the percentage of direct premiums received, by state, and by major lines of business for the year 2014:

<u>Life Insurance Premiums</u>		<u>Annuity Considerations</u>	
California	14.4%	Delaware	69.3%
New York	12.6	Maryland	11.0
Texas	7.5	California	4.9
Florida	4.5	New York	3.3
New Jersey	<u>4.0</u>	Nevada	<u>2.8</u>
Subtotal	43.1%	Subtotal	91.4%
All others	<u>56.9</u>	All others	<u>8.6</u>
Total	<u>100.0%</u>	Total	<u>100.0%</u>
<u>Accident and Health Insurance Premiums</u>		<u>Deposit Type Funds</u>	
New York	16.2%	Delaware	75.9%
California	12.7	New York	19.3
Texas	7.0	Pennsylvania	2.7
Florida	4.6	Iowa	1.0
Pennsylvania	<u>3.5</u>	Ohio	<u>0.6</u>
Subtotal	43.9%	Subtotal	99.5%
All others	<u>56.1</u>	All others	<u>0.5</u>
Total	<u>100.0%</u>	Total	<u>100.0%</u>

Others

New York	47.3%
Pennsylvania	9.0
Massachusetts	5.6
Georgia	4.9
Minnesota	<u>4.1</u>
Subtotal	70.9%
All others	<u>29.1</u>
Total	<u>100.0%</u>

Approximately 97% of the Company's policies are written on a participating basis. The Company writes whole life and term life insurance, group life and group accident and health membership association insurance, long-term care insurance, structured settlements and group annuity contracts.

The Company's individual products are distributed through career agents and brokers and its group products by direct response solicitation and through brokers.

5. MARKET CONDUCT ACTIVITIES

The examiner reviewed various elements of the Company's market conduct activities affecting policyholders, claimants, and beneficiaries to determine compliance with applicable statutes, regulations, and the operating rules of the Company.

A. Advertising and Sales Activities

The examiner reviewed a sample of the Company's advertising files and the sales activities of the agency force, including trade practices, solicitation, and the replacement of insurance policies.

Insurance Regulation No. 34-A, 11 NYCRR Section 219.4 states, in part:

“(a)(1) Advertisements shall be truthful and not misleading in fact or in implication. The format and content of an advertisement of a life insurance policy or annuity contract shall be sufficiently complete and clear so that it is neither misleading nor deceptive, nor has the capacity or tendency to mislead or deceive . . .
(h) Any insurer using the phrase low cost or similar term, to characterize its operation, policy portfolio, or a particular policy form shall, upon request of the superintendent, submit to the superintendent such evidence as it may have to substantiate such use.”

Advertising file number 510584 advertises the Company's whole life policy rider in English and Chinese. The English version of the advertisement that can also be accessed on the Company's website states, “Provides additional low-cost term coverage with premiums that are guaranteed for the first ten years.” The Company acknowledged that for the type of product advertised, premiums will increase every year for the first ten years by a guaranteed amount each year. An illustration showing the yearly increases in premium would be needed at the time of application so as not to mislead the client into believing that the premium will not increase during the first ten years.

The Chinese version, however, states, “Provides additional low-cost term coverage with premium guaranteed not to increase in the first ten years.” This is clearly stating that premium will not increase during the first ten years, an assertion that is untrue as the illustration reviewed showed that premium will increase by a guaranteed amount each year during the first ten years. The Company stated that the Chinese version of the advertisement is consistent with the English version.

The Company violated Insurance Regulation No. 34-A, 11 NYCRR Section 219.4(a)(1) by disseminating advertisements that are not sufficiently complete and clear, thereby having the capacity or tendency to mislead.

The examiner requested the Company to substantiate the use of the phrase “additional low-cost coverage” in its advertisement. The Company stated that “The term ‘low-cost’ refers to the additional, optional term coverage provided by the Yearly Convertible Term (‘YCT’) rider. The total amount of coverage (rider plus the policy) has a lower premium when it is a mix of whole life with a term rider than when it is solely made up of whole life.”

The review indicated that the YCT rider referred to in the advertisement does not have a guaranteed level premium and therefore should not be compared to a whole life product that has a guaranteed level premium.

The Company violated Insurance Regulation No. 34-A, 11 NYCRR Section 219.4(h) by using the phrase “low-cost” in its advertisement without substantiating that such is the case.

B. Underwriting and Policy Forms

The examiner reviewed a sample of underwriting files, both issued and declined, and the applicable policy forms.

1. Insurance Regulation No. 74, 11 NYCRR Section 53-3.1(d) states, in part:

“If a policy form is identified by the insurer as one to be marketed with an illustration, a basic illustration prepared and delivered in accordance with this Subpart is required . . . “

Insurance Regulation No. 74, 11 NYCRR Section 53-3.5 states, in part:

“(a) If a basic illustration is used by an insurance producer or other authorized representative of the insurer in the sale of a life insurance policy and the policy is applied for as illustrated, a copy of that illustration, signed in accordance with this Subpart, shall be submitted to the insurer at the time of policy application. A copy also shall be provided to the applicant. If the policy is issued other than as applied for, a revised basic illustration conforming to the policy as issued shall be sent with the policy. The revised illustration shall conform to the requirements of this Subpart, shall be labeled "Revised Illustration" and shall be signed and dated by the applicant or policyowner and producer or other authorized representative of the insurer no later than the time the policy is delivered. A copy shall be provided to the insurer and the policyowner.

(b) If no illustration is used by an insurance producer or other authorized representative of the insurer in the sale of a life insurance policy or if the policy is applied for other than as illustrated, the producer or representative shall certify to that effect in writing on a form provided by the insurer. On the same form the applicant shall acknowledge that no illustration conforming to the policy applied for was provided and shall further acknowledge an understanding that an illustration conforming to the policy as issued will be provided no later than at the time of policy delivery . . . If the policy is issued, a basic illustration conforming to the policy as issued shall be sent with the policy and signed no later than the time the policy is delivered. . . .”

In a guidance note for life insurance policy illustrations issued by the Superintendent and published on the Department’s website on August 22, 2008, insurers were advised:

“ . . . Some insurers may be incorrectly relying upon the NAIC Q&A document with respect to the use of sales illustrations displayed on a computer screen. Typically, in this situation an illustration displayed on a computer screen is used in the sale of a life insurance policy, but the applicant is not furnished a hard copy of the illustration at time of application. An illustration conforming to the policy as issued is then provided no later than policy delivery. Section 9.12 of the NAIC Q&A document states in part:

‘9.12 For Section 9B (1), is it permissible to show an illustration conforming to the model requirements on a computer screen, and obtain the signature at policy delivery?’

Where a computer screen illustration conforming to the regulation is used and no hard copy is furnished at the time of application, an acknowledgment, signed by the applicant and agent, should be obtained and submitted with the application, conforming to the following requirements: . . .

2. An acknowledgment consistent with the provisions of Section 9B (1) shall be obtained so that the applicant is aware that a copy of an illustration conforming to the policy as issued will be provided to him or her no later than at the time of policy delivery. . . .’

It is the position of the Department that such a delay in the delivery of a copy of the illustration conflicts with Regulation 74. Section 53-3.5(a) of Regulation 74, which requires a copy of an illustration to be signed by the applicant and furnished to the applicant at the time of application, states in relevant part:

‘(a) If a basic illustration is used by an insurance producer or other authorized representative of the insurer in the sale of a life insurance policy and the policy is applied for as illustrated, a copy of that illustration, signed in accordance with this Subpart, shall be submitted to the insurer at the time of policy application. A copy also shall be provided to the applicant.’

It is the position of the Department that, regardless of the format or method by which the illustration was shown to the applicant, a copy of the illustration signed by both the applicant and company's authorized representative must be furnished to the applicant at the time of application . . .”

The examiner reviewed a sample of 71 new business applications received during the examination period for products identified by the Company as those that will be marketed with an illustration. In 69 out of the 71 (97.2%) new business files reviewed, the agent did not submit a signed illustration with the application. The agent certified that no illustration conforming to the policy was provided. Based upon the 2008 guidance note for life insurance policy illustrations, it is the position of the Department that a delay in the delivery of a copy of the illustration conflicts with Insurance Regulation No. 74, 11 NYCRR Section 53-3.5(a), which requires a copy of an illustration to be signed by the applicant and furnished to the applicant at the time of application. The Company failed to follow the guidance for life insurance policy illustrations published on the Department's website on August 22, 2008, but continued its procedure of not providing prospective applicants with an illustration at the time of policy application.

The Company violated Insurance Regulation No. 74, 11 NYCRR Section 53-3.5(a) by failing to provide a copy of the illustration to prospective applicants at the time of application.

In four out of the 69 (5.8%) individual life policies reviewed, where an illustration was not provided at the time of sale of the policy, the Company failed to provide a basic illustration conforming to the policy as issued and signed no later than the time the policy was delivered.

A review of individual life conversion policies also revealed that in two out of ten (20.0%) conversions, the Company failed to provide a basic illustration conforming to the policy as issued and signed no later than the time the policy was delivered.

The examiner also reviewed a sample of 60 policies issued on the lives of minors during the examination. In three out of the 60 (5.0%) policies reviewed, the Company failed to provide a basic illustration conforming to the policy as issued and signed no later than the time the policy was delivered.

The Company violated Insurance Regulation No. 74, 11 NYCRR Section 53-3.5(b) by failing to provide a basic illustration conforming to the policy as issued and signed no later than the time the policy was delivered.

The examiner recommends that the Company take the following steps to comply with Insurance Regulation No. 74, 11 NYCRR Sections 53-3.1(d) and 53-3.5(a):

- i. Develop a system for monitoring the activities of its producers or other authorized representatives, specifically regarding disclosure requirements, and subsequently taking appropriate action where producers fail to submit a signed illustration at the point of sale with the application.
- ii. Immediately revise Company Form 23004 as the use of a computer screen illustration is contrary to Insurance Regulation No. 74.
- iii. Use the certification referred to in Insurance Regulation No. 74, 11 NYCRR Section 53-3.5(b) that only allows an option to be used in rare instances where the printed illustration that the producer or the authorized representative of the insurer brought with him/her for the potential sale does not match what the applicant actually applies for.
- iv. Communicate to its producers the requirements of Insurance Regulation No. 74 with respect to products identified as those that will be marketed with an illustration.

2. Section 3201 of the New York Insurance Law states, in part:

“(a) . . . policy form means any policy, contract, certificate, or evidence of insurance and any application therefor, or rider or endorsement thereto . . .

(b)(1) No policy form shall be delivered or issued for delivery in this state unless it has been filed with and approved by the superintendent as conforming to the requirements of this chapter and not inconsistent with law . . .”

I. The examiner’s review of policy forms used by the Company revealed that the Company altered seven of its previously approved policy forms by either including additional language or deleting language contained in the approved forms. The Company used the altered policy forms during the examination period. The examiner noted following issues:

- Form GMR-Pre-Ex-NY – the Company altered the language included in the “Preexisting Condition” section of the approved form.
- Form GMR-NFV – the Company altered the “Non-Forfeiture Values” section of the form by deleting the language about paid-up insurance that was included in the approved form.
- Forms GMR-L/AB/ADD and GMR-DI – the Company altered the “Exclusions” section of the forms by including clauses that were not included in the approved form.

- Form GMR-P-GEN – the Company altered the form to include a section titled “Group Retrospective Rate Credit” in the General Provisions that was not included in the approved form.
- Form GMR-CDI – the Company altered the approved form to include a section titled “Extension of Benefits” and deleted a section in the approved form titled “Grace Period Benefits.”
- Form BA-WS-NY.11 – the Company deleted the language included in the “Covered Loss” section of the approved form.
- Form GMR-L/DL C – this form hasn’t been approved by the Department. The Company explained that the form number was a typo and that the correct number should have been GMR-L/ADD. However, the Company was cited in the prior report on examination for using the same altered form GMR-L/ADD.

The Company stated that most of the exceptions cited above by the examiner are permitted due to the language included in the approved Explanation of Variability (“EOV”) for each requisite form. However, an approval for use of variability requires the nature and scope of the variations to be clearly indicated, and to include any alternative language, which the Company failed to do. The Company should have submitted the altered forms to the superintendent for approval prior to their use.

II. The Company does not maintain copies of policy contracts. However, its practice is to re-create policy files on an as-needed basis. Because of the Company’s practice, the examiner obtained and reviewed a re-created employee whole life policy Form 213-52.13. The review revealed that the Company added the following language in the premium section of the policy form: “At other times, this value depends on the date to which premiums have been paid, and on how much time has passed since the last policy anniversary.” The added language was not in the approved form.

In addition, the examiner reviewed a re-created level premium convertible term insurance policy form 210-450.13. The review revealed that the Company deleted the following language in the “LCT Rider Data Page” section of the policy form: “THE STANDARD CONVERSION PERIOD FOR THIS POLICY IS [10] YEARS AFTER THE ISSUE DATE.” The deleted

language was not indicated as a variable material in the original filing so it should not have been deleted from the approved form.

III. The examiner reviewed a sample of 20 individual life policies issued on the lives of minors during the examination period. In all cases the Company used an unapproved Form 21620.100NY to issue temporary insurance coverage during the examination period.

IV. The examiner reviewed a sample of 35 level premium convertible term life policies and noted that in all cases the Company used an unapproved indeterminate premium disclosure Form 22968.

The Company violated Section 3201(b)(1) of the New York Insurance Law by altering approved policy forms and failing to file such policy forms with the superintendent for approval, and by using forms not approved by the superintendent for use in New York State.

Section 3203(a) of the New York Insurance Law states, in part:

“All life insurance policies, except as otherwise stated herein, delivered or issued for delivery in this state, shall contain in substance the following provisions, or provisions which the superintendent deems to be more favorable to policyholder:

...
 (8)(A) that, for a policy not in default and where three full years' premiums have been paid or, in the case of a policy where the policyholder may vary the amount and frequency of premiums to be paid to the insurer, after three years from the date of issue of the policy, the policyholder shall be entitled to a loan in an amount not exceeding the loan value, under the conditions specified in section four thousand two hundred twenty-two of this chapter. However, a policyholder shall be entitled to a loan from an equity index account that credits additional amounts less frequently than annually at any time the equity index policy has a loan value. . . .”

The Company's used policy form numbers 213-50.13, 213-52.13, 208-50.13, 207-52.13 and 211-20C.13 during the examination period. The forms include language that prohibits policyholders from requesting policy loans beginning on the policy anniversary when the insured is age 121. The prohibition of policy loans is contrary to the requirement of Section 3203(a)(8)(A) of the New York Insurance Law, which states that the policyholder shall be entitled to a loan.

The Company violated Section 3203(a)(8) of the New York Insurance Law by stating on a policy contract that no loans can be requested after the policy anniversary when the insured's attained age is 121.

The Company's filing, pursuant to Circular Letter No. 6 (2004) certified compliance with all applicable laws, regulations, and circular letters, when in fact, the policy forms failed to comply with Section 3203(a)(8) of the New York Insurance Law by stating that no loans can be requested after the policy anniversary when the insured is age 121.

The Company violated Section 3201(b)(1) of the Insurance Law by issuing individual life insurance policy, utilizing forms that failed to conform to the statutory requirements for the type of product.

4. Section 3203(a) of the New York Insurance Law states, in part:

“All life insurance policies, except as otherwise stated herein, delivered or issued for delivery in this state, shall contain in substance the following provisions, or provisions which the superintendent deems to be more favorable to policyholder:

. . .

(10) that the policy shall be reinstated at any time within three years from the date of default, unless the cash surrender value has been exhausted or the period of extended insurance has expired, if the policyholder makes application, provides evidence of insurability, including good health, satisfactory to the insurer, pays all overdue premiums with interest at a rate not exceeding six per centum per annum compounded annually, and pays or reinstates any other policy indebtedness with interest at a rate not exceeding the applicable policy loan rate or rates determined in accordance with the policy's provisions. This provision shall be required only if the policy provides for termination or lapse in the event of a default in making a regularly scheduled premium payment. . . .”

Section 4221 of the New York Insurance Law states, in part:

“(a) In the case of policies issued on or after the operative date of this section as defined in subsection (p) hereof, no policy of life insurance, except as stated in subsection (o) hereof, shall be delivered or issued for delivery in this state unless it shall contain in substance the following provisions, or corresponding provisions which in the opinion of the superintendent are at least as favorable to the defaulting or surrendering policyholder as are minimum requirements hereinafter specified and are essentially in compliance with subsection (n) hereof:

(1) That, in the event of default in any premium payment, the company will grant, upon proper request not later than sixty days after the due date of the premium in default, a paid-up nonforfeiture benefit on a plan stipulated in the policy, effective as of such due date, of such value as may be hereinafter specified. In lieu of such stipulated paid-up nonforfeiture benefit, the company may substitute, upon proper request not later than sixty days after the due date of the premium in default, a more favorable alternative paid-up nonforfeiture benefit which provides a greater amount or longer period of death benefits . . .

(3) That a specified paid-up nonforfeiture benefit shall become effective as specified in the policy unless the person entitled to make such election elects another available option not later than sixty days after the due date of the premium in default. . . .

(b)(1) In the case of contracts issued on or after the operative date of this section as defined in subsection (p) hereof and prior to the operative date of section four thousand two hundred twenty-three of this article, no contract of annuity or pure endowment, except as stated in subsection (o) hereof, shall be delivered or issued for delivery in this state unless it contains in substance the following provisions, or corresponding provisions which in the opinion of the superintendent are at least as favorable to the defaulting or surrendering contract holder: . . .

(B) A statement of the mortality table, if any, and interest rate used in calculating the paid-up nonforfeiture benefits available under the contract, together with a table showing either the cash surrender value or the paid-up nonforfeiture benefit, if any, available on each anniversary of the contract either during the first twenty contract years or during the term of stipulated payments, whichever is shorter, such benefits to be calculated upon the assumption that there are no dividends or paid-up additions credited to the contract and that there is no indebtedness to the company on the contract . . . ”

“(k)(9)(B)(ii) Under any paid-up nonforfeiture benefit, including any paid-up dividend additions, any cash surrender value available, whether or not required by subsection (a) hereof, shall be calculated on the basis of the mortality table and rate of interest used in determining the amount of such paid-up nonforfeiture benefit and paid-up dividend additions, if any.”

The Company filed policy Form number 213-52.13 under the certified compliance process. Several sections of this form contain language that is contrary to the requirements of Section 4221 of the New York Insurance Law. Section 4221(a)(1) requires that there be a specified paid-up nonforfeiture benefit upon default of any premium payment. The language in the form implies that the specified paid-up nonforfeiture benefit will not become effective until 60 days after the date of default.

The Company violated Section 4221(a)(1) of the New York Insurance Law by failing to include in its life insurance policy form, a provision that requires a policyholder to be given a 60-day period, upon proper notice after the due date of the premium in default, to choose a paid-up non-forfeiture benefit on a plan stipulated in the policy.

In addition, options 1 and 2 of the “Non-Payment of Premiums” section of the form includes language that when combined could potentially prevent the insured from receiving a paid-up non-forfeiture benefit.

The Company violated Section 4221(a)(3) of the New York Insurance Law by failing to include in its policy form a provision that requires a paid-up non-forfeiture benefit.

The “Non-Payment of Premiums” section of the form includes language that would not allow for reinstatement if the policy was continued under either the Reduced Paid-Up (“RPU”) or Extended Term Insurance (“ETI”) non-forfeiture benefit.

The Company violated Section 3203(a)(10) of the New York Insurance Law by failing to include in its life insurance policy form a provision stating that the policy shall be reinstated at any time within three years of the date of default, unless the cash surrender value has been exhausted or the period of ETI has expired.

Based on the language included in the form, it appears that the Company wants to use substandard mortality for policies electing ETI, but standard mortality for RPU and the cash values of the policy. This is not allowed as the policy is not identified as substandard and policy cash values are determined based on standard mortality. Section 4221(b)(1) of the New York Insurance Law requires that policies include a statement of the mortality table, if any, and the interest rate used in calculating the paid-up nonforfeiture benefits under the contract. Also, Section 4221(k)(9)(B)(ii) of the New York Insurance Law requires that for any paid-up nonforfeiture benefit, any cash surrender value available shall be calculated on the basis of the mortality table and the rate of interest used in determining the amount of such paid-up nonforfeiture benefit.

The Company violated Sections 4221(b)(1) and 4221(k)(9)(B)(ii) of the New York Insurance Law when the ETI nonforfeiture provision stated that the insured’s class of risk would be used in determining the period of ETI that would be provided.

Section 3227 of the New York Insurance Law states, in part:

“(a) Interest . . . shall be payable by life insurers . . . upon: (1) the value of policies surrendered by policyholders for cash values . . . Such interest payment shall be added to and be a part of the total sum paid or be paid separately at the option of the insurer.

(b) The interest . . . shall be calculated from the date the documentation necessary to complete the transaction is received by the insurer and shall be payable if the

funds are not mailed or delivered by the insurer within ten working days of said receipt.”

The Company used policy form numbers 213-50.13 and 213-52.13 that included the language, “Interest will be paid from the date of surrender on any payment deferred for more than 10 days on any amount deferred for 30 days or more . . . “

The Company received approval for the two policy forms under the Department’s Circular Letter No. 6 (2004) certified compliance process. However, the inclusion of the words, “on any amount deferred for 30 days or more” in the policy forms is contrary to Section 3227(b) of the New York Insurance Law, which requires interest to be paid on amounts deferred for more than ten working days.

The Company violated Section 3227(b) of the New York Insurance Law by stating in Policy Forms 213-50.13 and 213-52.13 that interest will be paid on any surrender payment deferred for more than ten days on any amount deferred for 30 days or more.

The Company’s filing pursuant to Circular Letter No. 6 (2004) certified compliance with all applicable laws, regulations, and circular letters, when in fact, the policy forms failed to comply with Section 3227(b) of the New York Insurance Law.

The Company violated Section 3201(b)(1) of the New York Insurance Law by issuing individual life insurance policy forms that failed to conform to the statutory requirements for the type of product.

C. Treatment of Policyholders

The examiner reviewed a sample of various types of claims, surrenders, changes and lapses. The examiner also reviewed the various controls involved, checked the accuracy of the computations and traced the accounting data to the books of account.

1. Section 3211 of the New York Insurance Law states, in part:

“Notice of premium due under life or disability insurance policy . . . shall: . . .

(b)(2) state the amount of such payment, the date when due, the place where and the person to whom it is payable; and shall also state that unless such payment is made on or before the date when due or within the specified grace period thereafter, the policy shall terminate or lapse . . .”

The examiner reviewed a sample of 15 7-year term life policies that lapsed during the examination period. These policies are a closed-block and have not been sold since 1995. For all premium due notices issued during the examination period, the Company failed to include the statement that unless premium payment is made on or before the date when due or within the specified grace period thereafter, the policy shall lapse except for any cash surrender value or non-forfeiture benefit.

The Company violated Section 3211(b)(2) of the New York Insurance Law by failing to include the required statement in the premium due notice.

The examiner recommends that the Company conduct a study to identify insureds who have died within one year of the lapse of their policy and who received premium notice that failed to comply with Section 3211 of the New York Insurance Law. The study should include a crosscheck through the social security death master file.

The examiner also recommends that the Company pay the appropriate beneficiary or beneficiaries the total death benefit due under the policies where death occurred within one year of policy lapse processing..

2. Section 3227 of the New York Insurance Law states, in part:

“(a) Interest . . . shall be payable by life insurers . . . upon: (1) the value of policies surrendered by policyholders for cash values . . . Such interest payment shall be added to and be a part of the total sum paid or be paid separately at the option of the insurer.

(b) The interest . . . shall be calculated from the date the documentation necessary to complete the transaction is received by the insurer and shall be payable if the funds are not mailed or delivered by the insurer within ten working days of said receipt.”

The Company’s surrender processing procedures state:

“Regulations in the state of New York require that New York Life pay interest on those surrender requests that are not processed within 10 working days of receipt of all paper in good order. The interest payable must be \$25 or more. The interest rate is calculated based on the rate found in the rate table in the Agency Portal.”

The examiner reviewed a sample of 110 individual life policies that were surrendered during the examination period. The contract provision of some of the Company’s older policies

requires that interest be calculated on surrenders using specified rates of 3% or 3.5%. In 46 out of the 110 (42%) surrenders reviewed, the surrender proceeds were not disbursed within ten working days where the amount of interest due was at least twenty-five dollars. The Company paid interest on three surrenders, but failed to include interest in 43 (93%) out of 46 cases.

The Company violated Sections 3227(a) and (b) of the New York Insurance Law when it failed to calculate and pay the appropriate rate of interest on certain surrenders where the contract rate of interest exceeded the statutory rate.

The Company also did not comply with its surrender procedures, which require that interest be paid on surrender requests “that are not processed within ten working days of receipt of all papers in good order.”

The examiner recommends that the Company update its surrender procedures to advise the claim handlers that some policies have minimum interest rate provisions that may be higher than the settlement option rate.

As a result of the aforementioned finding involving violations of Section 3227(b) of the New York Insurance Law, the examiner directed the Company to perform a review of all surrenders paid from January 1, 2010 through the current period, identify policyholders who were impacted, and pay any amounts due.

3. Insurance Regulation 64, 11 NYCRR Section 216.4 states, in part:

“(a) Every insurer, upon notification of a claim, shall, within 15 business days, acknowledge the receipt of such notice. Such acknowledgment may be in writing. If an acknowledgment is made by other means, an appropriate notation shall be made in the claim file of the insurer. . .

(b) An appropriate reply shall be made within fifteen (15) business days on all other pertinent communications. . .”

The examiner reviewed a sample of ten annuity surrenders and 60 individual life surrenders. In two out of the ten (20%) annuity surrenders and six out of the 60 (10%) individual life surrenders reviewed, the Company did not respond to the surrender request within 15 business days of receiving it.

The Company violated Insurance Regulation No. 64, 11 NYCRR Section 216.4(b) by not providing an appropriate reply within 15 business days of receipt of the surrender notice.

4. Insurance Regulation 64, 11 NYCRR Section 216.6(c) states, in part:

“Within 15 business days after receipt by the insurer of a properly executed proof of loss and receipt of all items, statements and forms which the insurer requested from the claimant, the claimant, or the claimant's authorized representative, shall be advised in writing of the acceptance or rejection of the claim by the insurer . . .”

The examiner reviewed a sample of 30 group disability denied claims. The examiner's review revealed that in two (6.7%) of the denied claims reviewed, the Company failed to notify the beneficiary of the acceptance or rejection of the claim within fifteen (15) business days of the receipt of all items, statements and forms requested from the claimant.

The Company violated Insurance Regulation 64, 11 NYCRR Section 216.6(c)(1) when it failed to advise claimants in writing of the acceptance or rejection of their claims within the required period.

5. Insurance Regulation 95, 11 NYCRR Section 86.4(a) states:

“Except with respect to automobile insurance, all claim forms for insurance . . . provided to any person residing or located in this State in connection with insurance policies for issuance or issuance for delivery in this State, shall contain the following statement:

‘Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the stated value of the claim for each such violation.’ ”

USI Affinity and Pearl Carroll Associates processed disability claims for the Company during the examination period. The examiner’s review of all the claim forms used by USI for claims processing revealed that the medical provider’s statement did not include the required fraud warning statement. A review of the claims processed by Pearl Carroll also revealed that in 18 out of 45 (40%) claims, the medical provider’s statement did not include the required fraud warning statement.

The Company violated Insurance Regulation No. 95, 11 NYCRR Section 86.4(a) by failing to include the required fraud warning statement in its disability claim forms.

D. Retention of Records

Insurance Regulation 152, 11 NYCRR Section 243.2(b) states, in part:

“Except as otherwise required by law or regulation, an insurer shall maintain:

(1) A policy record for each insurance contract or policy for six calendar years after the date the policy is no longer in force or until after the filing of the report on examination in which the record was subject to review, whichever is longer. . . . A policy record shall include: . . .

(ii) The application, including any application form or enrollment form for coverage under any insurance contract or policy. . . .”

The examiner reviewed a sample of 25 group life certificates that were surrendered during the examination period. The Company failed to maintain the enrollment form in six out of the 25 (24%) certificates.

The Company advised the examiner early in the examination that it did not maintain duplicate copies of policies, but would re-create the policies if needed by the examiner. The examiner subsequently requested the Company to re-create 25 individual life policies. In five out of 25 (20%) policies, the Company failed to re-create the policies as issued. Pertinent data contained in the re-created policies did not match the data contained in the illustrations delivered with the policies. The Company failed to accurately reconstruct the policy records for the five policies in question.

The Company violated Insurance Regulation No. 152, 11 NYCRR Section 243.2(b)(1) by failing to maintain policy records for six calendar years after the date the policy is no longer in force or until after the filing of the report on examination in which the record was subject to review, whichever is longer.

The Company’s failure to maintain copies of policy contracts significantly hindered the progress of the examination and made it very difficult for the examiner to perform reviews of items that require policy information as the examiner had to go back to the Company to request that contracts be re-created.

6. PRIOR REPORT SUMMARY AND CONCLUSIONS

Following are the violations contained in the prior report on examination and the subsequent actions taken by the Company in response to each citation:

<u>Item</u>	<u>Description</u>
A	<p>The Company violated Section 53.3-5(a) of Insurance Regulation No. 74 by failing to, where an illustration was used in the sale of the policy, provide an illustration to the applicant at the time of application or, when a policy was issued other than as applied for, provide a “Revised Illustration” conforming to the policy as issued at time of policy delivery or failing to label the revised illustration as a “Revised Illustration.”</p> <p>The Company failed to provide an illustration where one was used in the sale of a policy to the applicant at the time of application, or, when a policy was issued other than as applied for, provided a “Revised Illustration” conforming to the policy as issued at time of policy delivery and labeled the revised illustration as a “Revised Illustration.” There is a similar violation in this report on examination. (See item 5B of this report)</p>
B	<p>The Company violated Section 53.3-5(b) of Insurance Regulation No. 74 by failing to certify in writing on the illustration certification section of the application that no illustration was used in the sale of the life insurance policy or that the policy was applied for other than as illustrated.</p> <p>The current review did not reveal any instances where the Company did not certify in writing on the illustration certification section of the application that no illustration was used in the sale of the life insurance policy or that the policy was applied for other than as illustrated.</p>
C	<p>The Company violated Section 53-3.2 (a)(2) of Insurance Regulation No. 74 by failing to include the producing agent’s name and/or business address on the illustration.</p> <p>The current review revealed that the Company included the producing agent’s name and/or business address on the illustration.</p>

<u>Item</u>	<u>Description</u>
D	<p>The Company violated Section 53-3.6(b) of Insurance Regulation No. 74 when it failed to include the required Important Policy Holder Notice language in the annual reports provided to policyholders and contract holders.</p> <p>The current review revealed that the Company included the required Important Policy Holder Notice language in the annual reports provided to policyholders and contract holders.</p>
E	<p>The Company violated Section 3201(b)(1) of the New York Insurance Law by using policy forms that were not approved by the superintendent for use in New York State.</p> <p>The current review revealed several instances where the Company violated Section 3201(b) (1) of the New York Insurance Law for using policy forms that were not approved by the superintendent for use in New York State. A similar violation is included in this report on examination. (See item 5B of this report)</p>
F	<p>The Company violated Section 3214(c) of the New York Insurance Law when it failed to pay interest on matured endowment claims from the date of maturity of the endowment contract to the date of payment.</p> <p>The current review revealed that the Company paid interest on matured endowment claims from the date of maturity of the endowment contract to the date of payment.</p>
G	<p>The Company violated Section 41.4(e) of Insurance Regulation No. 143 by using an Application for Accelerated Benefits Form that did not contain any of the disclosures required by such section.</p> <p>The Company used an Application for Accelerated Benefits Form that contained the disclosures required under Section 41.4(e) of Insurance Regulation No. 143.</p>
H	<p>The Company violated Section 41.4(g) of Insurance Regulation No. 143 when it failed to provide the information specified by such section to accelerated death benefit claimants.</p> <p>The Company provided all information specified under Section 41.4(g) of Insurance Regulation No. 143 to accelerated death benefit claimants.</p>

<u>Item</u>	<u>Description</u>
I	<p>The Company violated Section 403(d) of the New York Insurance Law and Section 86.4(a) of Insurance Regulation No. 95 in those cases where it did not include the proper fraud warning on certain claim forms.</p> <p>The Company violated Section 86.4(a) of Insurance Regulation No. 95 in cases where it did not include the proper fraud warning on certain claim forms. This violation is repeated in this report on examination. (See item 5C of this report)</p>
J	<p>The Company violated Section 86.4(d) of Insurance Regulation No. 95 by failing to position the fraud warning statement directly above the space where the signature of the person executing the form was placed.</p> <p>The current review did not reveal any instances where the Company failed to position the fraud warning statement directly above the space where the signature of the person executing the form was placed.</p>

7. SUMMARY AND CONCLUSIONS

Following are the violations and recommendations contained in this report:

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
A	The Company violated Insurance Regulation No. 34-A, 11 NYCRR Section 219.4(a)(1) by disseminating advertisements that are not sufficiently complete and clear, thereby having a capacity or tendency to mislead.	9
B	The Company violated Insurance Regulation No. 34-A, 11 NYCRR Section 219.4(h) by using the term “low- cost” in its advertisements without substantiating its use.	9
C	The Company violated Insurance Regulation No. 74, 11 NYCRR Section 53-3.5(a) by failing to provide a copy of the illustration to the applicant at the time of application. This is a repeat violation. (See item 4B of this report)	11
D	The Company violated Insurance Regulation No. 74, 11 NYCRR Section 53-3.5(b) by failing to provide a basic illustration conforming to the policy as issued and signed no later than the time the policy was delivered. This is a repeat violation. (See item 4B of this report)	11
E	The examiner recommends that the Company take certain steps to comply with Insurance Regulation 74, 11 NYCRR Sections 53-3.1(d) and 53-3.5(a).	11
F	The Company violated Section 3201(b)(1) of the New York Insurance Law by altering approved policy forms and failing to file such policy forms with the superintendent for approval and by using forms not approved by the superintendent for use in New York State.	14
G	The Company violated Section 3203(a)(8) of the New York Insurance Law by stating on a policy contract that no loans can be requested after the policy anniversary when the insured is age 121.	14
H	The Company violated Section 4221(a)(1) of the New York Insurance Law by failing to include in its life insurance policy form, a provision that requires a policyholder to be given a 60 day period, upon proper notice after the due date of the premium in default, to choose a paid-up non-forfeiture benefit on a plan stipulated in the policy.	16

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
I	The Company violated Section 4221(a)(3) of the New York Insurance Law by failing to include in its policy form a provision that requires a paid-up non-forfeiture benefit.	17
J	The Company violated Section 3203(a) (10) of the New York Insurance Law by failing to include in its life insurance policy form a provision stating that the policy shall be reinstated at any time within three years of the date of default, unless the cash surrender value has been exhausted or the period of ETI has expired.	17
K	The Company violated Sections 4221(b)(1) and 4221(k)(9)(B)(ii) of the New York Insurance Law when the ETI nonforfeiture provision stated that the insured's class of risk would be used in determining the period of ETI that would be provided.	17
L	The Company violated Section 3227(b) of the New York Insurance Law by stating in Policy Forms 213-50.13 and 213-52.13 that interest will be paid on any surrender payment deferred for more than ten days on any amount deferred for 30 days or more.	18
M	The Company's filing pursuant to Circular Letter No. 6 (2004) certified compliance with all applicable laws, regulations, and circular letters, when in fact, the policy form failed to comply with Section 3227(b) of New York Insurance Law.	18
N	The Company violated Section 3201(b)(1) of the New York Insurance Law by issuing individual life insurance policy forms that failed to conform to the statutory requirements for the type of product.	18
O	The Company violated Section 3211(b)(2) of the New York Insurance Law by failing to include the required statement in the premium due notice.	19
P	The examiner recommends that the Company conduct a study to identify insureds who have died within one year of the lapse of their policy and who received premium notice that failed to comply with Section 3211 of the New York Insurance Law. The study should include a crosscheck through the social security death master file.	19
Q	The examiner also recommends that the Company pay the appropriate beneficiary or beneficiaries the total death benefit due under the policies where death occurred within one year of policy lapse processing.	19

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
R	The Company violated Sections 3227(a) and (b) of the New York Insurance Law when it failed to calculate interest and include same in the payment of surrenders.	19
S	The examiner recommends that the Company update its surrender procedures to advise the claim handlers that some policies have minimum interest rate provisions that may be higher than the settlement option rate.	19
T	The Company violated Insurance Regulation No. 64, 11 NYCRR Section 216.4(b) by not providing an appropriate reply within 15 business days of receipt of the notice.	19
U	The Company violated Insurance Regulation 64, 11 NYCRR Section 216.6(c)(1) when it failed to advise claimants in writing of the acceptance or rejection of their claims within the required period.	20
V	The Company violated Insurance Regulation No. 95, 11 NYCRR Section 86.4(a) by failing to include the required fraud warning statement in its disability claim forms.	20
W	The Company violated Insurance Regulation No. 152, 11 NYCRR Section 243.2(b)(1) by failing to maintain policy records for six calendar years after the date the policy is no longer in force or until after the filing of the report on examination in which the record was subject to review, whichever is longer.	21

Respectfully submitted,

/s/

Victor Agbu
Principal Insurance Examiner

STATE OF NEW YORK)
)SS:
COUNTY OF NEW YORK)

Victor Agbu, being duly sworn, deposes and says that the foregoing report, subscribed by him, is true to the best of his knowledge and belief.

/s/

Victor Agbu

Subscribed and sworn to before me

this _____ day of _____

APPOINTMENT NO. 31290

NEW YORK STATE

DEPARTMENT OF FINANCIAL SERVICES

I, BENJAMIN M. LAWSKY, Superintendent of Financial Services of the State of New York, pursuant to the provisions of the Financial Services Law and the Insurance Law, do hereby appoint:

VICTOR AGBU

as a proper person to examine the affairs of the

NEW YORK LIFE INSURANCE COMPANY

and to make a report to me in writing of the condition of said

COMPANY

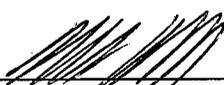
with such other information as he shall deem requisite.

In Witness Whereof, I have hereunto subscribed my name
and affixed the official Seal of the Department
at the City of New York

this 16th day of March, 2015

BENJAMIN M. LAWSKY
Superintendent of Financial Services

By:


MICHAEL MAFFEI

ASSISTANT DEPUTY SUPERINTENDENT
AND CHIEF OF THE LIFE BUREAU

