



NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

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In the Matter of

ATHENE LIFE INSURANCE COMPANY OF NEW YORK,

No. 2018-0055-S

Respondent.

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CONSENT ORDER

WHEREAS, the Department of Financial Services (the "Department") conducted a targeted Market Conduct Examination (the "Examination") of the affairs of Athene Life Insurance Company of New York (f/k/a Aviva Life and Annuity Company of New York) (hereinafter "ALICNY") because of several life insurance policyholder service related complaints received by the Department. The policyholder complaints included one or more of the following: (1) non-receipt of premium bills and annual reports; (2) failure to notify policyholders that their policies have been placed on restricted status; (3) the length of time that policies were placed on restricted status; (4) reference to the wrong company in correspondences sent to policyholders; or (5) delays in receipt of documents for policy replacements.

WHEREAS, the Department conducted an Examination of the affairs of ALICNY for the period from January 1, 2012 through March 31, 2017 and issued its Report on the Examination on June 26, 2018.

WHEREAS, all of the life insurance policies at issue have been administered by First Allmerica Financial Life Insurance Company ("FAFLIC" and together with ALICNY, "Respondents") beginning in 2015 and are subject to reinsurance agreements between ALICNY and FAFLIC.

WHEREAS, this Consent Order contains the Department's findings and the relief agreed to by the Department and Respondents.

NOW, THEREFORE, the Department and Respondents are willing to resolve the matters cited herein in lieu of proceeding by notice and hearing.

FINDINGS

1. ALICNY is a domestic insurance company authorized to transact life, annuities and accident and health insurance business in this State pursuant to Section 1113(a) of the New York Insurance Law.
2. On October 2, 2013, ALICNY ceded through a series of reinsurance agreements all its life insurance business, excluding a block of business written by John Alden of New York, to FAFLIC. One of the reinsurance agreements was a coinsurance and assumption reinsurance agreement ("Assumption Agreement"). ALICNY also entered into administrative service agreements with FAFLIC relating to these reinsurance agreements.
3. The Assumption Agreement allowed FAFLIC to pursue novation of the reinsured policies once it had the requisite system in place to begin converting ALICNY's policies to FAFLIC's administrative system. The administrative agreement required FAFLIC to service and administer all life insurance policies, regardless of when or whether they were novated.
4. FAFLIC contracted with a subsidiary of Computer Sciences Corporation, now DXC Technology ("DXC"), to perform the data conversion and administration for the reinsured life insurance policies. On August 1, 2015, DXC began the data conversion from ALICNY's administrative system to a new administrative system. As part of the data conversion, FAFLIC, on behalf of ALICNY, sent notices to policyholders to inform them that FAFLIC would be responsible for servicing their policies. However, Respondents encountered the following problems relating to the novation of the contracts and the data conversion which were not disclosed to the policyholders or the Department: FAFLIC, on behalf of ALICNY mailed approximately 70,000 letters explaining the policyholders' option to novate (the "option letters") to New York policyholders in three batches in March, April, and May of 2015. In March 2015, FAFLIC, on behalf of ALICNY, mailed an unapproved version of the option letters to 17,500 policyholders. FAFLIC, on behalf of ALICNY, re-sent the approved option letters to policyholders in April 2015. In May 2015, FAFLIC, on behalf of ALICNY,

sent another batch of option letters to 35,000 policyholders. As a result, the Department received several complaints from policyholders that the option letters did not include the required Exhibits and the Department's telephone number on the option letters was incorrect. Thus, the novation of the reinsured policies was initially not properly effectuated in accordance with the Assumption Agreement. In June 2015, FAFLIC, on behalf of ALICNY, revised the option letters and mailed them to policyholders.

5. During the data conversion process, certain policies were supposed to be placed on a "restricted" status to verify that the data for each policy was being converted correctly to the new administrative system. Instead, due to problems with the conversion process FAFLIC, on behalf of ALICNY, placed the majority of New York policies on restricted status and was unable to move them off of restricted status for an extended period of time. Beginning in 2015, Respondents began holding regular updates with the Department related to the conversion process and policyholder service issues. During this time FAFLIC and ALICNY continued to pay claims and surrenders. FAFLIC performed limited policy transactions during the time the policies were on "restricted" status, including premium billing and automated preparation of the annual statements. Only in instances where policyholders requested information, such as replacements, annual reports and illustrations, were such transactions processed manually.
6. ALICNY, for the time period 2012 to 2017:
 - a) failed to mail premium due notices for an amount of approximately \$81 million to policyholders at their last known address;
 - b) failed to provide annual reports or cash surrender value notices to policyholders;
 - c) failed to provide a statement at least annually to each holder of a policy under which additional amounts are credited and are marketed with an illustration;
 - d) failed to provide annual privacy notices to policyholders during the examination period;
 - e) failed to provide the replacing insurer with the existing policy or contract information necessary to complete the Regulation 60 "Disclosure Statement" within 20 days of receipt of the request;

- f) failed to advise applicants in writing that, when the policy is issued, a complete policy summary, including cost data, based on the benefits, premiums and dividends of the policy as issued, will be furnished; and that, following the receipt of the policy and policy summary, there will be a period of not less than ten days within which the applicant may return the policy for an unconditional refund of the premiums paid;
 - g) failed to maintain a copy of the preliminary information provided to prospective applicants on or before the date that the application was taken;
 - h) failed to include in its EOB a description of the time limit, place and manner in which an appeal of a denial of benefits must be brought under the policy and a notification that failure to comply with the requirements for appealing denied benefits may lead to forfeiture of a consumer's right to challenge a denial or rejection even when a request for clarification has been made; and
 - i) failed to place the required fraud warning statement immediately above the space provided for the signature of the person executing the claim form. This violation appeared in the prior report on examination.
7. ALICNY's violations during the aforementioned time period contravened New York Insurance Law.

VIOLATIONS

8. By reason of the foregoing, as reflected in the Department's Report on the Examination, ALICNY violated:
- Insurance Regulation No. 74, 11 NYCRR Section 53-3.6(a); Insurance Regulation No. 169, 11 NYCRR Section 420.5(a)(1); Insurance Regulation No. 60, 11 NYCRR Section 51.6(c)(2); Insurance Regulation No. 152, 11 NYCRR Section 243.2(b)(1); and Insurance Regulation No. 95, 11 NYCRR Section 86.4(d); and New York Insurance Law Sections 3211(b); 3211(g); 4221(a)(7); 3209(d)(7); and 3234(b)(7).

AGREEMENT

IT IS HEREBY UNDERSTOOD AND AGREED by Respondents, their successors and assigns that:

9. Respondents will fully correct the violations cited herein and demonstrate to the Department's satisfaction that they have taken the necessary corrective action by completing the actions set forth in the Remediation Plan attached hereto as Exhibit 1. Respondents will also take all necessary steps to comply fully with the New York Insurance Law and Regulations with respect to their insurance products in the future.

10. The Remediation Plan which is a part of this Consent Order provides for corrective actions and benefits to policyholders or their beneficiaries, where applicable, for each violation set forth in 6a through 6d of this Consent Order (the "Violations"). The Remediation Plan includes the following provisions as set forth in more detail in the attached Remediation Plan:
 - i. Hardship waivers of back premium for individuals who did not receive premium notices;
 - ii. Special premium arrangement offers to all eligible policyholders to extend payments of back premium for up to 5 years without interest;
 - iii. Retroactive fixed interest credits to all eligible universal life and indexed universal life policyholders that pay back premium;
 - iv. Premiums due on eligible policies will be billed using the annual premium mode;
 - v. Refund any modal premium charges for back premiums;
 - vi. Coverage existing for the period while the policy was restricted;
 - vii. Back premium will be applied based upon the non-guaranteed elements that were in effect when the policies were restricted in 2015 to the current date;
 - viii. For all eligible whole life and term life insurance policyholders, the policy may not lapse for the life of the policy due to non-payment of the back premium in accordance with the terms of the Remediation Plan; and

- ix. For all eligible universal life and indexed universal life policyholders, the policy may not lapse for non-payment of the back premium for 5 years in accordance with the terms of the Remediation Plan.

For the avoidance of doubt, a breach of any provision of the Remediation Plan constitutes a breach of this Consent Order.

MONETARY PENALTY

11. Within seven (7) days of the execution of this Consent Order, ALICNY shall pay a civil penalty to the State of New York of Fifteen Million Dollars (\$15,000,000.00). ALICNY agrees that it will not claim, assert, or apply for a tax deduction or tax credit with regard to any U.S. federal, state or local tax, directly or indirectly, for any portion of the civil monetary penalty paid pursuant to this Consent Order.
12. The above referenced payment shall be payable to the New York State Department of Financial Services via electronic transfer in accordance with instructions provided by the Department.

BREACH OF THE CONSENT ORDER

13. In the event that the Department believes either of the Respondents to be materially in breach of this Consent Order ("Breach"), the Department will provide written notice of such Breach to Respondents, and Respondents must, within ten (10) business days from the date of receipt of said notice, or on a later date if so determined in the sole discretion of the Department, appear before the Department and have an opportunity to rebut the evidence, if any, of the Department that a Breach has occurred and, to the extent pertinent, to demonstrate that any such Breach is not material or has been cured.
14. Respondents understand and agree that failure to appear before the Department to make the required demonstration within the specified period as set forth herein is presumptive evidence of Breach. Upon a finding of Breach, the Department has all the remedies available to it under New York or other applicable laws and may use any and all evidence available to the Department

for all ensuing examinations, hearings, notices, orders, and other remedies that may be available under New York or other applicable laws.

OTHER PROVISIONS

15. If either of the Respondents defaults on any of its obligations under this Consent Order, the Department may terminate the Consent Order, at its sole discretion, upon ten (10) days' written notice to Respondents. In the event of such termination, Respondents expressly agree and acknowledge that this Consent Order shall in no way bar or otherwise preclude the Department from commencing, conducting, or prosecuting any investigation, action, or proceeding, however denominated, related to the Consent Order, against either or both Respondents or from using in any way the statements, documents, or other materials produced or provided by either Respondent prior to or after the date of this Consent Order, including, without limitation, such statements, documents, or other materials, if any, provided for purposes of settlement negotiations.
16. The Department has agreed to the terms of this Consent Order based on, among other things, representations made to the Department by Respondents, as well as the Department's own factual examination. To the extent that representations made by ALICNY or FAFLIC are later found to be materially incomplete or inaccurate, this Consent Order or certain provisions thereof are voidable by the Department in its sole discretion.
17. Upon the request of the Department, Respondents shall provide all documentation and information reasonably necessary for the Department to verify compliance with this Consent Order.
18. All notices, reports, requests, certifications, and other communications regarding this Consent Order shall be in writing and shall be directed as follows:

If to the Department:

New York State Department of Financial Services
One State Street, 19th Floor

New York, NY 10004-1511
Attention: Laura Evangelista, Executive Deputy Superintendent for Insurance

If to ALICNY:

Athene Life Insurance Company of New York
One Blue Hill Plaza
Pearl River , NY 10960
Attention: Grant Kvalheim, President
with a copy to:
Ellen M. Dunn
Sidley Austin LLP
787 Seventh Avenue
New York, NY 10019

If to FAFLIC:

First Allmerica Financial Life Insurance Company
20 Guest Street
Brighton, MA 02135
Attention: Virginia Johnson, Legal Department
with a copy to:
Matthew Gaul
Dentons US LLP
1221 Avenue of the Americas
New York, NY 10020

19. This Consent Order and any dispute thereunder shall be governed by the laws of the State of New York without regard to any conflicts of laws principles.
20. Respondents waive their right to further notice and hearing in this matter as to any allegations of past violations up to and including the Effective Date and agree that no provision of the Consent Order is subject to review in any court or tribunal outside the Department.
21. This Consent Order may not be amended except by an instrument in writing signed on behalf of all parties to this Consent Order.
22. This Consent Order constitutes the entire agreement between the Department and Respondents relating to the violations identified herein and supersedes any prior communication, understanding, or agreement, whether written or oral, concerning the subject matter of this

Consent Order. No inducement, promise, understanding, condition, or warranty not set forth in this Consent Order has been relied upon by any party to this Consent Order.

23. In the event that one or more provisions contained in this Consent Order shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Consent Order.
24. Upon execution by the parties to this Consent Order, no further action will be taken by the Department against either of the Respondents for the conduct set forth in this Consent Order, subject to the terms of this Order.
25. This Consent Order may be executed in one or more counterparts, and shall become effective when such counterparts have been signed by each of the parties hereto and So Ordered by the Superintendent of Financial Services.

ATHENE LIFE INSURANCE COMPANY OF NEW YORK

By: Grant Kvalheim Dated: 6/26/18
Grant Kvalheim
President

FIRST ALLMERICA FINANCIAL LIFE INSURANCE COMPANY

By: _____ Dated: _____
Robert Arena
President

Heidi Lynn Coburn
A rectangular notary seal stamp for Heidi Lynn Coburn. It contains the text: HEIDI LYNN COBURN, Commission Number 226018, My Commission Expires 12-31-20. To the left of the text is a circular emblem featuring a bell.

Consent Order. No inducement, promise, understanding, condition, or warranty not set forth in this Consent Order has been relied upon by any party to this Consent Order.

23. In the event that one or more provisions contained in this Consent Order shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Consent Order.

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ATHENE LIFE INSURANCE COMPANY OF NEW YORK

By: _____ Dated: _____

Grant Kvalheim
President

FIRST ALLMERICA FINANCIAL LIFE INSURANCE COMPANY

By:  _____ Dated: 06/26/18

Robert Arena
President



VICTORIA GONZALEZ
NOTARY PUBLIC-STATE OF NEW YORK
No. 02GO6313927
Qualified in Queens County
My Commission Expires October 27, 2018

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

By:  Dated: 6/28/18

Laura Evangelista
Executive Deputy Superintendent for Insurance

THE FOREGOING CONSENT ORDER IS HEREBY APPROVED.

By:  Dated: 6/28/18

Maria T. Vullo
Superintendent of Financial Services

**Exhibit 1 to Consent Order No. 2018-0055-S entered into on June 26, 2018 by:
the New York State Department of Financial Services,
Athene Life Insurance Company of New York ("ALICNY") and
First Allmerica Financial Life Insurance Company ("FAFLIC")**

Remediation Plan

I. DEFINITIONS

In this Remediation Plan, the terms listed below shall have the following definitions:

A. Back Premium

The Back Premium is the maximum amount with respect to which an Eligible Policy may earn Catchup Fixed Interest Credits.

For universal life policies on pre-authorized check billing for which billing notices were not sent during the Restriction Period: The Back Premium is the difference between (a) the scheduled premium amount immediately prior to the conversion date and (b) the premium paid during the Restriction Period.

For universal life policies on direct billing for which billing did not occur during the Restriction Period: The Back Premium is the difference between (a) the greater of the scheduled annual premium amount immediately prior to the conversion date and the amount paid during the 12 months prior to the start of the Restriction Period (in both cases adjusted proportionally to length of the Restriction Period) and (b) the premium paid during the Restriction Period.

For whole life policies for which billing notices were not sent during the Restriction Period: The Back Premium is the sum of any scheduled premium not paid during the Restriction Period.

For term life policies for which billing notices were not sent during the Restriction Period: the Back Premium is the sum of any scheduled premium not paid during the Restriction Period.

B. Catchup Fixed Interest Credits

For universal life policies: All premium payments, up to but not exceeding the Back Premium, received during the Premium Relief Period (or the Special Payment Arrangement Period) will be applied to the policy's account value as of the due date of the original withheld premium notice. Any such premium payments will receive Catchup Fixed Interest Credits meaning interest using the applicable declared fixed interest credited rates for the policy beginning from the original withheld premium notice to the date the payment is received. Such premium payments and Catchup Fixed Interest Credits will then be applied as policy premium pursuant to the terms of the policy.

For whole life policies: All cash values and dividends will be calculated using the policy's original schedule as if all billed Back Premium had been received as of the original due date, thereby providing Catchup Fixed Interest Credits. Any unpaid Back Premium will be deducted

'from any death benefit or other cash disbursement, however under no circumstance will the deduction of Back Premium cause any available policy cash value to be less than the cash value of the policy on the day before the Restriction Period.

Term life policies are not eligible for Catchup Fixed Interest Credits.

C. Cumulative Billed Premium Test

The Cumulative Billed Premium Test is met whenever the premium received during the five (5) years following the Premium Relief Period End Date (not including any SPA payments) is greater than the sum of any withdrawals or policy loans taken during that same period by at least the amount equal to the Remediation Minimum Monthly Premium times the number of whole months that have passed since the Premium Relief Period End Date.

D. Eligible Policy/Eligible Policyholder

An Eligible Policy is a policy that entered Restricted Status and has a Back Premium greater than zero as of the date of the Consent Order. An Eligible Policyholder is the owner of an Eligible Policy.

E. Premium Relief Period

The Premium Relief Period begins on the Restriction Period End Date and ends on the Premium Relief Period End Date.

F. Premium Relief Period End Date

The Premium Relief Period End Date will be set forth in the notification letter and will be not less than 63 days from the date of the letter. After the Premium Relief Period End Date, the policyholder will be billed under the policy's regular billing processes unless the policyholder has established a Special Payment Arrangement with FAFLIC.

G. Remediation Minimum Monthly Premium

The Remediation Minimum Monthly Premium is the scheduled premium prior to the policy's Restriction Period, adjusted to the monthly premium mode.

H. Restricted Status

During the conversion to the new administrative system, certain policies were placed on Restricted Status to verify that the data for each policy was being converted correctly. Due to problems with the conversion process FAFLIC placed the majority of New York policies on restricted status and was unable to move them off of restricted status for an extended period of time. For policies on Restricted Status, FAFLIC could not perform certain policy transactions, including premium billing and automated preparation of annual statements. In instances where policyholders requested information, such as replacements, annual reports, illustrations, claims and surrenders, such transactions were processed manually. For purposes of this Remediation Plan, a policy is on Restricted Status beginning on the first date when a premium bill was missed.

I. Restriction Period End Date

The Restriction Period End Date is the date of the notification letter sent to the policyholder.

J. Restriction Period

The Restriction Period runs from the date the policy was placed on Restricted Status through the Restriction Period End Date.

K. Special Payment Arrangement ("SPA")

A Special Payment Arrangement or SPA is an arrangement which allows the policyholder to spread, on an interest-free basis, an amount up to but not exceeding the Back Premium evenly over a period of up to 5 years.

L. Special Payment Arrangement Period

A policy's Special Payment Arrangement Period will begin at the time the policyholder establishes an SPA with FAFLIC, but no later than the Premium Relief Period End Date. The Special Payment Arrangement Period will end on the earliest of (a) the date the final payment is made under the SPA, (b) five (5) years from the Premium Relief Period End Date, (c) the date of default on any SPA payment and (d) the date a policy lapses.

II. POLICYHOLDER BENEFITS

A. Policyholder Communications

Within 90 days of execution of the Consent Order, FAFLIC will notify Eligible Policyholders of their Back Premium using the template policyholder communications attached to this Remediation Plan as Exhibit A.

B. Catchup Fixed Interest Credits

During the Premium Relief Period, FAFLIC will provide Eligible Policyholders with the opportunity to remit payments of Back Premium. Back Premium payments for universal and whole life policies received during the Premium Relief Period will be eligible for Catchup Fixed Interest Credits.

C. SPAs

Any Eligible Policyholder may at his or her option enter into an SPA with FAFLIC any time before the Premium Relief Period End Date by calling FAFLIC's call center or writing to an address provided in the policyholder communications attached to this Remediation Plan as Exhibit A. Back Premium payments for universal and whole life policies received in connection with an SPA will be eligible for Catchup Fixed Interest Credits. SPA payments will be subject to the same grace period as the policy's regular premium payments.

D. No Lapse Benefit

With respect to a universal life Eligible Policy, so long as the Cumulative Billed Premium Test is met, the policy will not lapse during the five (5) years following the Premium Relief Period End Date.

With respect to a term life or whole life Eligible Policy, so long as the policyholder pays each scheduled premium after the Premium Relief Period End Date, the policy will not lapse (regardless of whether the Back Premium or SPA installments are paid).

E. Cases of Hardship

Any Eligible Policyholder who is unable to pay the Back Premium or the established SPA payments because the policyholder is experiencing a documented financial hardship may apply to FAFLIC for a waiver of the Back Premium or SPA payments or other appropriate relief. A documented financial hardship is becoming disabled, becoming unemployed, becoming a full-time caregiver for a spouse or close relative, or the uninsured loss of a home due to fire, storm or flood for which the proper documentation has been received and approved. FAFLIC will not use any information provided with respect to the hardship to take any other adverse action against the policyholder. FAFLIC may also grant one or more waivers of Back Premium for similar hardships under its Hardship Waiver Review Process described below.

F. Hardship Waiver Review Process

All applications for hardship waivers will be reviewed by FAFLIC. If FAFLIC determines that the documented hardship falls into a predefined category (disability, unemployment, full-time caregiver for spouse or close relative, uninsured loss of home), the hardship waiver will be granted and no further review will be necessary. All other applications will be examined by a working group consisting of FAFLIC's operations unit, individuals representing FAFLIC's retail businesses and FAFLIC legal and compliance personnel ("Hardship Working Group") to review whether the hardship should be granted. Factors that the Hardship Working Group may consider in determining whether a hardship outside a predefined category should be granted include:

- Age, medical status/condition, financial condition of the policy owner
- How long the policy has been in force
- Amount of premium past due
- Extent to which there were any customer service issues related to the policy

If the Hardship Working Group determines that a hardship waiver should be granted, and the amount of the Back Premium waived is less than \$50,000, there will be no further review. All other applications (all requests for waivers of amounts in excess of \$50,000) will be submitted to a committee of senior FAFLIC executives, including the President of the Life Division and the Chief Legal Officer (the "Hardship Committee"). The decision of the Hardship Committee will be final.

G. Annual Statements

FAFLIC and ALICNY will begin providing annual statements to New York policyholders pursuant to Insurance Regulation No. 74 (11 NYCRR 53-3.6) in the ordinary course of business after the Premium Relief Period End Date for each policy. For a Universal Life or Indexed Universal Life policy for which the No Lapse Benefit above has taken effect, disclosure of aggregate policy credits and debits in the annual statement will be sufficient to comply with 11 NYCRR 53-3.6(a)(1)(iii) because the policy cash value is no longer greater than zero.