



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

CONDITION:

SEPTEMBER 30, 2017

DATE OF REPORT:

JUNE 1, 2018

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EXAMINER:

JAMES WANG

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NEW YORK STATE  
DEPARTMENT *of*  
FINANCIAL SERVICES

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Andrew M. Cuomo  
Governor

Linda A. Lacewell  
Superintendent

July 16, 2020

The Honorable Linda A. Lacewell  
Superintendent of Financial Services  
New York, New York 10004

Madam:

In accordance with instructions contained in Appointment No. 31683, dated November 9, 2017, and annexed hereto, an examination has been made into the condition and affairs of National Life Insurance Company, hereinafter referred to as “the Company,” at its home office located at One National Life Drive, Montpelier, VT 05604.

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 Section 1313(f) of the New York Insurance Law by disseminating advertisements in New York that included a statement regarding the financial condition of the holding company group without also including a separate statement regarding the financial condition of the Company. (See item 4A-1 of this report.)
- The Company violated Section 2112(d) of the New York Insurance Law by failing to notify the Superintendent within 30 days of the facts relative to the termination of the certificates of appointment of its agents. (See item 4A-3 of this report.)
- The Company violated several sections of 11 NYCRR 51 (Insurance Regulation 60) by failing to examine the disclosure statements and ascertain that they were accurate and met the requirements of the New York Insurance Law and regulations promulgated thereunder, by failing to provide the applicant with a revised disclosure statement when the policy was issued other than applied for, by engaging in practices that prevented the orderly working of the regulation in accomplishing its intended purpose in the protection of policy and contract holders, and by failing to require with or as part of each application proof of receipt by the applicant of the “IMPORTANT Notice Regarding Replacement or Change of Life Insurance Policies.” (See item 4A-4 of this report.)
- The examiner recommends that the Company strengthen its replacement review process to ensure all necessary replacement documentations are received and accurately completed before issuing a policy. (See item 4A-4 of this report.)
- The examiner recommends that the Company implement a remediation plan, acceptable to the Department, to mitigate the deficiencies noted herein and provide relief to all policy and contract holders who did not receive complete, accurate and timely disclosure prior to completing an application to replace their existing policies and contracts. (See item 4A-4 of this report.)
- The examiner recommends that the Company develop and implement an audit plan designed to review, test and monitor compliance with Insurance Regulation 60. Such plan should be approved by the Company’s board of directors or its audit committee, and the

results of audits performed should also be reviewed by the board of directors or its audit committee. (See item 4A-4 of this report.)

- The Company violated Section 53-3.5(a) of 11 NYCRR 53 (Insurance Regulation 74) by failing to have the applicant and the producer sign the illustration at the time of policy delivery, by failing to obtain a copy of the signed illustration, and by failing to provide a revised illustration signed and dated by the applicant and the agent on or before the date of application. (See item 4B-2 of this report.)
- The Company violated Section 53-3.7(d) of 11 NYCRR 53 (Insurance Regulation 74) by failing to include all policy forms for which illustrations were used in the annual certification filed with the Department. (See item 4B-2 of this report.)
- The Company violated Section 2611(a) of the New York Insurance Law by subjecting individuals proposed for insurance coverage to an HIV related test without first obtaining their written informed consent. (See item 4B of this report.)
- The examiner recommends that the Company ensure that UNUM use claim forms displaying the Company's letterhead when processing the Company's disability claims as specified in the In-force Service Agreement between the Company and UNUM. (See item 4C-2 of this report.)
- The Company violated Section 3211(a)(1) of the New York Insurance Law by failing to mail the premium due notice when it determines that the net cash surrender value of the policy was insufficient to cover the premium necessary to keep the policy in force within the required time frame. (See item 4C-3 of this report.)
- The Company violated Section 3211(b)(2) of the New York Insurance Law by failing to include the statutorily required statement on its premium due notice. (See item 4C-3 of this report.)
- 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 4C-3 of this report.)
- The Company violated Section 3230 (b)(1) of the New York Insurance Law by failing to date the application to accelerated benefits upon transmittal to the policy owner. (See item 4C-4 of this report.)

- The Company violated Section 3230(d) of the New York Insurance Law by failing to provide an illustration to the policy owner within five days from receipt of an application to accelerated benefits and by failing to provide a notice to the policy owner that other means may be available to achieve the intended goal, including a policy loan. (See item 4C-4 of this report.)
- The Company violated Section 3230(c) of the New York Insurance Law by paying accelerated death benefits to the policy owner in less than a period of five days from the date on which the illustration was transmitted to the policy owner. (See item 4C-4 of this report.)
- The examiner recommends that the Company amend its application to state, “. . . for a period of five days from the date on which a numerical computation and illustration showing the effects of acceleration of benefits and a notice describing alternatives are transmitted in writing to the Owner,” to comply with Section 3230(c) of the New York Insurance Law. (See item 4C-4 of this report.)

## 2. SCOPE OF EXAMINATION

This examination covers the period from January 1, 2011, to September 30, 2017. As necessary, the examiner reviewed matters occurring subsequent to September 30, 2017, but prior to the date of this report (i.e., the completion date of the examination).

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.

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

### 3. DESCRIPTION OF COMPANY

#### A. History

The Company is a foreign stock life insurer. The Company was incorporated as a mutual life insurance company under the laws of the State of Vermont on November 13, 1848, and commenced business on January 17, 1850. The Company was licensed to do business in New York on September 17, 1850. On January 1, 1999, the Company was demutualized and converted to a stock life insurance company under a mutual holding company reorganization plan.

In February 1996, the Company acquired two-third interest in LSW National Holdings, Inc. (“LSWNH”), the parent of Life Insurance Company of the Southwest (“LSW”), a Texas domiciled life insurance company specialized in the sale of annuities. In July 1999, the Company acquired the outstanding one-third interest in LSWNH. As a result, the Company became the indirect 100% owner of LSW. At the end of 2007, LSWNH merged out of existence and the Company became the direct parent of LSW.

The Company is wholly owned by NLV Financial Corporation (“NLVF”), which in turn is wholly owned by the Company’s ultimate parent, National Life Holding Company. The Company, its upstream parents, and its subsidiaries and affiliates are collectively known as the National Life Group or (“the Group”).

On March 6, 2015, National Life Distribution, LLC was formed as a subsidiary of LSW. The entity serves as the master agency for the Group’s field force operations.

On August 5, 2015, Catamount Reinsurance Company (“Catamount”) was formed as a subsidiary of the Company. Catamount is a special purpose financial insurance company domiciled and licensed in the State of Vermont. During 2016, the Company transferred its ownership of Catamount as a dividend to NLVF.

On August 17, 2016, Longhorn Reinsurance Company (“Longhorn”) was formed as a direct subsidiary of the Company. Longhorn is a special purpose financial insurance company domiciled and licensed in the State of Vermont.

## B. Territory and Plan of Operation

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, and the District of Columbia. As of September 30, 2017, 27.5% of life insurance premiums, 39.0% of annuity considerations, 16.9% of accident and health premiums, and 48.0% of deposit-type contract funds were received from New York. Policies are written on a participating and non-participating basis.

The following tables show the percentage of direct premiums received, by state, and by major lines of business as of September 30, 2017:

<u>Life Insurance Premiums</u>		<u>Annuity Considerations</u>	
New York	27.5%	New York	39.0%
Florida	7.4	Florida	21.9
California	6.9	Vermont	8.4
New Jersey	6.5	Texas	7.7
Illinois	<u>4.1</u>	Georgia	<u>5.5</u>
Subtotal	52.4%	Subtotal	82.5%
All others	<u>47.6</u>	All others	<u>17.5</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	16.9%	Georgia	52.0%
California	<u>12.3</u>	New York	<u>48.0</u>
Subtotal	29.2%		<u>100.0%</u>
All others	<u>70.8</u>		
Total	<u>100.0%</u>		

The principal lines of business sold during the examination period were individual life insurance and annuity products. The products sold during the examination period include traditional whole life, term life, universal life, indexed universal life, and variable universal life policies, as well as deferred and immediate, and fixed and variable indexed annuity products. The Company generated most of its premium income from ordinary life insurance.

The Company markets its products to middle and emerging affluent markets, professionals, and small business owners. The primary distribution channels include a combination of affiliated agents as part of a general agency system and independent who are part of Independent Marketing Organizations, Marketing General Agencies, and Personally Producing General Agents.

#### 4. 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 and 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 sales activities of the agency force including trade practices, solicitation, and the replacement of insurance policies.

1. Section 1313(f) of the New York Insurance Law states:

“Advertisements and other public announcements directed primarily at calling the attention of policyholders or prospective policyholders to an insurer and containing a statement of the separate financial condition of the holding company system shall also contain a statement of the separate financial condition of the insurer which shall comply with this section.”

The examiner's review of a sample of 50 advertisements disseminated in New York during the examination period revealed that 4 of the Company's advertisements (8%) included a statement regarding the financial condition of the Group but did not also include a separate statement regarding the financial condition of the Company.

The Company violated Section 1313(f) of the New York Insurance Law by disseminating advertisements in New York that included a statement regarding the financial condition of the holding company group without also including a separate statement regarding the financial condition of the Company.

Section 219.5(a) of 11 NYCRR 219 (Insurance Regulation 34-A) states, in part:

“Each insurer shall maintain at its home office a complete file containing a specimen copy of every printed, published or prepared advertisement hereafter disseminated in this state, with a notation indicating the manner and extent of distribution and the form number of any policy advertised. In order to be complete, the file must contain all advertisements whether used by the company, its agents or solicitors or other persons. . . .”

The Company's advertising log includes the columns entitled "#times used" and "manner/extent of use." However, these columns were populated with neither the number of times the Company printed the advertisements nor the number of advertisements that were disseminated.

The Company violated Section 219.5(a) of 11 NYCRR 219 (Insurance Regulation 34-A) by failing to indicate the extent of distribution of its advertising materials in its advertising log.

2. Section 2112(b) of the New York Insurance Law states:

“To appoint a producer, the appointing insurer shall file, in a format approved by the superintendent, a notice of appointment within fifteen days from the date the agency contract is executed or the first insurance application is submitted.”

The examiner's review of the Company's producer licensing files revealed that the Company did not file the notices of appointment for its agents with the Superintendent within fifteen days of the date the agency contracts were executed, or the first insurance application for each agent was submitted. The 16 agents involved wrote 17 policies before the Company filed their notices of appointment with the Superintendent.

The Company violated Section 2112(b) of the New York Insurance Law by failing to timely file the notices of appointment for its agents with the Superintendent.

3. Section 2112(d) of the New York Insurance Law states, in part:

“Every insurer . . . doing business in this state shall, upon termination of the certificate of appointment . . . of any insurance agent . . . licensed in this state, . . . file with the superintendent within thirty days a statement, in such form as the superintendent may prescribe, of the facts relative to such termination. . . .”

The examiner's review of terminated agents revealed that in 12 instances the Superintendent was not informed within 30 days of the facts relative to the termination of the certificates of appointment of the Company's agents.

The Company violated Section 2112(d) of the New York Insurance Law by failing to notify the Superintendent within 30 days of the facts relative to the termination of the certificates of appointment of its agents.

4. Section 51.6(b) of 11 NYCRR 51 (Insurance Regulation 60, Third Amendment) states, in part:

“Where a replacement has occurred or is likely to occur, the insurer replacing the life insurance policy contract shall: . . .

(2) require with or as part of each application a copy of the sales material including any proposal, used in the sale of the life insurance policy, and proof of receipt by the applicant of the ‘IMPORTANT Notice Regarding Replacement or Change of Life Insurance Policies’; . . .

(4) examine the sales material, including any proposal, used in the sale of the life insurance policy, and the ‘Disclosure Statement’, and ascertain that they are accurate and meet the requirements of the Insurance Law and regulations promulgated thereunder; . . .

(10) if an initial ‘Disclosure Statement’ was provided to the applicant prior to the delivery of the life insurance policy . . . and the life insurance policy . . . is issued other than as applied for, then the insurer shall provide the owner a revised ‘Disclosure Statement’ that conforms to the life insurance policy . . . as issued not later than the time of delivery of the policy . . .”

Section 51.7(b) of 11 NYCRR 51 (Insurance Regulation 60, Third Amendment) states, in part:

“No insurer, insurance agent . . . shall fail to comply with or engage in other practices that would prevent the orderly working of this Part in accomplishing its intended purpose in the protection of policyholders and contract holders. Any person failing to comply with this Part, or engaging in other practices that would prevent the orderly working of this Part, shall be subject to penalties under the Insurance Law, which may include monetary restitution, restoration of policies or contracts, . . . and monetary fines.”

Office of General Counsel Opinion Number 03-07-34, issued July 31, 2003, advises, in part:

“. . . Under the circumstances surrounding the sale of sophisticated products, where the fees and charges may be a significant factor in a determination by a client to purchase a product, and possibly replace another product; the illustration of applicable fees and charges could be an essential element in the Regulation 60 disclosure. In addition, the Securities & Exchange Commission commented, when this Department was revising Regulation 60 in 1997, that it regarded the illustration of applicable fees and charges desirable so that the insured could ascertain that the applicable fees and charges were not excessive. The Department is aware that the Disclosure Statements established by the Superintendent of Insurance, N.Y. Comp. R. & Regs., tit. 11, Appendices 10A and 10B, do not specifically provide space for information concerning any applicable charges and fees. The Disclosure Statements do, however, contain a space for remarks, which may be utilized by the agent to describe applicable charges and fees. . . .”

The examiner reviewed 25 external life replacement transactions, 10 internal life replacement transactions, and all 34 annuity replacement transactions that were processed during the examination period. These transactions were reviewed for compliance with 11 NYCRR 51 (Insurance Regulation 60), as well as the Company's written replacement procedures. The review revealed that five of the annuity files provided by the Company were non-replacement transactions because they were miscoded in the Company's replacement system: one annuity file was a non-New York policy and one annuity file was "not taken." The examiner noted the following deviations from Insurance Regulation 60:

- i. The Company's universal life and variable universal life policies require a 6% charge against each premium paid by the policyholder. For all 25 external life replacements (100%) and for all 10 internal life replacements (100%), where the cash value of the existing policy was transferred to the new policy, the Company failed to disclose in the "remark" section of the disclosure statement that there would be a 6% upfront premium charge against the cash values that were transferred. This was a concern to the Department because the existing whole life policies did not have the upfront premium charges.
- ii. For all 25-external life (100%) and for 9 out of 10 internal life replacements reviewed (90%), the disclosure statement indicated "N/A" or zero as the surrender charge of the proposed policy. Based on the review of the illustration, surrender charges are applicable for the proposed index universal life policies. The description of such surrender charges should be disclosed on the "remark" section of the disclosure statement. In 12 out of 25 external index universal life replacements (48%), the disclosure statement indicated "N/A" as the surrender charge of the existing policy rather than "zero." The examiner noted that in most of these instances, a side-by-side comparison of the existing life policy and the proposed life policy may have affected the client's decision as the client would have observed the effect of the policy charges. The examiner also noted that, by using the notation "N/A" as the surrender charge of the existing policy where the correct surrender charge should have been "zero," the client was not afforded the opportunity to observe, based on a side-

by-side comparison, a policy feature that could have been a significant determinant whether to replace the existing policy.

- iii. For 5 out of 25 external life replacements (20%) and 3 out of 10 internal life replacements (30%), where the client replaced a whole life policy with an index universal life policy, the agent's statement section of the disclosure statement indicated that the primary reasons for recommending the new life insurance policy were "more coverage," "lower the premium," "double the coverage," "lower cost of insurance," or "same premium." In all these cases, the agent did not disclose that the premium requirements for the proposed index universal life policy are subject to change based on market rates, administrative costs, and other expenses and costs of insurance, as indicated in the policy illustrations. The agents also did not disclose, based on the guaranteed assumptions only, that those policies will terminate without coverage after a certain number of years.
- iv. For 3 out of 25 external life replacements reviewed (12%), the agent's statement section of the disclosure statement stated that the proposed policy has a "short time to pay up" or "the client will save \$3000 (roughly) annually, while still accruing equivalent cash value," or the existing policy has "No Cash Value Access." In all three cases, the examiner noted that the proposed policy is not a paid-up policy, the client is not accruing equivalent cash value, and the existing policy's cash value is accessible.
- v. For 2 out of 10 internal life replacements reviewed (20%), where the Company replaced the existing universal life policy with an indexed universal life policy, the agent stated in the agent's statement section of the disclosure statement that the advantages of the proposed policy are "lower net cost" and "too expensive." In these two cases, the proposed policies have higher costs of insurance, higher upfront premium charges, higher monthly policy fees, and higher monthly policy charges. The Company asserted that the "lower net cost" statement is referring to the premium difference of the two policies. The examiner finds the Company's assertion lacking because both the existing and the proposed policies are universal life policies, and the amount of premium to

be paid every year is flexible and depends on the cash value of the policy. Based on the guaranteed interest assumption and the new premium amount, the proposed policy would terminate without coverage after a certain number of years while the existing policy under the existing premium may still offer coverage.

- vi. For 2 out of 10 internal life replacements (20%) and in 1 out of 25 external life replacements reviewed (4%), the agent stated that the advantage of continuing the existing life insurance policy without changes are “none” or “N/A.” For all three cases, the statements are not true because the proposed policies would be subject to new contestable and suicide periods.
- vii. For 8 out of 25 external life replacements reviewed (32%), the agent stated on the disclosure statement that the guaranteed interest rate for the existing life policies is zero. The statement cannot be true because the existing policies are whole life policies, and whole life policies have guaranteed interest.
- viii. For 2 out of 25 external life replacements reviewed (8%), the amounts on the summary result comparison section of the disclosure statement were crossed out and amended. Because the policies were issued other than as applied for, the agent should have provided the applicant with a revised disclosure statement.
- ix. For 3 out of 27 annuity replacements reviewed (11.1%), the Company failed to provide a side-by-side comparison of the existing contract and the proposed contract to the client; i.e., no disclosure statement was provided.
- x. For 4 out of 27 annuity replacements reviewed (14.8%), the disclosure statements in the replacement files were not filled out. In those instances, the description of the transactions, or the summary result comparison, or the agent’s statement were left blank.
- xi. For 9 out of 27 annuity contracts reviewed (33.3%), the Company could not provide support for the policy amount disclosed in either the proposed annuity section or the existing annuity section of the summary result comparison.

- xii. For 4 out of 27 annuity replacements reviewed (14.8%), the surrender charge for either the existing contract or the proposed contract was not correctly disclosed on Part 4 of the agent's statement.
- xiii. For 3 out of 27 annuity contracts reviewed (11.1%), the agent's statement stated that the advantage of continuing the existing annuity contract was "none." Upon further review, the examiner noticed that the existing contracts were fixed annuities and the proposed contracts were variable annuities. The advantages of continuing the existing contracts would be that the interest rate is guaranteed and the surrender charge period has ended.
- xiv. For 3 out of 27 annuity contracts reviewed (11.1%), the "IMPORTANT Notice Regarding Replacement" were either missing from the replacement files or were partially provided; i.e., the Company only provided the signature page of the notice.

The Company violated Section 51.6(b)(4) of 11 NYCRR 51 (Insurance Regulation 60, Third Amendment) by failing to examine the disclosure statements and ascertain that they were accurate and met the requirements of the New York Insurance Law and the regulations promulgated thereunder. (See items i to vii and items ix to xiii above.)

The Company violated Section 51.6(b)(10) of 11 NYCRR 51 (Insurance Regulation 60, Third Amendment) by failing to provide the applicant with a revised disclosure statement when the policy was issued other than applied for. (See item viii above.)

The Company violated Section 51.6(b)(2) of 11 NYCRR 51 (Insurance Regulation 60, Third Amendment) by failing to require with or as part of each application proof of receipt by the applicant of the "IMPORTANT Notice Regarding Replacement or Change of Life Insurance Policies." (See item xiv above.)

The Company violated Section 51.7(b) of 11 NYCRR 51 (Insurance Regulation 60, Third Amendment) by engaging in practices that prevented the orderly working of the regulation in accomplishing its intended purpose in the protection of policy and contract holders.

The examiner recommends that the Company strengthen its replacement review process to ensure all necessary replacement documentations are received and accurately completed before issuing a policy.

The examiner recommends that the Company implement a remediation plan, acceptable to the Department, to mitigate the deficiencies noted herein and provide relief to all policy and contract holders who did not receive complete, accurate and timely disclosure prior to completing an application to replace their existing policies and contracts.

The examiner recommends that the Company develop and implement an audit plan designed to review, test and monitor compliance with Insurance Regulation 60. Such plan should be approved by the Company's board of directors or its audit committee, and the results of audits performed should also be reviewed by the board of directors or its audit committee.

#### B. Underwriting and Policy Forms

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

1. Section 2611(a) of the New York Insurance Law states:

“No insurer or its designee shall request or require an individual proposed for insurance coverage to be the subject of an HIV-related test without receiving the written informed consent of such individual prior to such testing and without providing general information about AIDS and the transmission of HIV infection.”

A review of 105 life policies (75 issued and 30 declined) revealed that in 38 of the policies reviewed (36.1%) the HIV consent form was not signed prior to the HIV-related testing.

The Company violated Section 2611(a) of the New York Insurance Law by subjecting applicants for insurance to an HIV-related test without first obtaining their written informed consent.

2. Section 53-3.5(a) of 11 NYCRR 53 (Insurance Regulation 74) states:

“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 policy-owner 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.”

Section 53-3.7(d) of 11 NYCRR 53 (Insurance Regulation 74) states:

“The illustration actuary shall file a certification with the board and with the Superintendent annually for all policy forms for which illustrations are used and before a new policy form is illustrated. If an error in a previous certification is discovered, the illustration actuary shall notify the board of directors of the insurer and the Superintendent promptly.”

A review of 75 policies issued during the examination period revealed that in 22 of the policies reviewed (29.3%) the initial illustration was neither signed by the applicant and producer nor submitted to the insurer at the time of policy application. The review also revealed that for 10 of the 75 policies (13.3%) the revised illustration was not signed and dated by the policy owner and the producer before or at the time the policy was delivered.

Additionally, the examiner’s review of the policy forms revealed that the Company did not include Form 0028NY (1013) in the annual certification filed with the Department. The Company included only Form 0028NY (0199), an older version of Form 0028NY (1013). Upon the examiner’s inquiry, the Company responded that Form 0028NY (1013) is marketed with an illustration.

The Company violated Section 53-3.5(a) of 11 NYCRR 53 (Insurance Regulation 74) by failing to have the applicant and the producer sign the illustration at the time of policy delivery, by failing to obtain a copy of the signed illustration, and by failing to provide a revised illustration signed and dated by the applicant and the agent on or before the date of application.

The Company violated Section 53-3.7(d) of 11 NYCRR 53 (Insurance Regulation 74) by failing to include all policy forms for which illustrations were used in the annual certification filed with the Department.

### 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 403(d) of the New York Insurance Law states, in part:

“All applications for commercial insurance, individual, group or blanket accident and health insurance and all claim forms . . . shall contain a notice in a form approved by the superintendent that clearly states in substance the following:

‘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.’ ”

Section 86.4(d) of 11NYCRR 86 (Insurance Regulation 95) states, in part:

“ . . . The warning statements required by subdivisions (a), (b) and (e) of this section shall be placed immediately above the space provided for the signature of the person executing the application or claim form and shall be printed in type which will produce a warning statement of conspicuous size. . . .”

The examiner reviewed a sample of 15 paid disability claim files, 20 denied disability claim files, and 20 denied death claim files. The examiner’s review revealed that for 7 of the 15 paid disability claims (46.7%), for 19 of the 20 denied disability claims (95%), and for 3 of the 20 denied death claims (15%) the attending physician’s statement contained the following incomplete statement:

“FRAUD NOTICE: Any person who knowingly files a statement of claim containing false or misleading information is subject to criminal and civil penalties. This includes Attending Physician portions of the claim form.” This fraud warning statement does not match the statement provided in Section 403(d) of the New York Insurance Law.

The examiner reviewed a sample of 20 denied death claims, 33 paid death claims, and 29 annuity claims and noted that for 5 of the 20 denied death claims (25%), for 31 of the 33 paid death claims (93.9%), and for all 29 annuity death claims (100%) the fraud warning statement was not placed immediately above the space provided for the signature of the person executing the claim form.

The Company violated Section 403(d) of the New York Insurance Law by using claim forms that failed to include the statutorily required fraud warning statement.

The Company violated Section 86.4(d) of 11 NYCRR 86 (Insurance Regulation 95) by using claim forms that failed to place the fraud warning statement immediately above the space provided for the signature of the person executing the claim form.

2. Item D of Article 3 “Administrative and Claim Services/Compensation” of the In-force Service Agreement between UNUM Life Insurance Company of America (“UNUM”) and the Company (referred to as “NLV” in this service agreement) states, in part:

“ . . . All correspondence about claims will be written on NLV’s letterhead and will be directly between the claimant and UNUM’s claim office, with copies for NLV’s home office . . . ”

The examiner noted during the review of the denied claims that in 8 out of 20 cases (40%) UNUM communicated with claimants and physicians on its own letterhead, not that of the Company, and failed to clearly identify itself as the Company’s third-party administrator.

The examiner recommends that the Company ensure that UNUM use claim forms displaying the Company’s letterhead when processing the Company’s disability claims as specified in the In-force Service Agreement between the Company and UNUM.

3. Section 3211(a)(1) of New York Insurance Law states, in part:

“No policy of life insurance . . . delivered or issued for delivery in this state, and no life insurance certificate delivered or issued for delivery in this state by a fraternal benefit society, shall terminate or lapse by reason of default in payment of any premium, installment, or interest on any policy loan in less than one year after such default, unless, for scheduled premium policies, a notice shall have been duly mailed . . . for life insurance policies in which the amount and frequency of premiums may vary, no earlier than and within thirty days after the day when the insurer determines that the net cash surrender value under the policy is insufficient to pay the total charges that are necessary to keep the policy in force. . . .”

Section 3211(b) of New York Insurance Law states, in part:

“The notice required by paragraph one of subsection (a) hereof shall: . . .  
(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 . . .”

A review of 15 indexed universal life lapsed policy files revealed that in all cases (100%) the Company did not mail the premium due notice when it was determined that the net cash surrender value under the policy was insufficient to cover the required premium necessary to keep the policy in force within the required time frame. Furthermore, the examiner reviewed a sample of 5 term life lapsed policy files. The Company failed to mail the premium due notice for 3 of the 5 term life policy files reviewed (60%).

A review of 15 indexed universal life lapsed policy files, 5 variable universal life lapsed policy files, and 5 term life lapsed policy files revealed that the premium due notice for all the indexed and variable universal life (100% each) and 2 term life (40%) did not include the required language that states, “. . . 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 except as to the right to any cash surrender value or non-forfeiture benefit.”

The Company violated Section 3211(a)(1) of the New York Insurance Law by failing to mail the premium due notice when it was determined that the net cash surrender value of the policy was insufficient to cover the premium necessary to keep the policy in force within the required time frame.

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

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.

4. Section 3230 of New York Insurance Law states, in part:

“(b) The application to accelerate benefits shall:

(1) be dated by the insurer upon transmittal and shall be completed and signed by the policy owner not more than thirty days thereafter; . . .

(c) Insurers are prohibited from paying accelerated death benefits or special surrender values to the policy owner or certificate holder for a period of five days from the date on which the information specified in subdivision (d) of this section is transmitted in writing to the policy owner or certificate holder. . . .

(d) Within 5 day[s] of receipt of an application to accelerate benefits an insurer must provide the policy owner with the following:

(1) an illustration demonstrating the effect of the accelerated benefit on the policy’s cash value and policy loans;

(2) a numerical computation of the amount of the death benefit which would be payable upon death;

(3) a numerical computation of the amount of the death benefit that would be payable upon acceleration; and

(4) a notice that other means may be available to achieve the intended goal, including a policy loan. . . .”

For all 14 accelerated death benefit files reviewed (100%), the Company failed to date the application for accelerated benefits upon transmittal to the policy owner. The examiner further noted that instead of dating the application, the Company included the following statement in the application above the applicant's signature and date, "The Company has delivered the numerical computation, illustration and notice referred to above, to the Owner on the date signed."

For 4 out of 14 accelerated death benefit files reviewed (28.6%), the Company provided an illustration, more than five days after the receipt of the application for accelerated benefits.

For 12 out of 14 accelerated death benefit files reviewed (86%), the Company paid accelerated death benefits to the policy owner in less than five days after the illustration was transmitted to the policy owner.

For all 14 accelerated death benefit files reviewed (100%), the Company failed to provide a notice to the policy owner that other means may be available to achieve the intended goal, including a policy loan.

During the review, the examiner also noted that the Company included the following statement in its application to accelerate benefits: "The Company is prohibited from paying Accelerated Benefits to the Owner for a period of 14 days from the date on which a numerical computation and illustration showing the effects of acceleration of benefits and a notice describing alternatives are transmitted in writing to the Owner."

The Company violated Section 3230(b)(1) of the New York Insurance Law by failing to date the application to accelerated benefits upon transmittal to the policy owner.

The Company violated Section 3230(d) of the New York Insurance Law by failing to provide an illustration to the policy owner within five days of receipt of an application to accelerate benefits and by failing to provide a notice to the policy owner that other means may be available to achieve the intended goal, including a policy loan.

The Company violated Section 3230(c) of the New York Insurance Law by paying accelerated death benefits to the policy owner in less than a period of five days from the date on which the illustration was transmitted to the policy owner.

The examiner recommends that the Company amend its application to state, ". . . for a period of five days from the date on which a numerical computation and illustration showing the effects of acceleration of benefits and a notice describing alternatives are transmitted in writing to the Owner," to comply with Section 3230(c) of the New York Insurance Law.

## 5. 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 Section 1313(f) of the New York Insurance Law by disseminating advertisements in New York that included a statement regarding the financial condition of the holding company group without also including a separate statement regarding the financial condition of the Company.	9
B	The Company violated Section 219.5(a) of 11 NYCRR 219 (Insurance Regulation 34-A) by failing to indicate the extent of distribution of its advertising materials in its advertising log.	10
C	The Company violated Section 2112(b) of the New York Insurance Law by failing to timely file the notices of appointment for its agents with the Superintendent.	10
D	The Company violated Section 2112(d) of the New York Insurance Law by failing to notify the Superintendent within 30 days of the facts relative to the termination of the certificates of appointment of its agents.	10
E	The Company violated Section 51.6(b)(4) of 11 NYCRR 51 (Insurance Regulation 60, Third Amendment) by failing to examine the disclosure statements and ascertain that they were accurate and met the requirements of the New York Insurance Law and the regulations promulgated thereunder.	15
F	The Company violated Section 51.6(b)(10) of 11 NYCRR 51 (Insurance Regulation 60, Third Amendment) by failing to provide the applicant with a revised disclosure statement when the policy was issued other than applied for.	15
G	The Company violated Section 51.6(b)(2) of 11 NYCRR 51 (Insurance Regulation 60, Third Amendment) by failing to require with or as part of each application proof of receipt by the applicant of the “IMPORTANT Notice Regarding Replacement or Change of Life Insurance Policies.”	15
H	The Company violated Section 51.7(b) of 11 NYCRR 51 (Insurance Regulation 60, Third Amendment) by engaging in practices that prevented the orderly working of the regulation in accomplishing its intended purpose in the protection of policy and contract holders.	15

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
I	The examiner recommends that the Company strengthen its replacement review process to ensure all necessary replacement documentations are received and accurately completed before issuing a policy.	15
J	The examiner recommends that the Company implement a remediation plan, acceptable to the Department, to mitigate the deficiencies noted herein and provide relief to all policy and contract holders who did not receive complete, accurate and timely disclosure prior to completing an application to replace their existing policies and contracts.	16
K	The examiner recommends that the Company develop and implement an audit plan designed to review, test and monitor compliance with Insurance Regulation 60. Such plan should be approved by the Company's board of directors or its audit committee, and the results of audits performed should also be reviewed by the board of directors or its audit committee.	16
L	The Company violated Section 2611(a) of the New York Insurance Law by subjecting applicants for insurance to an HIV-related test without first obtaining their written informed consent.	16
M	The Company violated Section 53-3.5(a) of 11 NYCRR 53 (Insurance Regulation 74) by failing to have the applicant and the producer sign the illustration at the time of policy delivery, by failing to obtain a copy of the signed illustration, and by failing to provide a revised illustration signed and dated by the applicant and the agent on or before the date of application.	17
N	The Company violated Section 53-3.7(d) of 11 NYCRR 53 (Insurance Regulation 74) by failing to include all policy forms for which illustrations were used in the annual certification filed with the Department.	17
P	The Company violated Section 403(d) of the New York Insurance Law by using claim forms that failed to include the statutorily required fraud warning statement.	18
Q	The Company violated Section 86.4(d) of 11 NYCRR 86 (Insurance Regulation 95) by using claim forms that failed to place the fraud warning statement immediately above the space provided for the signature of the person executing the claim form.	18

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
R	The examiner recommends that the Company ensure that UNUM use claim forms displaying the Company's letterhead when processing the Company's disability claims as specified in the In-force Service Agreement between the Company and UNUM.	19
S	The Company violated Section 3211(a)(1) of the New York Insurance Law by failing to mail the premium due notice when it was determined that the net cash surrender value of the policy was insufficient to cover the premium necessary to keep the policy in force within the required time frame.	20
T	The Company violated Section 3211(b)(2) of the New York Insurance Law by failing to include the statutorily required statement on its premium due notice.	20
U	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.	20
V	The Company violated Section 3230(b)(1) of the New York Insurance Law by failing to date the application to accelerated benefits upon transmittal to the policy owner.	21
W	The Company violated Section 3230(d) of the New York Insurance Law by failing to provide an illustration to the policy owner within five days of receipt of an application to accelerated benefits and by failing to provide a notice to the policy owner that other means may be available to achieve the intended goal, including a policy loan.	21
X	The Company violated Section 3230(c) of the New York Insurance Law by paying accelerated death benefits to the policy owner in less than a period of five days from the date on which the illustration was transmitted to the policy owner.	21
Y	The examiner recommends that the Company amend its application to state, ". . . for a period of five days from the date on which a numerical computation and illustration showing the effects of acceleration of benefits and a notice describing alternatives are transmitted in writing to the Owner," to comply with Section 3230(c) of the New York Insurance Law.	21

Respectfully submitted,

\_\_\_\_\_/s/  
James Wang  
Senior Insurance Examiner

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

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

\_\_\_\_\_/s/  
James Wang

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_

*APPOINTMENT NO. 31683*

*NEW YORK STATE*

*DEPARTMENT OF FINANCIAL SERVICES*

*I, MARIA T. VULLO, 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:*

*JAMES WANG*

*as a proper person to examine the affairs of the*

*NATIONAL 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 9th day of November, 2017*

*MARIA T. VULLO  
Superintendent of Financial Services*

*By:*

*Mark McLeod*

*MARK MCLEOD  
DEPUTY CHIEF - LIFE BUREAU*

