



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

CONDITION:

DECEMBER 31, 2018

DATE OF REPORT:

AUGUST 9, 2019

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

MARKET CONDUCT REPORT ON EXAMINATION

OF THE

NATIONWIDE LIFE INSURANCE COMPANY

AS OF

DECEMBER 31, 2018

DATE OF REPORT:

AUGUST 9, 2019

EXAMINER:

CHRISTINE MAVOUR

TABLE OF CONTENTS

<u>ITEM</u>	<u>PAGE NO.</u>
1. Executive summary	2
2. Scope of examination	3
3. Description of Company	4
A. History	4
B. Holding company	4
C. Territory and plan of operation	4
4. Market conduct activities	6
A. Advertising and sales activities	6
B. Underwriting and policy forms	12
C. Treatment of policyholders	17
5. Summary and conclusions	19



NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Linda A. Lacewell
Superintendent

July 8, 2020

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

Madam:

In accordance with instructions contained in Appointment No. 31545, dated November 1, 2016, and annexed hereto, an examination has been made into the condition and affairs of Nationwide Life Insurance Company, hereinafter referred to as “the Company,” at its home office located at One West Nationwide Blvd., Columbus, OH 43215.

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 contained in this report are summarized below.

- The company violated few sections of 11 NYCRR 51 (Insurance Regulation 60) by failing to (1) require an accurate and complete “Disclosure Statement” signed by the insurance agent or broker in the form prescribed in Appendix 10A to Insurance Regulation 60, including the primary reason or reasons for recommending the life insurance policy and why the existing life insurance policy cannot meet the applicant’s objectives;(2) examine the “Disclosure Statement” and ascertain that it is accurate and meet the requirements of the New York Insurance Law and regulations promulgated thereunder; and (3) ensure that the freelook period in its issued policies agrees with the requirements of Insurance Regulation 60. (See item 4A of this report.)
- The Company violated Section 3209(b)(1)(A) of the New York Insurance Law and Sections 53-2.1(a)(4), 53-2.1 (a)(5), and 53-2.1(a)(6) of 11 NYCRR 53 (Insurance Regulation 74) by issuing universal life policies without providing the required preliminary information to the applicant. (See item 4B of this report.)
- The Company violated Sections 53-2.2(a)(5)(v), 53-2.2(a)(5)(vi) and 53-2.2(a)(5)(vii) of 11 NYCRR 53 (Insurance Regulation 74) by failing to include current and median values on the policy summary information, where required. (See item 4B of this report.)
- The Company violated Section 53-2.2(a)(6) of 11 NYCRR 53 (Insurance Regulation 74) by providing policy summary information that failed to indicate if the loan interest rate is applied in advance or arrears, or if the rate is fixed or adjustable. (See item 4B of this report.)
- The Company violated Section 3211(g) of the New York Insurance Law and Section 53-3.6(c) of 11 NYCRR 53 (Insurance Regulation 74) by providing policyholders with in force illustrations that were not based upon the current mortality, interest, and expense assumptions. (See item 4C of this report.)

2. SCOPE OF EXAMINATION

This examination covers the period from January 1, 2010, to December 31, 2018. As necessary, the examiner reviewed matters occurring subsequent to June 30, 2016, 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 was incorporated as a stock insurance company under the laws of the State of Ohio on March 21, 1929, originally as American Insurance Union, Inc. In March 1935, the name changed to The Life Insurance Company of America; and in December 1935, the name changed to Cooperative Life Insurance Company of America. In 1939, the name became the Farm Bureau Life Insurance Company. This was also the year the Company became licensed to do an insurance business in New York. The present name was adopted in 1955.

In 2009, the Company merged with Nationwide Life Insurance Company of America (“NLICA”), formerly Provident Mutual Insurance Company, a Pennsylvania domiciled affiliate life insurer that was licensed to do business in New York. NLICA ceased to exist and the Company was the surviving corporation.

B. Holding Company

The Company is a wholly owned subsidiary of Nationwide Financial Services, Inc., a Delaware financial services holding corporation, which is in turn a wholly owned subsidiary of Nationwide Corporation, an Ohio holding corporation. The ultimate parent of the Company is Nationwide Mutual Insurance Company, an Ohio domiciled mutual property and casualty insurer.

C. 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, the District of Columbia, and the U.S. territories of Guam, Puerto Rico, and the U.S. Virgin Islands. As of June 30, 2016, 12.1% of life premiums, 9.2% of annuity considerations, and 4.7% of accident and health premiums 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 June 30, 2016:

<u>Life Insurance Premiums</u>		<u>Annuity Considerations</u>		<u>Other Considerations</u>	
Delaware	16.8%	Massachusetts	10.0%	Florida	15.0%
New York	12.1	Pennsylvania	9.7	New York	10.0
Minnesota	7.8	New York	9.2	California	9.8
California	7.3	California	6.7	Ohio	6.6
Florida	<u>6.4</u>	Florida	<u>6.5</u>	Texas	<u>5.9</u>
Subtotal	50.4%	Subtotal	42.1%	Subtotal	47.3%
All others	<u>49.6</u>	All Others	<u>57.9</u>	All Others	<u>52.7</u>
Total	<u>100.0%</u>	Total	<u>100.0%</u>	Total	<u>100.0%</u>

The Company principally writes individual life insurance and individual and group annuity products. Life insurance products consist mainly of universal life policies. The Company's individual and group annuities are composed mostly of variable annuity contracts and compose approximately three-fourths of the Company's total premium revenue. Group annuities consist of retirement plans sold to the private and public sector, and investment products sold to institutions and advisory services.

The Company's products are distributed by independent broker-dealers, financial institutions, wirehouse and regional firms, pension plan administrators, producer groups, and life insurance agencies and specialists. The Company's products are also marketed directly to a customer base through two affiliates: Nationwide Retirement Solutions, Inc., which distributes investment options to public sector retirement plans through variable annuity contracts; and Nationwide Financial Network, the sales and marketing arm of Nationwide Mutual Insurance Company, which distributes the Company's life insurance, annuities, and group pensions through career agents, independent broker-dealer, and pension sales force.

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

1. Section 219.4 of 11 NYCRR (Insurance Regulation 34-A) 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. Statements made should not cloud or misdirect the consideration of the purchaser. The use of statistics, illustrations and statements which may be factually correct will not be acceptable if their impact misleads or deceives. The use of technical insurance terminology should be held to a minimum and be appropriate within the context of the advertisement. . . .

(3) Whether an advertisement has the tendency or capacity to mislead or deceive shall be determined by the superintendent from the overall impression that the advertisement may be reasonably expected to create upon a person not knowledgeable in insurance matters. . . .

(p) In all advertisements made by an insurer, or on its behalf, the name of the insurer shall be clearly identified, together with the name of the city, town or village in which it has its home office in the United States. . . .”

The examiner reviewed a sample of 79 advertisements and noted that 17 of the reviewed sampled advertisements (22%) did not contain the name of the insurer or the name of the city, town or village in which it has its home office in the United States.

The Company violated Section 219.4(p) of 11 NYCRR 219 (Insurance Regulation 34-A) by failing to clearly identify the name of the insurer offering to provide the advertised insurance coverage, together with the name of the city, town or village in which it has its home office in the United States. The Company has taken corrective action to address this violation.

2. Section 51.1 of 11 NYCRR 51 (Insurance Regulation 60, Third Amendment) states, in part:

“The purposes of this Part are to: . . .

(b) protect the interest of the public by establishing minimum standards of conduct to be observed in the replacement or proposed replacement of life insurance policies and annuity contracts; by making available full and clear information on which an applicant for life insurance or annuities can make a decision in his or her own best interest; by reducing the opportunity for misrepresentation and incomplete comparison in replacement situations (commonly referred to as twisting); and by precluding unfair methods of competition and unfair practices.”

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 or annuity contract shall: . . .

(3) prior to the delivery of the life insurance policy or annuity contract, require an accurate and complete “Disclosure Statement” signed by the insurance agent or broker in the form prescribed in Appendices 10A or 10B to this Part, including the primary reason or reasons for recommending the new life insurance policy or annuity contract and why the existing life insurance policy or annuity contract cannot meet the applicant’s objectives;

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

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

“Any insurer that issues a replacement life insurance policy or annuity contract shall provide to the policy or contract owner the right to return the policy or contract within 60 days from the date of delivery of such policy or contract . . .”

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 (“OGC”) opinion issued July 31, 2003, states:

“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.”

a. The examiner reviewed 28 external index universal life (“IUL”) replacement transactions that were processed during the examination period. Below is a summary of the examiner’s findings.

i. The Company’s IUL policies require a 6% charge against each premium paid by the policyholder. In all 28 (100%) external IUL replacements where the cash value of the existing policy was transferred to the new policy the Company failed to disclose in the Remarks section of the Disclosure Statement that there would be a 6% upfront premium charge against the transferred cash value.

ii. In 5 out of the 28 (18%) IUL policy replacements, where the clients replaced whole life policies with IUL policies, the Agent’s Statement section of the Disclosure Statement stated the advantage of the existing policy as “none” for 4 of the policies and stated that “the only advantage of existing policy is no need to go through underwriting process” for the remaining policy. Because the proposed policies were entering new contestable, suicide and surrender charge periods, these statements are deemed inaccurate.

iii. In 6 out of the 28 (21%) IUL policy replacements, where the client replaced whole life policies with IUL policies, the Agent’s Statement section of the Disclosure Statement was vague and did not demonstrate that the customer was informed of the differences between the IUL policy and the whole life policy when it indicated the primary reason for recommending the new life insurance policy. The agent listed one or more of the following as reasons for recommending the new policy: the client prefers a IUL policy to a whole life policy, the client prefers or likes the equity index strategy of the IUL policy, and the IUL policy offers a better plan. These remarks did not specify the true advantages or disadvantages of replacing or keeping the existing policies.

iv. In 7 out of the 28 (25%) IUL policy replacements, where the client replaced whole life or universal life policies with IUL policies, the Agent's Statement section of the Disclosure Statement indicated that the primary reason for recommending the new life insurance policy is the availability of the long term care rider option with the proposed policy and the existing life insurance policy inability to meet the applicant's objective because of the lack of such option. However, the agent failed to disclose to the clients the cost of the long term care rider and the fact that exercising this rider option would reduce the policy's death benefit.

v. In 10 out of the 28 (36%) IUL policy replacements, where the client replaced whole life or universal life policies with the IUL policies, the Agent's Statement section of the Disclosure Statement indicated that the primary reason for recommending the new life insurance policy was either related to "flexible premium," "higher rate of return," "potential growth IUL," "better cash value growth," "no investment market risk," "cash accumulation for the existing policy was too slow," or "death benefit guaranteed." These statements are not accurate because of the following reasons: (1) if the premiums and/or cost of the riders, if applicable, are not paid according to the contract provision, the policies will run the risk of being terminated without coverage after a certain number of years; (2) "death benefits guaranteed" statement is not accurate as the illustration shows that the coverage will terminate after certain number of years even with the planned premium amount; (3) the higher or the better rate of return is not guaranteed in IUL policies; (4) the replaced whole life policy has the potential for growth, which does not make the "potential growth in the IUL" or "better cash value growth" a valid advantage especially when the growth in an IUL policy would be negatively affected in a market downturn; (5) there are investment market risks for index universal life policies; and (6) the accumulation for the existing policy is not too slow compared with the replacing policy as shown on the Summary Comparison Result section of the Disclosure Statement. In addition, in the case of one of the transactions, the agent's reason for recommending the new policy was that there would be a lower interest rate for loans on the cash value; however, the loan interest rate for the existing policy was not disclosed on the Description of Transaction section of the Disclosure Statement.

vi. In 14 out of the 28 (50%) IUL policy replacements, where the clients replaced whole life or universal life policies with IUL policies, the replaced policies contained one or more riders. For these policies, the Disclosure Statement failed to indicate that the policyholder would lose the existing policy rider as a result of the replacement transaction.

vii. In 5 out of 28 policies (18%), the replacing policies have an extended guaranteed death benefit rider. However, the cost of the extended guaranteed death benefit rider is not disclosed on the disclosure statement.

b. In addition, the examiner reviewed 32 external No-Lapse Guarantee Universal Life policy replacements that were processed during the examination period. The examiner's findings are summarized below:

i. In all 32 cases (100%) the examiner found that the policies that were issued by the Company failed to indicate that the freelook period is 60 days and not 10 days as indicated in the issued policies.

On September 30, 2019, the Company submitted a certified filing to the Department for an endorsement clarifying the freelook period for replaced life insurance policies. The Company received the Department's approval on October 10, 2019.

ii. In 31 of the 32 replacements (97%), the Company failed to disclose to the client that the premium expense charge is a significant fee that is deducted from the paid premium. The policy data page of the Statement of Cost and Benefit Information for the proposed policies refer to a guaranteed maximum percent of premium expense charge of 50% for each premium outlay. A review of the annual reports after the newly policies showed an actual charge of 25%. Given its significance, this charge should have been disclosed on the Disclosure Statement.

iii. In 6 of the 32 replacements (19%), the policies contain a long term care rider, and having the rider was cited by the agent as an advantage of the proposed policies. However, the agent failed to disclose to the clients the cost of the long term care rider and the fact that exercising this rider option would reduce the policy's death benefit.

iv. In 19 of the 32 replacements (59%), the Company failed to disclose that the proposed policies would attract an initial surrender charge that is applicable until year 19 of the policy.

v. In 11 of the 32 replacements, there were instances where the policy being replaced had one or more riders. In 10 out of the 11 cases (91%), the Company failed to indicate on the Disclosure Statement that the client would lose the existing rider or riders when the policy is replaced with the No-Lapse Guarantee Universal Life policy. In addition, the Disclosure Statement for one policy stated that the proposed policy was a Nationwide YourLife 20 Year Term Guaranteed Level Term. However, the issued policy indicated that it was a No-Lapse Guarantee Universal Life policy.

vi. As shown in the table below, there were instances where the Agent or Broker’s Statement conflicted with what was presented in the Disclosure Statement and the proposed policy or sales material, or the agent or broker failed to include the relevant information from the replaced company so that the applicant could make an informed decision.

Existing Policy	Proposed Policy and Sales Material	Agent or Broker’s Statement	Comment
Annual premium of \$1,521	Annual premium of \$32,632	The agent stated that primary reason for recommending the insurance policy was that the existing policy was too expensive to maintain	The annual premium for the existing policy was significantly less expensive than the annual premium of the proposed policy
The replaced company guaranteed interest rate was shown as “N/A” although it was a whole life policy		The agent stated that the existing policy could not meet the applicant’s objectives because it does not give a good rate of return	There was no evidence that the applicant was able to compare the rates of return
Issued dates are 12/02/1996 11/29/2000 and 7/11/2005		The agent stated that the advantages of continuing the existing policy without changes are “none” to client	The three existing policies’ suicide and contestability periods had expired, which should have been listed as advantages of continuing the existing policies
	The proposal used to market the proposed policy reflected a 34-year no lapse guarantee period with a 10-year minimum monthly premium period	The agent stated that the existing policy cannot meet the applicant’s objective because the “guarantee period” is not long enough and may require more future premiums	The agent implied that there was no future premium payment on the proposed policy above and beyond the exchanged funds, which was contrary to what was shown in the sales proposal
The Disclosure Statement showed increasing cash surrender values up to 10 years and the policy value accumulated more cash value over the same period of the proposed policy both on a guaranteed and a non-guaranteed basis		The agent stated that the primary reason for recommending the new policy was “better cash value growth” and that the existing life insurance policy could not meet the applicant’s objectives because there was “no cash value growth”	The agent statement was incorrect because the existing policy not only showed increasing cash surrender values up to 10 years but also showed that it would accumulate more cash value over the same period both on a guaranteed and a non-guaranteed basis

The Company violated Section 51.6 (b)(3) of 11 NYCRR 51 (Insurance Regulation 60, Third Amendment) by failing to require an accurate and complete “Disclosure Statement” signed by the insurance agent or broker in the form prescribed in Appendix 10A to Insurance Regulation 60, including the primary reason or reasons for recommending the life insurance policy and why the existing life insurance policy cannot meet the applicant’s objectives. The Company has taken corrective action to address this violation.

The Company violated Section 51.6(b)(4) of 11 NYCRR 51 (Insurance Regulation 60, Third Amendment) by failing to examine the “Disclosure Statement” and ascertain that it is accurate and meet the requirements of the New York Insurance Law and regulations promulgated thereunder. The Company has taken corrective action to address this violation.

The Company violated Section 51.6(d) of 11 NYCRR 51 (Insurance Regulation 60, Third Amendment) by failing to ensure that the freelook period in its issued policies agrees with the requirements of Insurance Regulation 60. The Company has taken corrective action to address this violation.

B. Underwriting and Policy Forms

The examiner reviewed a sample of underwriting files, both issued and declined, and the applicable policy forms. Additionally, the examiner reviewed the life insurance illustration certifications filed by the Company with the Department during the examination period in accordance with Section 53-3.7(d) of 11 NYCRR 53 (Insurance Regulation 74). The Company certified that the illustrations (point of sale and in force) produced for the following policy forms would only display guaranteed elements:

- L-4839 (In-Force)
- NWLA-400-MI (In-Force)
- NWLA-444-NY (Point of Sale & In-Force)
- NWLA-450-NY (Point of Sale & In-Force)
- UL 101 (NY)
- UL 102 (NY)

The Company began labelling these illustrations as sales proposals and used such sales proposal to market its No Lapse Guarantee Universal Life policies, policy form NWLA-444-NY, during the examination period. Because the sales proposal used does not meet the requirements of a basic illustration provided under Section 53.3.3 of 11 NYCRR 53 (Insurance Regulation 74),

the preliminary information and policy summary would have been required to be provided for the policies with which the sales proposal was used. Universal life policies are subject to Section 4232(b) of the New York Insurance Law, and as such, the preliminary information and policy summary requirements for policies subject to Section 4232(b) of the New York Insurance Law according to Sections 53-2.1 and 53-2.2 of 11 NYCRR 53 (Insurance Regulation 74) require, among other things, the current and median values be shown in addition to the guaranteed values.

1. Section 3209 of the New York Insurance Law states, in part:

“(b)(1) No policy of life insurance shall be delivered or issued for delivery in this state . . . unless the prospective purchaser has been provided with the following:
 (A) . . . the preliminary information required by subsection (d) of this section, at or prior to the time an application is taken. . . .
 (d) The preliminary information shall be in writing and include, to the extent applicable, the following: . . .
 (4) the total guaranteed cash surrender values for the basic policy, at the end of the tenth and twentieth policy years or at the end of the premium-paying period if earlier. These values may be shown on a per thousand or per unit basis . . .
 (7) in addition, the applicant shall be advised 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 . . .”

Section 53-2.1 of 11 NYCRR 53 (Insurance Regulation 74) states, in part:

“. . . (a) The preliminary information shall be in writing and include, to the extent applicable, the following: . . .
 (4) a table of values and benefits based upon current, median and guaranteed policy cost factors for the base policy and any rider at the end of each of the first five policy years, the tenth policy year and at the end of the policy years in which the proposed insured attains age 65, 75, 85 and 95. These values may be shown on a per thousand or per unit basis;
 (5) the year coverage will terminate based upon current, median and guaranteed policy cost factors. These values may be shown on a per thousand or per unit basis;
 (6) the interest rate basis for each table of values based upon current, median and guaranteed policy cost factors;
 (7) the effective policy loan annual percentage interest rate and whether this rate is applied in advance or in arrears, adjustable or fixed;
 (8) acknowledgment that the potential purchaser understands that policy values, cash surrender values and death benefits based on current and median policy cost factors are not guaranteed and that any changes in the company's interest earnings, expenses or claim experience may result in lower or higher premium payments or lower or higher policy benefits;

(9) a statement advising the applicant 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 premium paid or the adjusted amount if such policy provides for a market-value adjustment pursuant to Section 3203(a)(11) of the Insurance Law; and

(10) life insurance cost indexes and the equivalent level annual dividend for the basic policy for 10 and 20 years, but in no case beyond the premium-paying period.

(b) The table of values and benefits based on guaranteed policy cost factors shall be labeled in a prominent manner "guaranteed" and the table of values and benefits based on current and median policy cost factors shall be labeled in a prominent manner "not guaranteed."

(c) The preliminary information shall be provided to the prospective purchaser at or prior to the time an application is taken and shall be signed and dated by the agent or broker and the applicant and a copy of the preliminary information shall be attached to the application submitted to the insurer. . . .”

Section 53-2.2(a)(5) of 11 NYCRR 53 (Insurance Regulation 74) states, in part:

“. . . (a) A policy summary shall include the following: . . .

(5) tables for the first five policy years and every fifth year thereafter until the maturity date containing the following: . . .

(v) the death benefits, policy values and cash surrender values based on the annual premium or annual planned premium using the current, median and guaranteed policy cost factors;

(vi) the interest rate assumptions for each projection of policy values and death benefits based upon current, median and guaranteed policy cost factors;

(vii) the dates the policy will terminate based on the annual premium or annual planned premium and on the current, median and guaranteed policy cost factors; and,

(viii) the level annual premium from the issue date that would, based upon guaranteed policy cost factors, continue the policy to the maturity date.

(6) the effective policy loan annual percentage interest rate specifying whether this rate is applied in advance or arrears, adjustable or fixed, and if adjustable, the frequency at which such rate is to be determined and the index upon which the maximum rate is based at the time the policy is issued . . .”

- a. The examiner reviewed a sample of 20 life insurance policies issued during the examination period. Eight of the sampled policies were indexed universal life and twelve were universal life policies with a no lapse guarantee. In all 12 (100%) universal life policies issued with no lapse guarantee provisions, the sales proposals used to satisfy the preliminary information requirements failed to include a table of values and benefits based upon current and median policy cost factors for the base policy and any rider at the end of

each of the first five policy years, the tenth policy year, and at the end of the policy years in which the proposed insured attains age 65, 75, 85, and 95; the year the coverage will terminate based upon current and median policy cost factors; and the interest rate basis for each table of values based upon current and median policy cost factors, as required by Sections 53-2.1(a)(4), 53-2.1 (a)(5), and 53-2.1(a)(6) of 11 NYCRR 53 (Insurance Regulation 74). In addition, the sales proposal did not indicate if the loan interest rate is applied in advance, or in arrears, or if the rate is adjustable or fixed.

The Company violated Section 3209(b)(1)(A) of the New York Insurance Law and Sections 53-2.1(a)(4), 53-2.1 (a)(5), and 53-2.1(a)(6) of 11 NYCRR 53 (Insurance Regulation 74) by issuing universal life policies without providing the required preliminary information to the applicant. The Company has taken corrective action to address this violation.

The Company violated Section 53-2.1(a)(7) of 11 NYCRR 53 (Insurance Regulation 74) by not indicating if the loan interest rate is applied in advance, or in arrears, or if the rate is adjustable or fixed. The Company has taken corrective action to address this violation.

- b. In all 12 (100%) universal life policies issued with no lapsed guarantees, the policy summary provided to the policyholder failed to include tables for the first five policy years and every fifth year thereafter until the maturity date containing the death benefits, the policy values, and the cash surrender values based on the annual premium or annual planned premium using the current and median policy cost factors; the interest rate assumptions for each projection of policy values; the death benefits based upon current and median policy cost factors; and the dates the policy will terminate based on the current and median policy cost factors, as required by Sections 53-2.2(a)(5)(v), 53-2.2(a)(5)(vi) and 53-2.2(a)(5)(vii) of 11 NYCRR 53 (Insurance Regulation 74). Additionally, the policy summary did not indicate if the loan interest rate is applied in advance, or in arrears, or if the rate is adjustable or fixed.

The Company violated Sections 53-2.2(a)(5)(v), 53-2.2(a)(5)(vi) and 53-2.2(a)(5)(vii) of 11 NYCRR 53 (Insurance Regulation 74) by failing to include current and median values on the policy summary information, where required. The Company has taken corrective action to address this violation.

The Company violated Section 53-2.2(a)(6) of 11 NYCRR 53 (Insurance Regulation 74) by providing policy summary information that failed to indicate if the loan interest rate is applied in advance or arrears, or if the rate is fixed or adjustable. The Company has taken corrective action to address this violation.

2. Insurance Regulation No. 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. Policy records need not be segregated from the policy records of other states as long as they are maintained in accordance with the provisions of this Part. A separate copy need not be maintained in an individual policy record, provided that any data relating to a specific contract or policy can be retrieved pursuant to Section 243.3(a) of this Part. A policy record shall include: . . .

(iv) Other information necessary for reconstructing the solicitation, rating, and underwriting of the contract or policy. . . .”

The examiner reviewed a sample of 25 underwriting policy files and noted that the preliminary information was not part of the electronic files. The examiner requested a copy of the preliminary information provided to the applicant for each reviewed file. The Company replied, “Nationwide Life Insurance Company (NLIC) does not in the ordinary course of business require insurance agents or brokers to return a completed copy of the attached documents after providing them to prospective purchasers during the application process.”

The Company violated Section 243.2(b)(1)(iv) of 11 NYCRR 243 (Insurance Regulation 152) by failing to maintain the preliminary information presented to the applicant at the time of sale in the policy record for each insurance contract or policy for six calendar years after the date the policy is no longer in force or until the filing of the date of the report on examination in which the record was subject to review, whichever is longer. The Company has taken corrective action to address this violation.

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(g) of the New York Insurance Law states, in part:

“In the case of life insurance policies to which this section is applicable and which contain a cash surrender value, the insurer must provide an annual notification that the policy contains a cash surrender value and that further information, including the amount thereof, is available from the insurer upon written request from the policyowner. Such notification shall include a statement that the insured has the right to request an updated policy illustration based, . . . in respect to a policy subject to subsection (a) of section four thousand two hundred thirty-two of this chapter, on the then current mortality, interest and expense assumptions. . . .”

Section 53-3.6(c) of 11 NYCRR 53 (Insurance Regulation 74) states:

“Upon the request of the policyowner, the insurer shall furnish an in-force illustration of current and future benefits and values based on the insurer’s present illustrated scale. This illustration shall comply with the requirements of Sections 53-3.2(a), 53-3.3(a), and 53-3.3(e) of this Subpart. No signature or other acknowledgement of receipt of this illustration shall be required.”

With respect to policy forms L-4839, NWLA-400-MI, NWLA-444-NY, NWLA-450-NY, UL 101 (NY), and UL 102 (NY), the in force illustrations provided to policyholders prior to April 3, 2014, only displayed guaranteed elements. (See item 4B of this report.)

The Company violated Section 3211(g) of the New York Insurance Law and Section 53-3.6(c) of 11 NYCRR 53 (Insurance Regulation 74) by providing policyholders with in force illustrations that were not based upon the current mortality, interest, and expense assumptions. The Company has taken corrective action to address this violation.

2. Section 403(d) of the New York Insurance Law states, in part:

"All applications for . . . 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 11 NYCRR 86 (Insurance Regulation 95) states:

“Location of warning statements and type size. 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. On claim forms which require execution by a person other than the claimant, or in addition to the claimant, the warning statements required by subdivisions (a), (b) and (e) of this section shall be placed at the top of the first page of the claim form or in the page containing instructions, either in print, by stamp or by attachment and shall be in type size which will produce a warning statement of conspicuous size.”

The examiner reviewed a sample of 197 death claims. The claim form used to process 61 of the death claims reviewed (31%) did not include the required fraud warning statement.

The Company violated Section 403(d) of New York Insurance Law by failing to include the required fraud warning statement on the claim forms. The Company has taken corrective action to address this violation.

The examiner also noted that in 56 of the death claims reviewed (28%), the claim form used to process the claims included the required fraud warning statement; however, the statement was not located immediately above the space provided for the signature of the person executing the claim form.

The Company violated Section 86.4(d) of 11 NYCRR 86 (Insurance Regulation 95) by failing to place the required fraud warning statement immediately above the space provided for the signature of the person executing the claim form. The Company has taken corrective action to address this violation.

5. SUMMARY AND CONCLUSIONS

Following are the violations contained in this report:

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
A	The Company violated Section 219.4(p) of 11 NYCRR 219 (Insurance Regulation 34-A) by failing to clearly identify the name of the insurer offering to provide the advertised insurance coverage, together with the name of the city, town or village in which it has its home office in the United States.	6
B	The Company violated Section 51.6 (b)(3) of 11 NYCRR 51 (Insurance Regulation 60, Third Amendment) by failing to require an accurate and complete “Disclosure Statement” signed by the insurance agent or broker in the form prescribed in Appendix 10A to Insurance Regulation 60, including the primary reason or reasons for recommending the life insurance policy and why the existing life insurance policy cannot meet the applicant’s objectives.	12
C	The Company violated Section 51.6(b)(4) of 11 NYCRR 51 (Insurance Regulation 60, Third Amendment) by failing to examine the “Disclosure Statement” and ascertain that it is accurate and meet the requirements of the New York Insurance Law and regulations promulgated thereunder.	12
D	The Company violated Section 51.6(d) of 11NYCRR 51 (Insurance Regulation 60, Third Amendment) by failing to ensure that the freelook period in its issued policies agrees with the requirements of Insurance Regulation 60.	12
E	The Company violated Section 3209(b)(1)(A) of the New York Insurance Law and Sections 53-2.1(a)(4), 53-2.1 (a)(5), and 53-2.1(a)(6) of 11 NYCRR 53 (Insurance Regulation 74) by issuing universal life policies without providing the required preliminary information to the applicant.	15
F	The Company violated Section 53-2.1(a)(7) of 11 NYCRR 53 (Insurance Regulation 74) by not indicating if the loan interest rate is applied in advance, or in arrears, or if the rate is adjustable or fixed.	15
G	The Company violated Sections 53-2.2(a)(5)(v), 53-2.2(a)(5)(vi) and 53-2.2(a)(5)(vii) of 11 NYCRR 53 (Insurance Regulation 74) by failing to include current and median values on the policy summary information, where required.	15

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
H	The Company violated Section 53-2.2(a)(6) of 11 NYCRR 53 (Insurance Regulation 74) by providing policy summary information that failed to indicate if the loan interest rate is applied in advance or arrears, or if the rate is fixed or adjustable.	16
I	The Company violated Section 243.2(b)(1)(iv) of 11 NYCRR 243 (Insurance Regulation 152) by failing to maintain the preliminary information presented to the applicant at the time of sale in the policy record for each insurance contract or policy for six calendar years after the date the policy is no longer in force or until the filing of the date of the report on examination in which the record was subject to review, whichever is longer.	16
J	The Company violated Section 3211(g) of the New York Insurance Law and Section 53-3.6(c) of 11 NYCRR 53 (Insurance Regulation 74) by providing policyholders with in force illustrations that were not based upon the current mortality, interest, and expense assumptions.	17
K	The Company violated Section 403(d) of New York Insurance Law by failing to include the required fraud warning statement on the claim forms.	18
L	The Company violated Section 86.4(d) of 11 NYCRR 86 (Insurance Regulation 95) by failing to place the required fraud warning statement immediately above the space provided for the signature of the person executing the claim form.	18

Respectfully submitted,

_____/s/
Christine Mavour
Associate Insurance Examiner

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

Christine Mavour, being duly sworn, deposes and says that the foregoing report, subscribed by her, is true to the best of her knowledge and belief.

_____/s/
Christine Mavour

Subscribed and sworn to before me
this _____ day of _____

APPOINTMENT NO. 31545

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:

CHRISTINE MAVOUR

as a proper person to examine the affairs of the

NATIONWIDE LIFE INSURANCE COMPANY

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

COMPANY

with such other information as she 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 1st day of November, 2016

MARIA T. VULLO

Superintendent of Financial Services

By:

Mark McLeod

MARK MCLEOD

DEPUTY CHIEF - LIFE BUREAU

