



**FINANCIAL CONDITION REPORT ON EXAMINATION**

**OF THE**

**FIRST BERKSHIRE HATHAWAY**

**LIFE INSURANCE COMPANY**

**AS OF DECEMBER 31, 2020**

**EXAMINER:**  
**DATE OF REPORT:**

**DANIEL SCHOETTLE, CFE, CPA**  
**JUNE 2, 2022**

## TABLE OF CONTENTS

<u>ITEM</u>		<u>PAGE NO.</u>
1.	Executive summary	2
2.	Scope of examination	3
3.	Description of Company	5
	A. History	5
	B. Holding company	5
	C. Organizational chart	6
	D. Service agreements	7
	E. Management	8
	F. Books and records	10
4.	Territory and plan of operations	12
	A. Statutory and special deposits	12
	B. Direct operations	12
	C. Reinsurance	13
5.	Financial statements	14
	A. Independent accountants	14
	B. Net admitted assets	14
	C. Liabilities, capital and surplus	15
	D. Condensed summary of operations	16
	E. Capital and surplus account	17
6.	Prior report summary and conclusions	18
7.	Summary and conclusions	19

---

KATHY HOCHUL  
Governor



ADRIENNE A. HARRIS  
Superintendent

June 7, 2022

Honorable Adrienne A. Harris  
Superintendent of Financial Services  
New York, New York 10004

Dear Adrienne A. Harris:

In accordance with instructions contained in Appointment No. 32283, dated July 28, 2021, and annexed hereto, an examination has been made into the condition and affairs of First Berkshire Hathaway Life Insurance Company, hereinafter referred to as "the Company". The Company's administrative office is located at 1314 Douglas Street, Suite 1400, Omaha, NE 68102. The Company's home office is located at Empire State Building, Suite 4250, 350 5<sup>th</sup> Avenue, New York, NY 10118. Due to the COVID-19 pandemic, the examination was conducted remotely.

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 Section 1505(d)(3) of the New York Insurance Law by changing the billing terms of its Intercompany Services Agreement without notifying the superintendent in writing of its intention at least thirty days prior thereto. (See item 3D of this report.)
- The Company violated Section 325(a) of the New York Insurance Law by failing to keep and maintain at its principal office in New York its books of account, specifically its trial balance detail in a format that would allow for reconstruction of the Company's financial records. (See item 3F of this report.)

## 2. SCOPE OF EXAMINATION

The examination of the Company was a full-scope examination as defined in the National Association of Insurance Commissioners' ("NAIC") *Financial Condition Examiners Handbook, 2021 Edition* (the "Handbook"). The examination covers the four-year period from January 1, 2017 through December 31, 2020. The examination was conducted observing the guidelines and procedures in the Handbook and, where deemed appropriate by the examiner, transactions occurring subsequent to December 31, 2020, but prior to the date of this report (i.e., the completion date of the examination) were also reviewed.

The examination was conducted on a risk-focused basis in accordance with the provisions of the Handbook published by the NAIC. The Handbook guidance provides for the establishment of an examination plan based on the examiner's assessment of risk in the insurer's operations and utilizing that evaluation in formulating the nature and extent of the examination. The examiner planned and performed the examination to evaluate the current financial condition as well as identify prospective risks that may threaten the future solvency of the insurer. The examiner identified key processes, assessed the risks within those processes and evaluated the internal control systems and procedures used to mitigate those risks. The examination also included assessing the principles used and significant estimates made by management, evaluating the overall financial statement presentation, and determining management's compliance with New York statutes and Department guidelines, Statutory Accounting Principles as adopted by the Department, and annual statement instructions.

The examination was called by the Nebraska Department of Insurance ("Nebraska") in accordance with the NAIC Handbook guidelines, through the NAIC's Financial Examination Electronic Tracking System. The examination was conducted as part of the Berkshire Hathaway Group. Nebraska served as the lead state with participation from the states of California, Colorado, Connecticut, Iowa, and New York. Since the lead and participating states are all accredited by the NAIC, all states deemed it appropriate to rely on each other's work.

Information about the Company's organizational structure, business approach and control environment were utilized to develop the examination approach. The Company's risks and management activities were evaluated incorporating the NAIC's nine branded risk categories.

These categories are as follows:

- Pricing/Underwriting
- Reserving
- Operational
- Strategic
- Credit
- Market
- Liquidity
- Legal
- Reputational

The Company was audited annually, for the years 2017 through 2020, by the accounting firm of Deloitte & Touche LLP (“D&T”). The Company received an unqualified opinion for all years under examination. Certain audit workpapers of the accounting firm were reviewed and relied upon in conjunction with this examination. In 2017, the internal audit function at the holding company level was brought in-house and it consists of both General Reinsurance Corporation and National Indemnity Company (“NICO”) employees that perform testing over both Sarbanes-Oxley Act of 2002 (“SOX”) and non-SOX control cycles. Prior to 2017, the Company primarily outsourced the function to Ernst & Young, LLP. Where applicable, SOX and non-SOX workpapers and reports were reviewed, and portions were relied upon for this examination.

The examiner reviewed the corrective actions taken by the Company with respect to the recommendation contained in the prior report on examination. The results of the examiner’s review are contained in item 6 of this report.

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

### 3. DESCRIPTION OF COMPANY

#### A. History

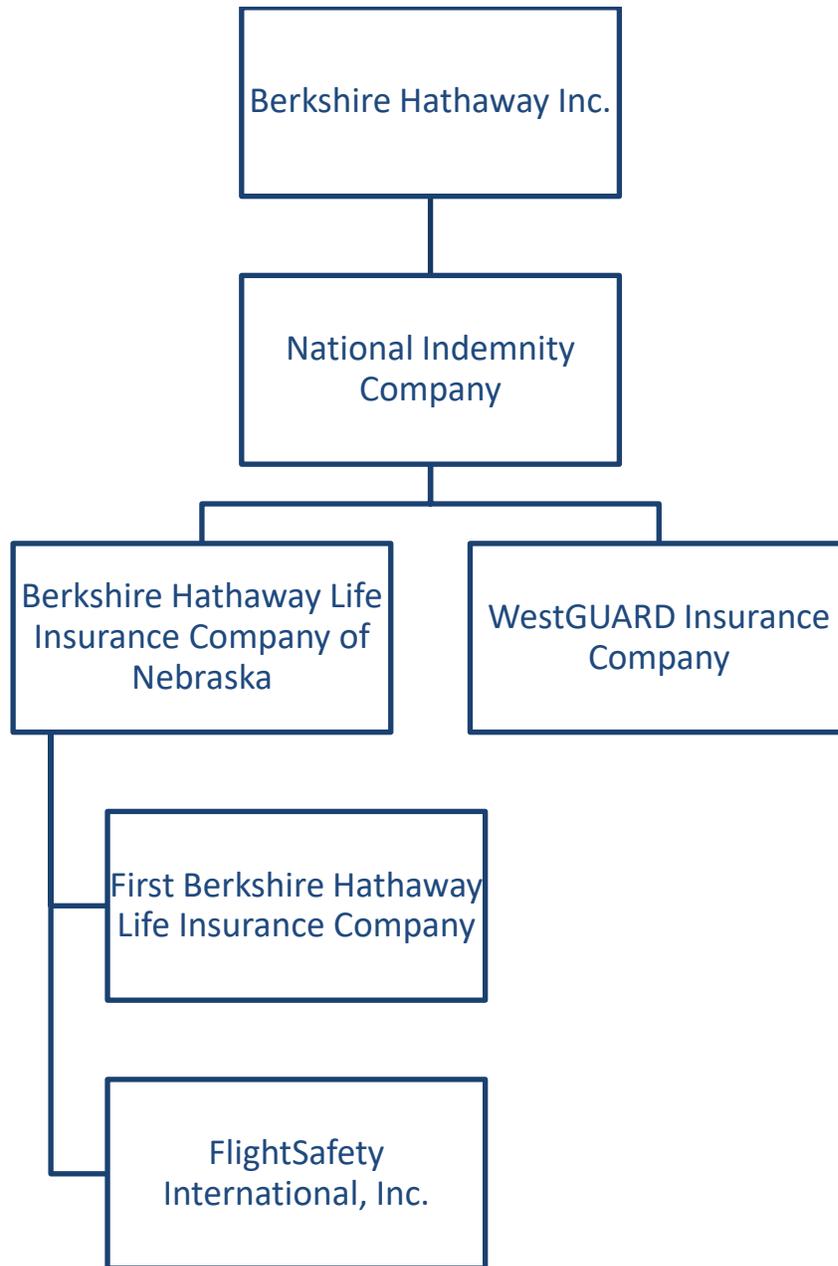
The Company was incorporated as a stock life insurance company under the laws of New York on September 22, 1998, and was licensed and commenced business on March 21, 2003. Initial resources of \$8,000,000, consisting of common capital stock of \$2,000,000 and paid in and contributed surplus of \$6,000,000, were provided through the sale of 2,000 shares of common stock (with a par value of \$1,000 each).

#### B. Holding Company

The Company is a wholly owned subsidiary of Berkshire Hathaway Life Insurance Company of Nebraska (“BHLN”), a Nebraska domiciled life insurer and a New York accredited reinsurer. BHLN is, in turn, a wholly owned subsidiary of NICO, a Nebraska domiciled property and casualty insurance company. The Company’s ultimate parent company is Berkshire Hathaway Inc., a Delaware corporation.

C. Organizational Chart

An organization chart reflecting the relationship between the Company and significant entities in its holding company system as of December 31, 2020, follows:



#### D. Service Agreements

The Company had four service agreements in effect with affiliates during the examination period.

Type of Agreement and Department File Number	Effective Date	Provider(s) of Service(s)	Recipient(s) of Service(s)	Specific Service(s) Covered	Income/ (Expense)* For Each Year of the Examination
Investment Services Agreement (Department File No. 0025287A)	12/01/2002	NICO	The Company	Investment Management Services	2017 \$(78,552) 2018 \$(86,440) 2019 \$(67,503) 2020 \$(87,378)
Intercompany Agreement (Department File No. 0025287A)	12/01/2002	NICO	The Company	Certain administrative and special services	2017 \$(336,398) 2018 \$(210,860) 2019 \$(185,702) 2020 \$(241,761)
Intercompany Services Agreement (Department File No. 0036093)	12/01/2006	FlightSafety International Inc.	The Company	Provide certain property, equipment, and facilities for its day-to-day operations	2017 \$( 774) 2018 \$(1,259) 2019 \$(1,259) 2020 \$(1,259)
Amendment No. 1	12/01/2011				
Amendment No. 2	11/30/2016				
Amendment No. 3	12/01/2017				
Administrative Agreement (Department File No. 59776)	11/23/2020	WestGUARD Insurance Company	The Company	Provide facilities as reasonably necessary for mail processing, record-keeping, and other services ancillary to the maintenance of a statutory home office at the Facilities.	2020 \$(383)

\*Amount of Income or (Expense) Incurred by the Company

The Company participates in a federal income tax allocation agreement with its parent company and affiliates.

Section 1505(d)(3) of the New York Insurance Law states in part, the following:

“d) The following transactions between a domestic controlled insurer and any person in its holding company system may not be entered into unless the insurer has notified the superintendent in writing of its intention to enter into any such transaction at least thirty days prior thereto, or with regard to reinsurance treaties or agreements at least forty-five days prior thereto, or such shorter period as the superintendent may permit, and the superintendent has not disapproved it within such period:...

(3) rendering of services on a regular or systematic basis...”

The Intercompany Services Agreement between the Company and NICO, with an effective date of December 1, 2002, states, in Section 4, paragraph 4:

“Reports regarding services performed and the determination of charges estimated to be owed by FBHL for services provided by NICO pursuant to this Agreements shall be delivered to FBHL on a monthly basis. Amounts due hereunder shall be payable by FBHL to NICO within fifteen (15) days of receipt of such reports.”

A review of the billing and payments made during the examination period related to the Intercompany Services Agreement between the Company and NICO, indicated that billings were issued and settled on a quarterly basis, rather than monthly as required by the filed and approved Intercompany Services Agreement.

The Company violated Section 1505(d)(3) of the New York Insurance Law by changing the billing terms of its Intercompany Services Agreement without notifying the superintendent in writing of its intention at least thirty days prior thereto.

#### E. Management

The Company’s by-laws provide that the board of directors shall be comprised of not less than 7 and not more than 13 directors. Directors are elected for a period of one year at the annual meeting of the stockholders held in May of each year. As of December 31, 2020, the board of directors consisted of eight members. Meetings of the board are held quarterly.

The eight board members and their principal business affiliation as of December 31, 2020, were as follows:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>	<u>Year First Elected</u>
John D. Arendt Stamford, Connecticut	Vice President First Berkshire Hathaway Life Insurance Company	1999
Bruce J. Byrnes New City, New York	Vice President First Berkshire Hathaway Life Insurance Company	2014
Norman H. Denenberg* Omaha, Nebraska	Attorney Self employed	2002
Robert M. LeBlanc* Newtown, Connecticut	Managing Director Onex Investment Corporation	1998
Peter M. Shelley Darien, Connecticut	Vice President First Berkshire Hathaway Life Insurance Company	2019
Brian G. Snover Stamford, Connecticut	Vice President and Secretary First Berkshire Hathaway Life Insurance Company	2013
Kevin G. Snover* West Babylon, New York	Attorney Self employed	1998
Sandra J. Wilson* Fort Myers, Florida	Comptroller A&A Surplus, Inc.	2007

\*Not affiliated with the Company or any other company in the holding company system

In November 2021, Norman H. Denenberg resigned from the board and was replaced by Marcia D. Alazraki.

The examiner's review of the minutes of the meetings of the board of directors and its committees indicated that meetings were well attended, and that each director attended a majority of meetings.

The following is a listing of the principal officers of the Company as of December 31, 2020:

<u>Name</u>	<u>Title</u>
Donald F. Wurster	President
Brian G. Snover	Vice President and Secretary
Brooke L. Gregory	Controller
Dale D. Geistkemper	Treasurer
John D. Arendt*	Vice President
Bruce J. Byrnes	Vice President

\*Designated consumer services officer per Section 216.4(c) of 11 NYCRR 216 (Insurance Regulation 64)

#### F. Books and Records

Section 325(a) of the New York Insurance Law states, in part:

“Every domestic insurer and every licensed United States branch of an alien insurer entered through this state shall, except as hereinafter provided, keep and maintain at its principal office in this state its ... books of account ... and if a domestic corporation the minutes of any meetings of its shareholders, policyholders, board of directors and committees thereof ...”

Due to the COVID-19 pandemic, an onsite examination of the Company’s charter and by-laws, books of account, and minutes of any meetings of its shareholders, policyholders, board of directors and committees thereof that are maintained at the Company’s principal office in New York State could not be undertaken. As a result, the examiner requested via electronic correspondence the Company’s procedures regarding the maintenance of these documents at its principal office in New York State.

In response, the Company stated, in part:

“We are set up in such a way that all financial detail for the Company could be accessed by an employee with the appropriate access through a secure VPN, and the quarterly procedures to prepare and review financial statements can be completed anywhere. For Financial Statements, we have previously interpreted NYIL Section 325 to include Statutory Annual and Quarterly Statements, which is what has been included in the quarterly submission via USB. However, we have determined that there are four key financial files which include trial balance detail which would make sense to include in the quarterly USB submissions beginning with 2Q 2021 and going forward. Such files were developed during the conversion

of our general ledger completed since the prior exam, and would not have been in place for all years under exam.”

The Company violated Section 325(a) of the New York Insurance Law by failing to keep and maintain at its principal office in New York its books of account, specifically its trial balance detail in a format that would allow for reconstruction of the Company’s financial records.

#### 4. TERRITORY AND PLAN OF OPERATIONS

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

The Company is licensed to transact business in three states, namely Missouri, Nebraska, and New York. During the examination period, 100% of premiums (annuity considerations and deposit type funds) were received from Missouri.

##### A. Statutory and Special Deposits

As of December 31, 2020, the Company had \$1,200,000 (par value) of United States Treasury bonds on deposit with the State of New York, its domiciliary state, for the benefit of all policyholders, claimants, and creditors of the Company. The State of Missouri was holding an additional \$630,000 as reported in Schedule E of the 2020 filed annual statement.

##### B. Direct Operations

The Company markets structured settlement annuities, individual immediate annuities, and deposit-type contracts. Annuities are established principally to fund structured settlements to New York settlement recipients and to provide for retirement income and asset diversification. The deposit-type contracts are non-life contingent fixed annuity obligations, primarily issued in conjunction with structured settlements for third-party claims.

The Company primarily sells life contingent and non-life contingent fixed annuities to its affiliate BHG Structured Settlements, Inc. (“BHGSS”), a Missouri corporation, to fund BHGSS structured settlement business. As of December 31, 2020, the Company had 425 structured settlements and 6 immediate annuities in force.

The Company offers property-casualty insurers and defendants the opportunity to purchase annuities issued by the Company to fund structured settlements that have a guaranteed payout pattern. The Company also offers individual annuities with a guaranteed payout pattern directly to individual consumers, although it is presently not engaged in this business.

The Company has no agency operations.

C. Reinsurance

As of December 31, 2020, the Company had two reinsurance treaties in effect with its parent, BHLN, an authorized reinsurer. The Company's annuity business is reinsured on a coinsurance basis. Reinsurance is provided on an automatic basis.

## 5. FINANCIAL STATEMENTS

The following statements show the assets, liabilities, capital, and surplus as of December 31, 2020, as contained in the Company's 2020 filed annual statement, a condensed summary of operations and a reconciliation of the capital and surplus account for each of the years under review. The examiner's review of a sample of transactions did not reveal any differences which materially affected the Company's financial condition as presented in its financial statements contained in the December 31, 2020, filed annual statement.

### A. Independent Accountants

The firm of D&T was retained by the Company to audit the Company's combined statutory basis statements of financial position of the Company as of December 31<sup>st</sup> of each year in the examination period, and the related statutory-basis statements of operations, capital and surplus, and cash flows for the year then ended.

D&T concluded that the statutory financial statements presented fairly, in all material respects, the financial position of the Company at the respective audit dates. Balances reported in these audited financial statements were reconciled to the corresponding years' annual statements with no discrepancies noted.

### B. Net Admitted Assets

Bonds	\$ 83,343,045
Common stocks	29,402,705
Cash, cash equivalents and short-term investments	112,883,013
Investment income due and accrued	1,197,075
Premiums and considerations:	
Uncollected premiums and agents' balances in the course of collection	2,719,516
Reinsurance:	
Amounts recoverable from reinsurers	1,413,167
Other amounts receivable under reinsurance contracts	980,678
Current federal and foreign income tax recoverable and interest thereon	822,709
Net deferred tax asset	108,349
Other assets	<u>4,155</u>
Total admitted assets	<u>\$232,874,412</u>

C. Liabilities, Capital and Surplus

Aggregate reserve for life policies and contracts	\$ 60,926,093
Liability for deposit-type contracts	42,994,321
Contract claims:	
Life	243,655
Contract liabilities not included elsewhere:	
Other amounts payable on reinsurance	3,875,300
Interest maintenance reserve	2,493
Commissions to agents due or accrued	54,617
General expenses due or accrued	23,579
Taxes, licenses and fees due or accrued, excluding federal income taxes	24,650
Miscellaneous liabilities:	
Asset valuation reserve	4,676,219
Payable to parent, subsidiaries and affiliates	<u>156,791</u>
 Total liabilities	 <u>\$112,977,718</u>
 Common capital stock	 2,000,000
 Gross paid in and contributed surplus	 122,000,000
Unassigned funds (surplus)	<u>(4,103,306)</u>
Surplus	<u>\$117,896,694</u>
Total capital and surplus	<u>\$119,896,694</u>
 Total liabilities, capital and surplus	 <u>\$232,874,412</u>

D. Condensed Summary of Operations

	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>
Premiums and considerations	\$ 6,776,854	\$ 4,240,706	\$1,215,519	\$ 2,516,396
Investment income	5,367,394	7,070,605	7,964,572	5,706,480
Commissions and reserve adjustments on reinsurance ceded	344,588	272,719	228,158	742,503
Miscellaneous income	<u>0</u>	<u>(10)</u>	<u>0</u>	<u>0</u>
Total income	<u>\$12,488,836</u>	<u>\$11,584,020</u>	<u>\$9,408,249</u>	<u>\$ 8,965,379</u>
Annuity benefits	\$ 1,134,675	\$ 1,690,170	\$1,316,272	\$ 1,437,905
Interest and adjustments on contract or deposit-type contract funds	1,930,937	2,434,486	1,286,169	3,990,492
Increase in reserves	11,403,592	2,788,418	3,230,623	5,497,362
Commissions	0	0	192,156	819,038
General expenses and taxes	354,775	256,515	217,931	290,698
Miscellaneous deductions	<u>0</u>	<u>0</u>	<u>0</u>	<u>205</u>
Total deductions	<u>\$14,823,979</u>	<u>\$ 7,169,589</u>	<u>\$6,243,151</u>	<u>\$12,035,700</u>
Net gain (loss)	\$(2,335,143)	\$ 4,414,431	\$3,165,098	\$ (3,070,321)
Federal and foreign income taxes incurred	<u>1,230,769</u>	<u>978,315</u>	<u>1,024,500</u>	<u>439,735</u>
Net gain (loss) from operations before net realized capital gains	\$(3,565,912)	\$ 3,436,116	\$2,140,598	\$ (3,510,056)
Net realized capital gains (losses)	<u>0</u>	<u>(2,021)</u>	<u>0</u>	<u>830,487</u>
Net income	<u>\$(3,565,912)</u>	<u>\$ 3,434,095</u>	<u>\$2,140,598</u>	<u>\$ (2,679,569)</u>

E. Capital and Surplus Account

	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>
Capital and surplus, December 31, prior year	\$ <u>109,608,387</u>	\$ <u>116,139,473</u>	\$ <u>119,346,276</u>	\$ <u>122,788,557</u>
Net income	\$ (3,565,912)	\$ 3,434,095	\$ 2,140,598	\$ (2,679,569)
Change in net unrealized capital gains (losses)	1,228,234	(1,962,525)	1,776,843	(116,073)
Change in net deferred income tax	(2,869,712)	(76,077)	277,327	936,475
Change in non-admitted assets and related items	13,951,596	274,934	715,941	(8,589)
Change in reserve valuation basis	(1,674,398)	0	0	0
Change in asset valuation reserve	<u>(538,718)</u>	<u>1,536,376</u>	<u>(1,468,428)</u>	<u>(1,024,107)</u>
Net change in capital and surplus for the year	\$ <u>6,531,090</u>	\$ <u>3,206,803</u>	\$ <u>3,442,281</u>	\$ <u>(2,891,863)</u>
Capital and surplus, December 31, current year	\$ <u>116,139,473</u>	\$ <u>119,346,276</u>	\$ <u>122,788,557</u>	\$ <u>119,896,694</u>

## 6. PRIOR REPORT SUMMARY AND CONCLUSIONS

Following is the recommendation contained in the prior report on examination and the subsequent actions taken by the Company in response to the citation:

<u>Item</u>	<u>Description</u>
A	<p>The examiner recommends that the Company continues to compute reserves using the assumptions and methodology agreed upon with the Department.</p> <p>The examiner determined that the concerns referenced above were appropriately addressed and did not uncover any new material issues. The examination revealed that the Company computed reserves using the assumptions and methodology agreed upon with the Department.</p>

## 7. 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 1505(d)(3) of the New York Insurance Law by changing the billing terms of its Intercompany Services Agreement without notifying the superintendent in writing of its intention at least thirty days prior thereto.	8
B	The Company violated Section 325(a) of the New York Insurance Law by failing to keep and maintain at its principal office in New York its books of account, specifically its trial balance detail in a format that would allow for reconstruction of the Company's financial records.	11

Respectfully submitted,

Daniel Schoettle  
Daniel Schoettle, CFE, CPA  
Noble Consulting Services, Inc.

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

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

Daniel Schoettle  
Daniel Schoettle

Subscribed and sworn to before me  
this 17<sup>th</sup> day of June, 2022  
Audrey Hall

**AUDREY HALL**  
Notary Public, State of New York  
No. 01HA6274900  
Qualified in Kings County  
Commission Expires January 28, 2025

Respectfully submitted,

\_\_\_\_\_/s/  
Vincent Targia  
Principal Insurance Examiner

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

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

\_\_\_\_\_/s/  
Vincent Targia

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

**APPOINTMENT NO. 32283**

**NEW YORK STATE**

**DEPARTMENT OF FINANCIAL SERVICES**

I, **Linda A. Lacewell**, 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:

**DANIEL SCHOETTLE**  
**NOBLE CONSULTING SERVICES, INC.**

as a proper person to examine the affairs of the  
**FIRST BERKSHIRE HATHAWAY 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 28th day of July, 2021

**LINDA A. LACEWELL**  
Superintendent of Financial Services

By:

*Mark McLeod*

---

**MARK MCLEOD**  
**DEPUTY CHIEF - LIFE BUREAU**

