



**MARKET CONDUCT REPORT ON EXAMINATION
OF THE
FIRST UNUM LIFE INSURANCE COMPANY**

AS OF DECEMBER 31, 2021

EXAMINER:

DONNA TAYLOR

DATE OF REPORT:

MARCH 3, 2023

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KATHY HOCHUL
Governor



ADRIENNE A. HARRIS
Superintendent

December 18, 2023

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. 32445, dated August 9, 2022, and annexed hereto, an examination has been made into the condition and affairs of First Unum Life Insurance Company, hereinafter referred to as “the Company.” The Company’s home office is located at 1225 Franklin Avenue, Suite 250, Garden City, NY 11530. The examination was conducted remotely because of the COVID-19 pandemic.

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 3201(b)(1) of the New York Insurance Law by using various application forms that were not filed with and approved by the Superintendent. (See item 4B of this report.)
- The Company violated multiple subsections of Section 3230 of the New York Insurance Law when it processed applications to accelerate death benefits, and ultimately paid the benefits. (See item 4C of this report.)
- The Company violated Section 3206(d)(3) of the New York Insurance Law when it failed to notify the policyholder of the increase in the interest rate charged on cash policy loans. (See item 4C of this report.)

2. SCOPE OF EXAMINATION

This examination covers the period from January 1, 2017, to December 31, 2021. As necessary, the examiner reviewed matters occurring subsequent to December 31, 2021, 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.

The examiner reviewed the corrective actions taken by the Company with respect to the market conduct violations and recommendation contained in the prior report on examination. The results of the examiner's review are contained in item 5 of this report.

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

3. DESCRIPTION OF COMPANY

A. History

The Company was incorporated as a stock life insurance company under the laws of the State of New York on October 15, 1959, under the name Hamilton Life Insurance Company of New York (“Hamilton Life”). The Company was licensed and commenced business January 22, 1960. Initial resources of \$400,000, consisting of common capital stock, were provided through the sale of 4,000 shares of common stock (with a par value of \$100 each) for \$100 per share.

In March 1968, due to surplus problems, the New York State Supreme Court allowed the Department to take over Hamilton Life and attempt to rehabilitate it. This action was taken as a result of a special report made by the Department which indicated that Hamilton Life was insolvent.

In May 1970, an agreement for the recapitalization of Hamilton Life was executed. The agreement—among the Superintendent of Insurance, as the court appointed rehabilitator; Unionmutual Life Insurance Company; Unionmutual Corporation; and the Life Insurance Guaranty Corporation—provided for Unionmutual Corporation to contribute \$1,000,000 in cash and \$575,000 in securities to Hamilton Life in return for shares of new Hamilton Life stock. One million dollars, consisting of 1,000,000 shares of common stock (with a par value of \$1), was allocated to Hamilton Life’s capital account and \$578,519 was allocated to surplus. This transaction was completed on September 30, 1970, and Hamilton Life’s name was changed to Unionmutual Stock Life Insurance Company of New York.

In November 1986, Unionmutual Life Insurance Company demutualized and changed its name to Unum Life Insurance Company (“Unum Life”), Unionmutual Corporation changed its name to Unum Holding Company, and Unionmutual Stock Life Insurance Company of New York adopted its present name, First Unum Life Insurance Company. At the same time, a new corporation, Unum Corporation, which owned 100% of Unum Life, was formed.

On July 25, 1990, the Department approved the acquisition of First Commercial Life Insurance Company by Unum Corporation from Continental Corporation. On July 31, 1990, First Commercial Life Insurance Company was merged into the Company, with the Company being the surviving entity.

On December 31, 1991, Unum Life merged into Unum Life Insurance Company of America, a Maine life insurer, and a subsidiary of Unum Holding Company, with Unum Life Insurance Company of America being the surviving company. On June 30, 1999, Unum Corporation merged into Provident Companies, Inc., with Provident Companies, Inc. being the surviving company and thereupon changing its name to UnumProvident Corporation. On December 22, 2004, Unum Holding Company was merged into UnumProvident Corporation, with UnumProvident Corporation being the surviving entity. In February 2007, UnumProvident Corporation changed its name to Unum Group (“Unum”).

Unum made capital contributions to the Company in 2014 totaling \$155,000,000; in 2015 totaling \$40,000,000; in 2016 totaling \$40,000,000; in 2017 totaling \$89,737,521; in 2018 totaling \$125,000,000; in 2019 totaling \$100,000,000; and in 2020 totaling \$55,000,000. The Company paid dividends to Unum in 2021 totaling \$30,800,000; and in 2022 totaling \$39,000,000.

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 only in New York. In 2021, 77.3% of life premiums and 87.8% of accident and health premiums were received from New York. Policies are written on a non-participating basis.

The Company primarily writes group term life and group short-term and long-term disability insurance. The Company also offers accidental death and dismemberment coverage, voluntary benefits products, and administrative services only (“ASO”) products. The voluntary benefits products are primarily sold to groups of employees through payroll deduction at the workplace, and include life, disability, accident, hospital indemnity, and specified disease. The ASO products provide administrative services for claims processing and self-insured customers billing for which the responsibility for funding claims remains with the customers. Effective July 22, 2017, the Company ceased marketing individual universal life insurance policies that were designated as being marketed with an illustration.

The Company also services its closed blocks of business which consist of group and individual long-term care insurance, individual voluntary disability insurance, and individual universal life insurance.

The Company's agency operations are conducted on a general agency basis. The Company's products are sold through independent agent and brokers. The Company's group business is also sold through broker general agent distribution channel.

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.

Based upon the sample reviewed, no significant findings were noted.

B. Underwriting and Policy Forms

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

Section 3201(b)(1) of the New York Insurance Law states, in part:

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

A review of a sample of 51 individual whole life policies issued during the examination period revealed that in all instances (100%), the Company utilized application form FUL-21850-NY which differed from the application form that was filed with and approved by the Superintendent.

The issues noted were as follows:

- Section 3: Child and/or Grandchild of the approved application form FUL-21850-NY included the word “Telephone” under subsections: Child/Grandchild #1 and Child/Grandchild #2. However, the application form utilized did not include the word “Telephone.”
- Section 5: Tier 1 Medical Profile, Item 1 of the application form FUL-21850-NY utilized by the Company included the word “with.” However, the approved

application form did not include the word “with.”

- Section 7: Employee (Applicant) Agrees as Follows of the approved application form FUL-21850-NY was changed to Section 8 on the application form utilized by the Company, i.e., the application form utilized omitted Section 7 and replaced it with Section 8.

The examiner also reviewed a sample of 44 policies issued by the Company during the examination. The sample consisted of 14 individual disability income policies, 15 group critical illness policies, and 15 group accident insurance policies.

- In 1 out of 14 (7%) individual disability income policies reviewed, the Company utilized form AE-1200-NY that was not filed with and approved by the Superintendent.
- In 3 out of 15 (20%) group critical illness policies reviewed, the Company utilized benefit election form AE-1200-NY-GRP that was not filed with and approved by the Superintendent.
- In 2 out of 15 (13%) group accident insurance policies reviewed, the Company utilized benefit election form AE-1200-NY-GRP that was not filed with and approved by the Superintendent.

A review of an additional sample of 11 group term life underwriting files indicated that in all 11 files (100%) reviewed, the Company utilized policy application form AE-1080-NY (12/17) that was not filed with and approved by the Superintendent.

The Company violated Section 3201(b)(1) of the New York Insurance Law by using application forms FUL-21850-NY, AE-1200-NY, AE-1200-NY-GRP, and AE-1080-NY (12/17) that were not filed with and approved by the Superintendent.

A review of a sample of 10 declined voluntary benefit underwriting files indicated that in all 10 files (100%) reviewed, the Company utilized Provident Life and Accident letterhead, instead of First Unum Life Insurance Company letterhead when the adverse underwriting decision letters were generated and mailed to the applicants.

The examiner recommends that all Company correspondence with policyholders and applicants reflect the correct name of the insurer on its letterhead.

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.

Section 403(d) of 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 of 11 NYCRR 95 (Insurance Regulation 95) states, in part:

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

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

(e) . . . Insurers may use substantially similar warning statements provided such warning statements are submitted to the Criminal Investigation Unit for prior approval.”

The examiner’s review of a sample of various claims processed during the examination period revealed that the Company utilized claim forms that did not contain the required fraud warning statement and used fraud language that differed from the New York required fraud warning statement.

- In 11 out of 15 (73.33%) individual life claims reviewed, the Company utilized a claim form that did not contain a fraud warning statement as specified under Section 403(d) of the New York Insurance Law.

- In 2 out of 16 (12.5%) universal life claims reviewed, the Company used fraud language that differed from the New York required fraud warning statement.

The Company violated Section 403(d) of the New York Insurance Law, and Sections 86.4(a) and 86.4(e) of 11 NYCRR 86 (Insurance Regulation 95) by utilizing claim forms that did not contain the required fraud warning statement, and further, by using fraud language that differed from the required fraud warning statement without obtaining prior approval from the Department's Criminal Investigation Unit.

Section 216.6(c) of 11 NYCRR 216 (Insurance Regulation 64) states, in part:

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

The examiner reviewed a sample of 15 individual life claims. In 2 of 15 (13%) individual life claims reviewed, it took the Company an average of 26 days to pay the two claims once all the properly executed proof of loss and/or receipt of all items, statements, and forms which the insurer requested from the claimant were received.

The Company violated Section 216(c) of 11 NYCRR 216 (Insurance Regulation 64) by failing to provide notice of acceptance or rejection of individual life claims within 15 business days of receipt of a properly executed proof of loss.

Section 3206(d) of the New York Insurance Law states, in part:

"The insurer shall for any such policy:

- (1) notify the policyholder at the time a cash loan is made of the initial rate of interest on the loan;
- (2) notify the policyholder with respect to premium loans of the initial rate of interest on the loan as soon as it is reasonably practical to do so after making the initial loan. Notice need not be given to the policyholder when a further premium loan is added, except as provided in paragraph three hereof;
- (3) send to the policyholders with loans reasonable advance notice of any increase in the rate...

During the review of policy loans from the Company's Colonial Life and Accident ("CLA") administrative system, the examiner identified that in all four (100%) CLA contract loans

selected for review, the Company charged the policyowner a 6.5% policy loan interest rate, whereas the initial policy loan interest rate stated on the issued policy was 6%. The Company stated that it was due to a CLA system error and its review of the CLA system identified a total of 156 contract loans that the Company charged the policyowner a policy loan interest more than the initial rate stated on the policy.

The Company violated Section 3206(d)(3) of the New York Insurance Law when it failed to notify the policyholder of the increase in the interest rate charged on cash policy loans.

The Company stated that it has successfully remediated all 156 policies that were impacted. The plan included calculating the interest amounts for all impacted policies depending on the current policy status and where applicable, the Company issued a refund or credit to the outstanding loan balance.

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

“(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. The policy owner or certificate holder shall have the right to rescind the request for such payments at any time during the process of application for said benefits.

(d) Within five days 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; ...

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

The examiner's review of a sample of 15 accelerated death benefit claims revealed that the Company paid 12 (80%) accelerated death claims within five days of the date the required information was transmitted in writing to the certificate holder.

The Company violated Section 3230(c) of the New York Insurance Law when it failed to wait the required five days before paying accelerated benefits to certificate holders. A similar violation appeared in the prior report on examination.

The examiner also reviewed a sample of two ordinary life accelerated death benefit claims that contained cash value and policy loans. In both instances (100%), the Company failed to

provide the policy owner with the following items required by Section 3230(d) of the New York Insurance Law within five days of receipt of the application to accelerate benefits:

- an illustration demonstrating the effect of the accelerated benefit on the policy's cash value and policy loans; and
- a notice that other means may be available to achieve the intended goal, including a policy loan.

The Company violated Section 3230(d)(1) and Section 3230(d)(4) of the New York Insurance Law by failing to provide the required illustration within five days of receipt of an application to accelerate death benefits that has a cash value and policy loans, 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.

Furthermore, in all 13 (100%) group life accelerated death benefit claims reviewed, that do not accumulate cash value or provide for policy loans, the Company failed to provide the policy owner within five days of receipt of the application to accelerate benefits, with a notice that other means may be available to achieve the intended goal.

The Company violated Section 3230(d)(4) of the New York Insurance Law by failing to provide policy owners whose policies do not accumulate cash value or provide for policy loans within five days of receipt of an application to accelerate death benefits with a notice that other means may be available to achieve the intended goal.

5. PRIOR REPORT SUMMARY AND CONCLUSIONS

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

<u>Item</u>	<u>Description</u>
A	<p>The Company violated Section 53-2.1(c) of 11 NYCRR 53 (Insurance Regulation 74) by failing to provide preliminary information to the prospective purchaser at or prior to the time the application was taken.</p> <p>The same violation was identified during the Electronic Application Process review, which was conducted as of December 31, 2021. The Company indicated it has put in place steps to ensure the preliminary information required by Section 3209 is presented in its enrollments of Individual Whole Life product at or prior to the time an application is taken. The Company also indicated that these steps will be completed by the end of September 2023.</p>
B	<p>The Company violated Section 53-3.1(d) of 11 NYCRR 53 (Insurance Regulation 74) by failing to provide a basic illustration prepared and delivered in accordance with this Section for policy forms that it designated as being marketed with an illustration.</p> <p>The examiner's review revealed that the Company no longer actively markets or sells any policies designated as being marketed with an illustration. Additionally, the examiner's review indicated that there were no illustrations used during the examination period.</p>
C	<p>The Company violated Section 53-3.5(a) of 11 NYCRR 53 (Insurance Regulation 74) by failing to obtain a compliant illustration signed and dated by the applicant or policyowner and the producer or other authorized representative of the insurer no later than the time of policy delivery.</p> <p>The examiner's review revealed that the Company no longer actively markets or sells any policies designated as being marketed with an illustration. Additionally, the examiner's review indicated that there were no illustrations used during the examination period.</p>
D	<p>The Company violated Section 53-3.2(a)(5) of 11 NYCRR 53 (Insurance Regulation 74) by labeling the illustration used in the sale of a scheduled premium universal life insurance paid up at 120 policies with a generic name that was inconsistent with the name included on the policy contract form.</p>

<u>Item</u>	<u>Description</u>
	The examiner's review revealed that the Company no longer markets or sells any policies designated as being marketed with an illustration. Additionally, the examiner's review demonstrated that there was no illustration used during the examination period.
E	The Company violated Section 53-3-3(d)(1) of 11 NYCRR 53 (Insurance Regulation 74) by failing to have the policyowner sign the illustration and attest that he or she understood that non-guaranteed elements were not guaranteed, were subject to change, and could be either higher or lower than shown.
	The examiner's review revealed that the Company no longer actively markets or sells any policies designated as being marketed with an illustration. In addition, the Company conducted a due diligence review to ensure there were no actively sold Company policies designated as being marketed with an illustration. The examiner's review also indicated that there were no illustrations used during the examination.
F	The examiner recommended that the Company revise its illustration to include the \$150,000 accelerated living benefit limit.
	The Company revised its illustration to include the \$150,000 accelerated living benefit limit.
G	The Company violated Section 51.6(a)(2) of 11 NYCRR 51 (Insurance Regulation 60) by failing to include the Definition of Replacement in the individual life underwriting.
	The examiner's review revealed that this is a repeat violation. The Company indicated it has put in place steps to ensure the Definition of Replacement form is completed during its enrollment as required by 11 NYCRR 51 Section 51.6(a)(2). The Company also stated that these steps will be completed by the end of September 2023.
H	The Company violated Section 2122(a)(2) of the New York Insurance Law by using a 'Fact About Accelerated Benefit Living Benefit Option Rider' form, which included a reference at the bottom of the page to Provident Life and Accident Insurance Company, an insurer not authorized in New York.
	The examiner's review indicated that the Company's 'Facts About Accelerated Benefit Living Benefit Option Rider' form did not include a reference to an unauthorized insurer Provident Life and Accident Insurance Company.

<u>Item</u>	<u>Description</u>
I	<p>The Company violated Section 3230(b)(2) of the New York Insurance Law by failing to include in the application to accelerate death benefits the required notice that the receipt of accelerated death benefits in periodic payments may be treated differently than the receipt in a lump sum.</p> <p>The examiner verified that the revised application form for the accelerated death benefits included the required notice that the receipt of accelerated death benefits in periodic payments may be treated differently than the receipt in a lump sum.</p>
J	<p>The Company violated Section 3230(b)(4) of the New York Insurance Law by failing to include in the application the required statement by the policy owner that such application is voluntary and without coercion on the part of any third party.</p> <p>The examiner's review indicated that the application included the required statement by the policy owner that such application is voluntary and without coercion on the part of any third party.</p>
K	<p>The Company violated Section 3230(c) of the New York Insurance Law when it failed to wait the required 14 days before paying accelerated death benefits to certificate holders.</p> <p>The examiner's review revealed that the Company failed to take the corrective action in response to this prior report violation. (See item 4C of this report.)</p>
L	<p>The Company violated Section 3230(d) of the New York Insurance Law by failing to provide policy owners with the required disclosure information within five days of receipt of an application to accelerated benefits.</p> <p>The examiner's review revealed that the Company failed to take corrective action in response to this prior report comment. (See item 4C of this Report.)</p>

6. SUMMARY AND CONCLUSIONS

Following are the violations and recommendation contained in this report:

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
A	The Company violated Section 3201(b)(1) of the New York Insurance Law by using application forms FUL-21850-NY, AE-1200-NY, AE-1200-NY-GRP, and AE-1080-NY (12/17) that were not filed with and approved by the Superintendent.	8
B	The examiner recommends that all Company correspondence with policyholders and applicants reflect the correct name of the insurer on its letterhead.	8
C	The Company violated Section 403(d) of the New York Insurance Law, and Sections 86.4(a) and 86.4(e) of 11 NYCRR 86 (Insurance Regulation 95) by utilizing claim forms that did not contain the required fraud warning statement, and further, by using fraud language that differed from the required fraud warning statement without obtaining prior approval from the Department's Criminal Investigation Unit.	10
D	The Company violated Section 216(c) of 11 NYCRR 216 (Insurance Regulation 64) by failing to provide notice of acceptance or rejection of individual life claims within 15 business days of receipt of a properly executed proof of loss.	10
E	The Company violated Section 3206(d)(3) of the New York Insurance Law when it failed to notify the policyholder of the increase in the interest rate charged on cash policy loans.	11
F	The Company violated Section 3230(c) of the New York Insurance Law when it failed to wait the required five days before paying accelerated benefits to certificate holder. A similar violation appeared in the prior report on examination.	11
G	The Company violated Section 3230(d)(1) and Section 3230(d)(4) of the New York Insurance Law by failing to provide the required illustration within five days of receipt of an application to accelerate death benefits that has a cash value and policy loans, 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.	12

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
H	The Company violated Section 3230(d)(4) of the New York Insurance Law by failing to provide policy owners whose policies do not accumulate cash value or provide for policy loans within five days of receipt of an application to accelerate death benefits with a notice that other means may be available to achieve the intended goal.	12

Respectfully submitted,



Donna Taylor
Senior Insurance Examiner

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

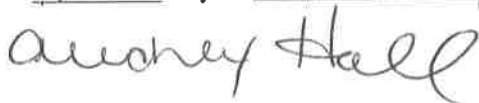
Donna Taylor, being duly sworn, deposes and says that the foregoing report, subscribed by her, is true to the best of her knowledge and belief.



Donna Taylor

Subscribed and sworn to before me

this 12th day of December, 2023



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

APPOINTMENT NO. 32445

NEW YORK STATE

DEPARTMENT OF FINANCIAL SERVICES

I, ADRIENNE A. HARRIS, 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:

DONNA TAYLOR

as a proper person to examine the affairs of the

FIRST UNUM 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 9th day of August, 2022

*ADRIENNE A. HARRIS
Superintendent of Financial Services*

By:

Mark McLeod

*MARK MCLEOD
DEPUTY CHIEF - LIFE BUREAU*

