



**MARKET CONDUCT REPORT ON EXAMINATION**

**OF THE**

**RIVERSOURCE LIFE INSURANCE CO. OF NEW YORK**

**AS OF DECEMBER 31, 2022**

**EXAMINER:**

**DONNA TAYLOR**

**DATE OF REPORT:**

**SEPTEMBER 21, 2023**

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KATHY HOCHUL  
Governor



ADRIENNE A. HARRIS  
Superintendent

May 7, 2024

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. 32530, dated March 21, 2023, and annexed hereto, an examination has been made into the condition and affairs of RiverSource Life Insurance Co. of New York, hereinafter referred to as "the Company." The Company's home office is located at 20 Madison Avenue Extension, Albany, NY 12203.

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 findings and violations contained in this report are summarized below.

- The Company violated several sections of 11 NYCRR 51 (Insurance Regulation 60) by failing to: (i) examine and ascertain that the Disclosure Statement was accurate and met the requirements of the Regulation; (ii) disclose the fees and charges that are associated with the proposed policy on the disclosure statement; and (iii) send the applicant a revised Disclosure Statement when the policy is issued other than as applied for. (See item 4A-1 of this report.)
- The Company violated Section 2112(d) of the New York Insurance Law by failing to file with the superintendent notice of the termination of ten certificates of appointment, within 30 days of such termination. (See item 4A-4 of this report.)
- The Company violated Section 3211(b)(2) of the New York Insurance Law by disseminating non-compliant premium notices to the policyholders. (See item 4C-4 of this report.)
- The Company violated multiple sections of 11 NYCRR 53 (Insurance Regulation 74) with respect to new business (point of sale) and in-force illustrations of universal life and variable universal life products. (See items 4D-1, 4D-4 and 4D-5 of this report.)
- The Company violated Section 4221(a)(7) of the New York Insurance Law by failing to specify the loan value available to the policyholder under the policy. (See item 4D-3 of this report.)

## 2. SCOPE OF EXAMINATION

This examination covers the period from January 1, 2018, to December 31, 2022. As necessary, the examiner reviewed matters occurring subsequent to December 31, 2022, 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 recommendations 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 under the laws of New York on July 10, 1972, as IDS Life Insurance Company of New York (“IDSNY”), a stock life insurance company. The Company was licensed and commenced business on October 25, 1972.

On March 17, 2006, IDSNY and American Centurion Life Assurance Company (“ACL”), both subsidiaries of IDS Life Insurance Company (“IDS”), a Minnesota life insurer, at the time, executed an agreement and plan of merger, under which ACL would be merged with and into IDSNY. IDSNY was the surviving company and continued to exist as a domestic stock life insurance company. Simultaneously with the merger, the Company changed its name to RiverSource Life Insurance Co. of New York and IDS changed its name to RiverSource Life Insurance Company (“RVSL”). The Company remained domiciled in New York and continued to be a wholly owned subsidiary of RVSL. The merger and name change were effective December 31, 2006.

The Company’s ultimate parent, Ameriprise Financial, Inc., (“Ameriprise”) was formerly a wholly owned subsidiary of American Express Company (“American Express”). On February 1, 2005, Ameriprise entered into certain agreements with American Express to effect a separation from American Express, which was completed in 2007.

#### B. 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 only in New York. In 2022, 84.36% of life premiums, 94.88% of annuity considerations, and 73.52% accident and health premiums, were received from New York. Policies are written on a non-participating basis.

The Company’s principal products are variable and fixed annuities. The Company also issues both variable and fixed (including indexed) universal life insurance, term life insurance and disability income insurance. Policies are written on a non-participating basis.

The Company distributes products through the affiliated retail financial planning channel. The channel’s financial advisors, some of whom are employees of Ameriprise Financial Services

(“AFS”) and some of whom are franchisees of AFS, work directly with clients in financial planning relationships.

A majority of the Company’s business is sold through the retail distribution channel of AFS, a subsidiary of Ameriprise. RiverSource Distributors Inc., a subsidiary of Ameriprise, serves as the principal underwriter and distributor of variable annuity and life insurance products issued by the Company.

#### 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 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: . . .

(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 . . .

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

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.”



The examiner's review of a sample of 20 internal annuity and 23 external annuity replacements revealed the following:

- i. In 2 out of 20 (10%) internal annuity and in 5 out of 23 (22%) external annuity replacements reviewed, the agents used a prospectus to market the products, but checked the box in the Disclosure Statement indicating that no sales material or proposal was used in the sale.
- ii. In 5 out of 20 (25%) internal annuity and 2 out 23 (8.7%) external annuity replacements reviewed, the agent checked the box that, "no sales material or proposal was used in these sales."
- iii. In 1 out of 20 (5%) internal annuity and 3 out of 23 (13%) external annuity replacement reviewed, the examiner noted that the existing contract has a guaranteed interest rate, but the proposed contract does not have a guaranteed interest rate. A statement was not included in the Agent's Statement section of the Disclosure Statement indicating that an advantage of continuing the existing policy would be the guaranteed interest rate.
- iv. In 6 out of 23 (26%) external annuity replacement reviewed, the agent failed to complete the surrender charge line for the existing policy on the Agent/Broker's Statement of the Disclosure Statement. The surrender charge should have been denoted by a "0" for comparison purpose.

The examiner's review of a sample of 20 internal and 23 external life replacements revealed the following:

- i. In 14 out of 20 (70%) internal life and in 8 out of 23 (34.8%) external life replacements reviewed, the examiner noted that the existing policy has a higher guaranteed interest rate, than the proposed policy. A statement was not included in the Agent/Broker's Statement section of the Disclosure Statement indicating that an advantage of continuing the existing policy would be the higher guaranteed interest rate.
- ii. In all 20 (100%) internal life and in all 23 (100%) external life replacements reviewed, the agents failed to disclose the fees and charges that are associated with the proposed policy on the Disclosure Statement.

- iii. In 4 out of 20 (20%) internal life and in 6 out of 23 (26 %) external life replacements reviewed, the agents failed to disclose in the Agent/Broker's Statement of the Disclosure Statements that the expired suicide and contestable periods as advantages for continuing the existing policies.
- iv. In 3 out of 20 (15%) internal life replacement files reviewed, the Agent/Broker's Statement of the Disclosure Statement stated, the only advantage of continuing the existing life insurance policy without changes are low premiums. The agent failed to disclose that another advantage of continuing the existing policy is that the suicide and contestable periods have expired. Therefore, stating low premiums as the only advantage is deemed inaccurate.
- v. In 2 out of 23 (8.7%) external life replacement files reviewed, the Agent/Broker's Statement of the Disclosure Statement stated that the advantage of the new life insurance policy is the lower cost of the insurance structure. The proposed policies have surrender charges and in one case for the proposed policy, with the same face amount as the existing policy, the proposed policy's annual premium was more than five times the premium of the existing policy.
- vi. In 2 out of 23 (8.7%) external life replacement files reviewed, the Agent/Broker's Statement of the Disclosure Statement made no mention of the advantage of no new underwriting for the existing policy.
- vii. In 3 out of 23 (13%) external life replacement reviewed, the agent failed to mention on the Agent/Broker's Statement, that the no surrender charge was an advantage of the existing policy.
- viii. In 9 out of 23 (39.1%) external life replacement reviewed, the whole life policies were replaced by universal life policies and the Agent/Broker's Statement failed to show the cost associated with the premium charge for the universal life policies. Whole life policies do not incur premium charge.

The Company violated Section 51.6(b)(4) of 11 NYCRR 51 (Insurance Regulation 60, Third Amendment) by failing to examine the Disclosure Statements and ascertain that they are accurate and meet the requirements of the Insurance Law and regulations.

In 2 out of 20 (10%) internal annuity replacements reviewed, where the policy was issued other than applied for, the Company failed to provide a revised Disclosure Statement to the applicant.

The Company violated Section 51.6(b)(10) of 11 NYCRR 51 (Insurance Regulation 60) by failing to provide the applicant with a revised “Disclosure Statement” when the policy is issued other than as applied for.

2. Section 51.7 of 11 NYCRR 51 (Insurance Regulation 60) states, in part:

“(b) No insurer, insurance agent, insurance broker, or any other licensee of this department, or any representative, officer, or employee of an insurer, 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 contractholders. 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, removal of directors or officers, suspension or revocation of agent’s, broker’s or company’s licenses, and monetary fines.”

In 20 out of 23 (87%) external life and 10 out of 23 (43.5%) external annuity replacement policies reviewed, the Company had the clients sign the Authorization to Disclose forms before the Definition of Replacement forms were signed. The client must complete the Definition of Replacement form to determine if a replacement will take place. When it is determined that a replacement will take place then the client will need to complete and sign the Authorization to Disclose form.

The Company violated Section 51.7(b) of 11 NYCRR 51 (Insurance Regulation 60) by failing to ensure that the Definition of Replacement is signed before the applicant signs the authorization form.

The examiner recommends that the Company follow its procedures for replacements that was approved by the Department.

3. Section 224.4 of 11 NYCRR 224 (Insurance Regulation 187) states, in part:

“ . . . (iv) in the case of a replacement of a policy, the replacement is suitable including taking into consideration whether:

(a) the consumer will incur a surrender charge, increased premium or fees, decreased coverage duration, decreased death benefit or income amount, adverse change in health rating, be subject to the commencement of a new surrender period,

lose existing benefits (such as death, living or other contractual benefits), be subject to tax implications if the consumer surrenders or borrows from the policy, or be subject to increased fees, investment advisory fees, premium loads or charges for riders and similar product enhancements;

(b) the consumer would benefit from policy enhancements and improvements, such as a decreased premium or fees, increased coverage duration, increased death benefit or income amount; . . . ”

In 1 out of 23 (4.3%) life external replacements reviewed, the Disclosure Statement shows that the existing policy’s face amount is greater than the face amount of the proposed policy, the existing policy’s premium is less than the proposed policy’s premium, and that the surrender charge on the existing policy is less than the proposed policy’s surrender charge.

The Company violated Section 224.4 of 11 NYCRR 224 (Insurance Regulation 187) by failing to ensure that the proposed policy is suitable for the policyholder.

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

“Every insurer . . . doing business in this state shall, upon termination of the certificate of appointment as set forth in subsection (a) of this section of any insurance agent, or title insurance agent licensed in this state, or upon termination for cause for activities as set forth in subsection (a) of section two thousand one hundred ten of this article, of the certificate of appointment, of employment, of a contract or other insurance business relationship with any insurance producer, file with the superintendent within thirty days a statement, in such form as the superintendent may prescribe, of the facts relative to such termination for cause. The insurer . . . shall provide, within fifteen days after notification has been sent to the superintendent, a copy of the statement filed with the superintendent to the insurance producer at his, or her or its last known address by certified mail, return receipt requested, postage prepaid or by overnight delivery using a nationally recognized carrier. Every statement made pursuant to this subsection shall be deemed a privileged communication.”

The examiner noted that in all 10 (100%) agent terminations for cause reviewed, the Company failed to file with the superintendent a statement of the facts relative to such terminations for cause within the stipulated 30 days as required by the law.

In addition, the examiner could not find any communication in the files to indicate that the 10 agents terminated for cause were notified by certified mail within fifteen days after the superintendent was notified.

The Company violated Section 2112(d) of the New York Insurance Law by failing to file with the superintendent notice of the termination of ten certificates of appointment, within 30 days of such termination.

The Company violated Section 2112(d) of the New York Insurance Law by failing to provide the insurance producer with: a copy of the statement filed with the superintendent within fifteen days after notification has been sent to the superintendent, and a copy of the statement filed with the superintendent to the insurance producer at his, or her or its last known address by certified mail, return receipt requested, postage prepaid or by overnight delivery using a nationally recognized carrier.

#### B. Underwriting and Policy Forms

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

1. Section 53-2.1(a)(9) of 11 NYCRR 53 (Insurance Regulation 74) states, in part:

“The preliminary information shall be in writing and include, to the extent applicable, the following: . . .

(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 . . .”

A review of nine term life underwriting files indicated that in all nine (100%) files reviewed, the Company’s preliminary information for each term life insurance policy did not include the language required by Section 53-2.1(a)(9) of 11 NYCRR 53 (Regulation 74).

The Company violated Section 53-2.1(a)(9) of 11 NYCRR 53 (Insurance Regulation 74) by not including the required language on the preliminary information for its term life insurance policies.

2. Section 4221(n-1) (2)(H) of the New York Insurance Law states, in part:

“Net level whole life annual premium at issue” means an annual premium based on face amounts of insurance set forth in the policy and on the assumption of level

annual premiums for life, the mortality table rate used to calculate the maximum mortality charges (but not greater than that permitted under item (iv) of subparagraph (A) of paragraph three of this subsection) and an interest rate based on the rate specified in the policy but not less than the lesser of four percent and the nonforfeiture interest rate per annum pursuant to paragraph ten of subsection (k) of this section.”

The examiner’s review revealed that six universal life policies that were issued after July 21, 2022, did not show the nonforfeiture interest rate in the policy form (113578), the specification page or on the informational policy data pages.

The Company violated Section 4221(n-1)(2)(H) of the New York Insurance Law by not including the nonforfeiture interest rate in the policy form, the specification page or on the informational policy data pages.

The Company filed amended policy forms on October 13, 2023 and the Department approved the forms on October 17, 2023.

### C. Treatment of Policyholders

The examiner reviewed a sample of various types of claims, surrenders, changes and lapses. The examiner also reviewed the various controls involved, checked the accuracy of the computations and traced the accounting data to the books of account.

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

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

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

Section 86.4 of 11 NYCRR 86 (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.” . . .

(d) Location of warning statements and type size. The warning statements . . . shall be placed immediately above the space provided for the signature of the person executing the application or claim form and shall be printed in type which will produce a warning statement of conspicuous size.”

The examiner reviewed various types of claims processed during the examination period and noted that the Company used claim forms in which the fraud warning statement was not placed immediately above the space provided for the signature of the person executing the claim form, or where the Company utilized claim forms that did not contain the required fraud warning statement. The examiner’s review revealed that:

- In 2 out of 18 (11%) fixed annuity claims, the fraud warning was not placed immediately above the space provided for the signature of the person executing the claim.
- In 2 out of 10 (20%) group annuity claims, the Company utilized a claim form that does not include a fraud warning statement as specified under Section 403(a) of the New York Insurance Law.

The Company violated Section 403(d) of the New York Insurance Law and Section 86.4(a) of 11 NYCRR 86 (Insurance Regulation 95) by using claim forms where the required fraud warning statement was omitted.

The Company violated Section 86.4(d) of 11 NYCRR 86 (Insurance Regulation 95) by using claim forms where the required fraud warning statement was not placed immediately above the space provided for the signature of the person executing the claim form.

2. Section 3204 of the New York Insurance Law states, in part:

“(a)(1) Every policy of life, accident or health insurance, or contract of annuity, delivered or issued for delivery in this state, shall contain the entire contract between the parties, and nothing shall be incorporated therein by reference to any writing, unless a copy thereof is endorsed upon or attached to the policy or contract when issued. . .

(3) Such policy or contract cannot be modified, nor can any rights or requirements be waived, except in writing signed by a person specified by the insurer in such policy or contract.”

(d) No insertion in or other alteration of any written application for any such policy or contract shall be made by any person other than the applicant without his written consent. . . .”

The examiner reviewed a sample of fifteen policies with the automatic premium loan (“APL”) nonforfeiture option. In 8 of the 15 policies selected for review (53%), the application forms did not have the APL option box checked to indicate the insured’s or policyowner’s selection of this nonforfeiture option. In addition, the examiner did not note any other documentation suggesting that the policyholder requested automatic premium loan.

The Company violated Sections 3204(a)(1) and (3) and Section 3204(d) of the New York Insurance Law by adding the automatic policy loan provision without prior written consent from the applicant or policyowner.

3. Section 3206 of the New York Insurance Law states, in part:

“(d) 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

(3) send to policyholders with loans reasonable advance notice of any increase in the rate; and

(4) include in the notices required above the substance of the pertinent policy provisions permitting an adjustable maximum interest rate on policy loans established from time to time by the insurer as permitted by law, and specifying the frequency at which the interest rate is to be determined by the insurer as permitted by law. . . .”

The examiner’s review of samples of policy loans and contract loans revealed the following:

- i. In all seven (100%) life policy loans reviewed, the Company did not forward a letter to the policyholders informing them of the initial interest rate and the frequency of the interest rate adjustments.
- ii. In all 12 (100%) annuity contracts loans reviewed, the Company did not forward a letter to the contractholders informing them of the initial interest rate and the frequency of the interest rate adjustments.



The Company violated Section 3206(d) of the New York Insurance Law by failing to forward a letter to policyholders or contractholders informing them of the initial interest rate and the frequency with which the interest rate would be adjusted.

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

“The notice required by paragraph one of subsection (a) hereof shall: . . .  
 (2) state the amount of such payment, the date when due, the place where and the person to whom it is payable; and shall also state that unless such payment is made on or before the date when due or within the specified grace period thereafter, the policy shall terminate or lapse except as to the right to any cash surrender value or nonforfeiture benefit.”

In 20 out of 28 (71.4%) life lapsed policies reviewed, the premium notices utilized by the Company did not contain the language required by Section 3211(b)(2) of the New York Insurance Law to address the cash value and nonforfeiture benefit. These notices should have stated that unless such payment is made on or before the date when due or within the specified grace period thereafter, the policy shall terminate or lapse except as to the right to any cash surrender value or nonforfeiture benefit.

The Company violated Section 3211(b)(2) of the New York Insurance Law by disseminating non-compliant premium notices to the policyholders.

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

“(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. . . .”

During the examination period the Company had one application to accelerate death benefit, a Flexible Premium Adjustable Life Insurance policy. The Company failed to provide the policy owner with the following items 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.

6. Section 243.2 of 11 NYCRR 243 (Insurance Regulation 152) states, in part:

“(a) In addition to any other requirement contained in Insurance Law Section 325, any other Section of the Insurance Law or other law, or any other provision of this Title, every insurer shall maintain . . . and such other records subject to examination by the superintendent, in accordance with the provisions of this Part.

(b) Except as otherwise required by law or regulation, an insurer shall maintain: . . .

(8) Any other record for six calendar years from its creation or until after the filing of a report on examination or the conclusion of an investigation in which the record was subject to review.”

Section 243.3(a) of 11 NYCRR 243 (Insurance Regulation 152) states, in part:

“(4) If the insurer does not retain the original paper record, or if there was no original paper record, a duplicate or back-up system sufficient to permit reconstruction of the record shall be established at a separate location. The record may be retained in any form permitted by this Part. . . .”

The examiner’s review of various samples revealed the following:

- In 2 out of 38 (5.3%) group life files reviewed, the applications are missing.
- In 2 out of 38 (5.3%) group life files reviewed, the acknowledgement letters are missing.
- In 1 out of 28 (3.6%) lapse files reviewed, the applications are missing.
- In 1 out of 25 (4%) life underwriting files reviewed, the Company is unable to provide the complete approved policy form.

The Company violated Sections 243.2(a) and (b)(8) and Section 243.3(a)(4) of 11 NYCRR 243 (Insurance Regulation 152) by failing to maintain policy records and failing to establish a duplicate or back-up system sufficient to permit the reconstruction of the missing documents.

D. Annual Illustration Actuary Certifications.

1. Illustrated Universal & Variable Universal Life

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 acknowledgment of receipt of this illustration shall be required.”

Section 53-3.3 of 11 NYCRR 53 (Insurance Regulation 74) states, in part:

“(c) Numeric summary.

(1) Following the narrative summary, a basic illustration shall include a numeric summary of the death benefits and values and the premium outlay and contract premium, as applicable. For a policy that provides for a contract premium, the guaranteed death benefits and values shall be based on the contract premium. Except as provided in subdivision (g) of this Section, this summary shall be shown for at least policy years 5, 10 and 20 and at age 70, if applicable, on the three bases shown below. . . .

(g) The numeric summary for a policy subject to Section 4232(b) of the Insurance Law and a cash value policy providing three basic components consisting of a base policy, a paid-up additions element and a term insurance element shall show, in addition to the policy durations set forth in subdivision (c) of this section, policy duration at age 85 and age 90 of the insured . . .”

The Numeric Summary in the basic illustration of the example basic illustrations provided for policy forms 138789 (Foundations UL 2011), 138791 (RiverSource Indexed UL), 139573 (Multi-Index UL), 139574 (Survivorship Multi-Index UL), 113578 (Index UL 2) and 138795 (VUL 5) does not show the death benefits and values or the premium outlay for the insured at ages 85 and 90.

The Company violated Section 53-3.3(g) of 11 NYCRR 53 (Insurance Regulation 74) by failing to show the premium outlay, death benefits and values of the policy in the Numeric Summary for the insured at ages 85 and 90.

The Company agreed to update the Numeric Summary in the basic illustration for all policy forms, including 138789, 138791, 139573, 139574, 113578 and 138795, to show the annual premium outlay, death benefits and values of the policy in the Numeric Summary for the insured at ages 85 and 90 in Q2 2022.

The Company took corrective action in May 2022.

The Department comments that policy forms 138791 and 138789 were not actively marketed during 2020.

The Department recommends that the Company perform a self-review of policy forms sold in New York since 2014 to identify additional affected policy forms where the basic illustration furnished to the applicant did not comply with Section 53-3.3(g) of 11 NYCRR 53 (Insurance Regulation 74).

Section 53-3.3(a)(7) of 11 NYCRR 53 (Insurance Regulation 74) states:

“Format. A basic illustration shall conform with the following requirements: . . .

(7) If the illustration shows any non-guaranteed elements, they cannot be based on a scale more favorable to the policyowner than the insurer’s illustrated scale at any duration. These elements shall be clearly labeled non-guaranteed . . .”

The basic illustration for policy form 138795 (Variable Universal Life 5) includes three sets of values using different rates of return, interest and expense assumptions starting on page 11 of the 20-page illustration. The scenarios or assumptions are more fully explained on page 9 of 20. Scenario 1 values assume guaranteed cost of insurance and expenses and the guaranteed minimum interest rates for the fixed account, and the illustrated segment floor (minimums) for the indexed accounts (0% and 1%) and a 0% gross hypothetical rate of return for the variable subaccounts. The table of values and benefits identified as Scenario 1 are not labeled “guaranteed cost factors and 0% gross return.” In Scenario 2, the Company uses guaranteed maximum cost of insurance and expenses but assumes current non-guaranteed interest rates for the fixed account (2%) and the maximum illustrated rates for the selected indexed accounts (5.5%) and a hypothetical rate of return for the variable subaccounts (8% gross). Scenario 3 assumptions are like Scenario 2 but are based on current cost of insurance and expenses.

The columns containing the values and benefits for Scenario 1 are not labeled, “guaranteed cost factors and 0% rate of return”, instead the column heading “Guaranteed Expenses” is used.

The tables of values and benefits based on current or median (Scenario 3 and 2) are not labeled in a prominent manner “not guaranteed.”

The Company should add the terms “non-Guaranteed” above the columns containing Scenario 2 and Scenario 3 to all basic (new sale) and in-force illustrations of variable universal life policy forms with policies in force to comply with Section 53-3.3(a)(7) of 11 NYCRR 53 (Insurance Regulation 74).

The Company violated Section 53-3.3(a)(7) of 11 NYCRR 53 (Insurance Regulation 74) by failing to clearly label non-guaranteed elements in the Tabular Detail or projection of the policy for policy form 138795 (Variable Universal Life 5 and Variable Universal Life 6).

The Company agreed to make the following changes for all basic (new sale) and in-force illustrations of variable universal life policy forms with policies in force (including policy form 138795 for Variable Universal Life 5 and Variable Universal Life 6) upon confirmation from the Department that these changes are appropriate:

- Replace “Rates of Return” with the term “Non-Guaranteed Rates of Return” in the Scenario 2 and Scenario 3 column headings.
- Replace the term “Expenses” in all three Scenario column headings with the term “Charges.”

The Department has no objection to the proposed changes.

The Company made the referenced changes to reflect “Non-Guaranteed Rates of Return” and “charges to Form 138795 in May 2022.

Section 53-3.3(a)(12) of 11 NYCRR 53 (Insurance Regulation 74) states:

“(a) Format. A basic illustration shall conform with the following requirements: . . .  
 (12) Any illustration of non-guaranteed elements shall be accompanied by a statement indicating that:  
 (i) the benefits and values are not guaranteed.  
 (ii) the assumptions on which they are based are subject to change by the insurer;  
 and  
 (iii) actual results may be more or less favorable.”

The basic illustrations for all of the policy forms reviewed, except variable universal life policy form 138795, contained the following disclosure language in the Narrative Summary section on page 2:

**“Non-Guaranteed Values** and benefits reflect the cost of insurance and expenses charged under the terms of the policy by RiverSource Life of NY on [XX/XX/XXXX].<sup>1</sup> These charges may vary depending on RiverSource Life of NY’s expenses, investment earnings, persistency, and mortality experience in the future. Cost of insurance and any applicable rider costs, administrative charge and policy fee continue to age [120]. The values illustrated also assume interest is credited at the RiverSource Life of NY rate in effect on [XX/XX/XXXX]. This illustration assumes that these currently illustrated non-guaranteed elements will continue unchanged for all years shown. This is not likely to occur, and actual results may be more or less favorable than those shown, depending on the cost of insurance, the expenses charged, and the interest rates credited in the future.”

The basic illustration for policy form 138795 (Variable Universal Life 5) includes these disclosures on page 3:

**“Current Expenses** reflect the cost of insurance and expenses charged under the terms of the policy by RiverSource Life of NY on [XX/XX/XXXX]. These charges may vary depending on RiverSource Life of NY’s expenses, investment earnings, persistency, and mortality experience in the future. Cost of insurance and any applicable rider costs, administrative charge, Indexed Account charges, the mortality and expense risk charge and policy fee continue to age [120]. Because the values illustrated assume cost of insurance and expense charges that are not guaranteed and a hypothetical investment return, the values illustrated are not guaranteed and will fluctuate over the life of the policy.”

While the Narrative Summary contains these important disclosures concerning non-guaranteed elements on page 2 (or page 3), as required by Section 53-3.3(b)(5) of 11 NYCRR 53 (Insurance Regulation 74), similar disclosures proximate to the illustration of non-guaranteed elements were not found in the Tabular Detail or re-projection of values section of the basic (new sale) or in-force illustrations.

The Department comments that disclosures concerning non-guaranteed elements are required in three separate areas of Insurance Regulation 74: in the Narrative Summary; in the applicant and agent’s statement in the Numeric Summary; and in the Tabular Detail, where the illustration of non-guaranteed elements is depicted, usually in tabular form. The Company should ensure going forward that each of these sections include the required disclosures in the basic illustration, even if it may appear repetitive. For an in-force illustration, a Narrative Summary and a Numeric Summary are not required (Refer to Section 53-3.6(c) on page 2). The in-force

illustration, like the basic illustration, includes a presentation or depiction that includes non-guaranteed elements of a policy of life insurance over a period of years, after that policy has been in force for a year or longer in tabular form (Tabular Detail). The Company should include the Section 53-3.3(a)(12) disclosures in entirety proximate to the depiction of non-guaranteed elements in the Tabular Detail. While it may appear repetitive, Section 53-3.3, “Standards for Basic Illustrations”, requires disclosures about the non-guaranteed elements of the policy or certificate in several areas of an illustration to ensure that the consumer is mindful that certain elements are not determined at issue and may change over the life of the policy (i.e., premiums, benefits, values, credits or charges).

The important disclosures concerning the non-guaranteed elements of the policy required by Section 53-3.3(a)(12) of 11 NYCRR 53 (Insurance Regulation 74) should be shown in the basic illustration (point of sale illustration) and in the in-force illustration of the policy proximate to the projection of policy values and benefits on a non-guaranteed basis.

The Company violated Section 53-3.3(a)(12) of 11 NYCRR 53 (Insurance Regulation 74) by failing to disclose in close proximity to the illustration of non-guaranteed elements that (i) the benefits and values are not guaranteed; (ii) the assumptions on which they are based are subject to change by the insurer; and (iii) actual results may be more or less favorable in its in-force illustrations.

The Company may wish to use language that more closely aligns with that used in Section 53-3.3(a)(12) of 11 NYCRR 53 (Insurance Regulation 74) when making these modifications to its illustration software for basic (new sale) and in-force illustrations.

The Company agreed to enhance the proximity of the disclosures relating to non-guaranteed elements so the following statements appear in the Tabular Detail: (i) the benefits and values are not guaranteed; (ii) the assumptions on which they are based are subject to change by the insurer; and (iii) actual results may be more or less favorable.

The Company made the referenced changes relating to non-guaranteed elements in May 2022.

Section 53-3.3(a) of 11 NYCRR 53 (Insurance Regulation 74) states:

“(a) Format. A basic illustration shall conform with the following requirements: . . .  
(13) If the illustration shows that the premium payer may have the option to allow policy charges to be paid using non-guaranteed values, the illustration must clearly

disclose that a charge continues to be required and that, depending on actual results, the premium payer may need to continue or resume premium outlays. Similar disclosure shall be made for premium outlay of lesser amounts or shorter durations than the contract premium. If a contract premium is due, the premium outlay display shall not be left blank or show zero unless accompanied by an asterisk or similar mark to draw attention to the fact that the policy is not paid up . . .”

The basic (new sale) illustration for policy forms 1135782 and 1387953 and in-force illustrations for policy forms 39080, 139789, 138791, and 139573 show a suspension of premium prior to policy maturity. There is no disclosure proximate to the re-projection of policy values that a charge continues to be required and that, depending on actual results, the premium payer may need to continue or resume premium outlays and there is no alert to the consumer to draw attention to the fact that the policy is not paid up.

As shown above, the third page of the basic or the second page of the in-force illustrations for the policy forms contains the following language:

“. . . Cost of insurance and any applicable rider costs, administrative charge and policy fee continue to age [120] . . .”

The Department has no objection to the Company including this language on page 2, but the Department recommends that the Company modify its illustration software so that the placement of the disclosures required by Section 53-3.3(a)(13) of 11 NYCRR 53 (Insurance Regulation 74) for basic and in-force illustrations is proximate to the illustration showing the stoppage of annual premium outlay (i.e., the Tabular Detail).

The Company agreed to enhance its basic (point of sale) and in-force illustrations so that the disclosures required by Section 53-3.3(a)(13) of 11 NYCRR 53 (Insurance Regulation 74) are included in the Tabular Detail pages when the annual planned premium outlay is zero for any policy years or duration depicted. The Company will also include an alert to draw attention to the fact that the policy is not paid up.

The Company made the referenced changes relating to non-guaranteed elements in the Tabular Details as well as an alert to draw attention to the policy not being paid up in May 2022.

Section 53-3.2(a)(5) of 11 NYCRR 53 (Insurance Regulation 74) states:



“An illustration used in the sale of a life insurance policy and subject to this Subpart shall satisfy the applicable requirements of this Subpart, be clearly labeled ‘life insurance illustration’ and contain the following basic information . . .

(5) Generic name of policy, the company product name, if different, and form number;”

For all of seven of the in-force illustrations reviewed, the Department was not able to locate the policy form number in the in-force illustration (policy forms 390804, 1397895, 138789, 1387916, and 139573).

The Company violated Section 53-3.2(a)(5) of 11 NYCRR 53 (Insurance Regulation 74) by failing to include the policy form number of the policy in the in-force illustration.

The Company stated that effective May 1, 2020, the Company implemented enhancements to include the policy form number in in-force illustrations for all policy forms with policies in force.

## 2. Indexed Universal Life Products

The Department reviewed the basic (new sale) illustration and the product disclosure form used by the Company to satisfy the disclosures required by New York Insurance Law, Section 3209(b)(2) for indexed universal life policy forms 113578 (Indexed Universal Life 2), 138791 (Indexed Universal Life, including the Estate Series), 139573 (Multi-Index Universal Life) and 139574 (Survivorship Multi-Index Universal Life). Product disclosure form 139551 was used with policy forms 113578 (Indexed Universal Life 2), 138791 (Indexed Universal Life, including the Estate Series); and product disclosure form 139575 was used with policy forms 139573 (Multi-Index Universal Life) and 139574 (Survivorship Multi-Index Universal Life). While the Company provided a basic illustration for policy form 138795 (Variable Universal Life 5) with an equity index account, the product disclosure form was not included in the October 31, 2018, response.

The product disclosure form satisfies most of the disclosures required under Insurance Law, Section 3209(b)(2).

Section 3209(b)(2) of the New York Insurance Law states, in part:

“No annuity contract or life insurance policy or certificate with an equity index account shall be delivered or issued for delivery in this state unless, no later than

at the time of application, the prospective purchaser has been provided with a disclosure statement containing the following . . .

(B) a statement identifying the equity index used in the equity index formula, together with a description of any alternate index should the initial index no longer be publicly available . . .

(F) a statement identifying the initial minimum guaranteed interest rate for the minimum accumulation value of an equity index account and any withdrawal charge . . .”

The product disclosure form 139551 (Important Information for indexed universal life insurance) used with policy form 113578 includes the following statement:

“If an index is no longer available, has changed substantially or we determine it should no longer be used, we may substitute a comparable index. In any of these situations we are required to obtain any necessary approval from the New York State Department of Financial Services. Before an index is substituted, we will notify the policy owner.”

The same language is contained in the product disclosure form 139575 that is used with multi-indexed forms 139573 and 139574.

Product disclosure form 139551 (Important Information for indexed universal life insurance) used with policy forms 138791 and 138791-ES includes this statement:

“The index currently available for the indexed account is the S&P 500 Index that does not include dividends. If this index is no longer available, RiverSource Life Insurance Co. of New York may substitute a comparable index subject to any necessary approval by the New York State Department of Financial Services. Before an index is substituted, we will notify the policy owner.”

Section 3209(b)(2)(B) of the New York Insurance Law requires a statement identifying the equity index used in the equity index formula, together with a description of any alternate index should the initial index no longer be publicly available. Alternative indices are not addressed in either the disclosure or the basic (sales) illustration. The Company stated that the possible use of alternative indices is contained in the provisions of the policy form. The Company did not describe the alternate index that would be used should an index no longer be publicly available.

The Law requires a description of the any alternate index should it no longer be publicly available, the index does not need to be specified by name. There is no need to hold in reserve an alternate index. However, what is required is a “description.” The language in the policy form also does not satisfy the “description” requirement. The use of the phrase, “a comparable

alternative index” needs to be expanded to be more meaningful and to satisfy the “description” requirement in the Law. This information is required to be provided to the consumer no later than at the time of application. The policy is delivered after the application has already been taken and therefore, relying on the language contained in the policy provisions does not comply with timely disclosure on or before the application is signed.

The Company violated Section 3209(b)(2)(B) of the New York Insurance Law by failing to describe the alternate index(es) that would be used should the initial index no longer be publicly available in the disclosure information provided to the prospective purchaser on or before the application is signed.

The Company agreed to enhance the Product Disclosure Form for all products with indexed accounts to describe the alternate index that would be used if an index is no longer publicly available. The Department reviewed the proposed enhancements, and they are acceptable to the Department.

In March 2022, the Company made the referenced changes describing alternate indexes to be used if an index is no longer publicly available.

### 3. Annual Report

Section 4221(a)(7) of the New York Insurance Law states, in part:

“That the company shall deliver at issue to each holder of a policy . . . and shall mail to each such holder at least once each policy year or within sixty days after the end of a policy year a statement as of a date during such year as to the death benefit, cash surrender value and loan value under the policy. . .as well as such further information as the superintendent requires. . .”

The annual report examples provided on August 19, 2019, do not comply with Section 4221(a)(7) of the New York Insurance Law. Section 4221(a)(7) requires that the Company disclose the amount available to the policyholder under the policy, should they wish to take a loan against the policy (i.e., the maximum amount that can be loaned against the policy). Most of the annual reports submitted for review provide the amount of any outstanding loans against the policy, when applicable, but the reports did not provide the loan value available under the policy.

The Company violated Section 4221(a)(7) of the New York Insurance Law by failing to specify the loan value available to the policyholder under the policy.

The Company agreed to enhance the annual report to disclose the amount available to the policyholder under the policy should the policyholder wish to take a loan against the policy.

The Company made the referenced changes in June 2022.

4. Non-illustrated Universal Life Policy Form 114434

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

“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. . .”

The Department requested the signed application, the signed preliminary information and the policy summary delivered with a New York sale of policy form 114434. The application was signed on June 20, 2019. The preliminary information statement submitted to the Department for review was prepared on August 22, 2019, and was signed by the applicant on August 22, 2019. The Company submitted 9 pages of the 10-page preliminary information statement (incomplete). The policy summary was prepared on August 14, 2019.

The Department asked the Company to perform a self-review of the applications received for policy form 114434 and identify additional applications where the applicant was not provided with the required preliminary information in accordance with Section 53-2.1(c) of 11 NYCRR 53 (Insurance Regulation 74). In its February 8, 2022, response, the Company admitted that it provided a revised preliminary information document (or proposal) to the Department for review. The Company chose to provide the revised preliminary information because it matched the planned annual premium ultimately chosen by the insured. The redacted preliminary information signed on June 20, 2019, the date that the application was signed, was submitted to the Department February 8, 2022.

The Company performed the self-review as requested by the Department and determined that of the 182 applications received for policy form 114434, there were six instances in which the consumer was not provided with the required preliminary information on or before the application was taken.

The Company violated Section 53-2.1(c) of 11 NYCRR 53 (Insurance Regulation 74) by failing to provide the preliminary information to the applicant on or before the date that the application was signed.

The Company discontinued all new sales of policy form 114424 (and like policy form 114436) as of December 31, 2021. Even though the Company discontinued sales of these forms, the Company has reinforced the New York illustration requirements with the appropriate teams and is undergoing a review of its process and it will make enhancements, if necessary.

Section 53-3.1(c) of 11 NYCRR 53 (Insurance Regulation 74) states, in part:

“If the insurer identifies a policy form as one to be marketed without an illustration, any use of an illustration for any policy using that form prior to the first policy anniversary is prohibited.”

In reviewing the document labeled, “6.1 97909168697 Preliminary Info-Illustration Form 114434”, the Company uses a hybrid approach to satisfy the preliminary information required in Section 53-2.1 of 11 NYCRR 53 (Insurance Regulation 74). On the first page, the Company labels the document, “A Universal Life Insurance Proposal” and “Preliminary Information”; however, the Company did not exercise care to remove references to the word “illustration” throughout the remainder of the document. For example, at the bottom of each page of the 9-page pdf submitted, are the terms “REVISED ILLUSTRATION.” In addition, the following appears on page 3 of the preliminary information: “Because these non-guaranteed elements are not included in this proposal, this proposal is not considered an illustration under the applicable state insurance regulation.”

The Department recommends that the Company carefully review the authorized preliminary information for policy form 114434 and like policy forms and remove any statements that are inappropriate, such as the sentence on page 3, “Because these non-guaranteed elements are not included in this proposal, this proposal is not considered an illustration under the applicable state insurance regulation.” The 9-page preliminary information document does show non-guaranteed values as required by Section 53-2.1(a)(4) of 11 NYCRR 53 (Insurance Regulation 74) for policy forms subject to Section 4232(b) of the New York Insurance Law.

The Department further recommends that the Company correct the preliminary information for policy form 114434 and like policy forms that are subject to Section 4232(b) of the New York Insurance Law, but are designated as non-illustrated forms, to remove all references to the term life “illustration.”

The Company has received 182 applications for policy form 114434 and issued 114 policies since the product was launched in 2019. The Company discontinued all new sales of policy form 114424 (and like policy form 114436) as of December 31, 2021.

The Department comments that the policy summary for the New York sale of policy form 114434 included a net payment cost index and surrender cost index on a guaranteed basis of 0.00 in Year 20.

The Company admitted that there is an error in the system that generated the calculations shown in the Statement of Policy Cost and Benefit Information (policy summary) for policy forms 114434 and like form 114436. The Company determined that the calculation error occurs only in certain circumstances causing the surrender cost index and/or cost index to be 0.00.

New sales for both policy forms 114434 and 114436 have been discontinued as of December 31, 2021. Should the Company decide to market these forms or like forms again in the future, it has agreed to make the necessary updates to ensure that these fields are populated correctly.

##### 5. In-force Illustrations for Non-illustrated Universal Life Policies

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.”

The Department requested examples of in-force illustrations that were provided to a New York policyholder for selected non-illustrated Universal Life Policy Form 7. In response to the Department’s request, the Company advised that it did not provide examples of in-force

illustrations because the Company does not provide policyholders with an in-force illustration containing non-guaranteed elements for these policy forms.

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 in force illustrations to policyholders that were not based upon the current mortality, interest, and expense assumptions.

The Company had 1,593 policies in-force as of October 31, 2018, for the affected policy forms (specifically, forms 139056A, 139056A with Endorsement, 138744, 139056A with Endorsement 139557, 139056A with Endorsements 139557 and 138821, 138581, 138581-ES, 138581 with Endorsement 138746, 138581-ES with Endorsement 138746, 138581 with Endorsements 138746 and 138821, 138581-ES with Endorsements 138746 and 138821, 138581A).

The Company implemented the necessary changes to its in-force illustration software on December 13, 2019, for all in-force policy forms, including the in-force blocks of non-illustrated universal life policy forms listed in the preceding paragraph.

The Department requested an in-force illustration for policy form 114434 (Foundations Protector), a product launched in 2019. The Company provided an in-force “proposal” prepared on December 3, 2021, consisting of 7 pages.

Section 53-3.3(a)(12) of 11 NYCRR 53 (Insurance Regulation 74) states:

“Any illustration of non-guaranteed elements shall be accompanied by a statement indicating that:

- (i) the benefits and values are not guaranteed;
- (ii) the assumptions on which they are based are subject to change by the insurer;
- and
- (iii) actual results may be more or less favorable.”

The in-force illustration did not include the required disclosures concerning non-guaranteed elements placed proximate to the projection of values and benefits on a non-guaranteed basis (e.g., the Tabular Detail pages). Similar disclosures were found on page 2 in the “Non-Guaranteed Values” section.

The Department has no objection to the Company maintaining the information provided in the “Non-Guaranteed Values” section, but the Company should add the Section 53-3.3(a)(12) of

11 NYCRR 53 (Insurance Regulation 74) disclosures to pages 4 and 5 where the non-guaranteed elements are depicted.

The Company was made aware of a similar issue with the Company's products that are sold with an illustration.

The Company should also ensure that it complies with the disclosure requirements in Section 53-3.3(a)(13) of 11 NYCRR 53 (Insurance Regulation 74) when applicable, if there is a planned annual premium outlay of zero or a stoppage of premium depicted for policy form 114434 and like policy forms.

The Company made the changes to non-guaranteed disclosures in May 2022. Disclosures were added to pages where the non-guaranteed values were depicted to clients.

#### 6. Universal and Variable Universal Life Policies with Secondary Guarantee Provisions

Section III.F.1 of the Individual Universal Life Product Outline published on the Department's website states, in part:

“. . . (g) The policy and annual report must describe in a prominent place any policyholder action (e.g., partial withdrawal or loan) that will nullify the secondary guarantee. Based on Section 3201(c)(2).

(h) The annual report must state whether the guarantee is in effect on the date of the report. If a lump sum is projected to be required to be paid at the end of the no-lapse period to maintain the policy in force, it is recommended that the annual report include an early warning notice to that effect.”

The Department reviewed example annual reports for the following policy forms containing secondary guarantee provisions: 138581 (RiverSource Life of NY Succession Protector), 138789-ES (RiverSource Life of NY Foundations Estate Series UL), 138791 (RiverSource Life of NY Indexed UL), 138791-ES (RiverSource Life of NY Indexed UL Estate Series), 130956A (RiverSource Life of NY Foundations Protector UL), 139573 (RiverSource Life of NY Multi-Index UL), 139574 (RiverSource Life of NY Survivorship Multi-Index UL), and 1139056A8 (RiverSource Life of NY Foundations Protector Estate Series).

The annual reports for policy forms 139056A (RiverSource Life of NY Foundations Protector) and 138581 (RiverSource Life of NY Succession Protector) include up to a lifetime no lapse guarantee provision. The annual reports include a statement as to whether or not the no-lapse guarantee is in effect on the report date, in the section labeled, “Your Policy's Guarantees



and Projections.” While the annual report does include statements in the same section and in the Disclosures section that “accessing policy cash value through loans and surrenders may cause a permanent reduction of policy cash values and death benefit and negate any guarantees against lapse”, the Department recommends that the Company consider adding this language to the Your Policy’s Guarantees and Projections section of the annual report (replacing the statement “The information provided assumes there are no loans, surrenders or changes in coverage.”). The Department has no objection to maintaining the language in the Disclosures section, but the Department argues that it is not prominent on the last page of the annual report and could be overlooked by the consumer.

The Company states that it had updated the annual report since the Company submitted the examples to the Department for review (and prior to receiving the Actuarial Comment Letter). Information previously provided in the “Your Policy’s Guarantees and Projections” is now provided in the “Basic Policy Information” section. However, in view of the Department’s comments, the Company will add the language, “accessing policy cash value through loans and surrenders may cause a permanent reduction of policy cash values and death benefit and negate any guarantees against lapse.”

In June 2022, the Company updated the annual report with the additional language pertaining to loans.

For the remaining of the products, the no lapse secondary guarantee period was 15 years. The Department did not review an annual report for the variable universal life products (policy forms 138795, VUL 5 and VUL 6), however, the no lapse secondary guarantee period of the policy was the later of 10 years or age 75. All of these products include language in the policy that at a lump sum may be required to keep the policy in force at the termination of the no-lapse guarantee period.

The annual report for these products contains a “Your Policy’s Projections” section, there is no reference to the no lapse secondary guarantee. The report includes a chart in this section to present the projection assumptions and projected values. The Department assumes that the chart is intended to comply with Section 53-3.6(a)(1)(viii) of 11 NYCRR 53 (Insurance Regulation 74). This section does not contain the required language in Section III.F.(h) of the Individual Universal Life Product Outline as to whether or not the guarantee is in effect on the date of the report. There was no notice in the annual report if a lump sum may be required to be paid at the end of the no-

lapse period to maintain the policy in force. The Disclosures section of the annual reports for these products included the statement, “accessing policy cash value through loans and surrenders may cause a permanent reduction of policy cash values and death benefit and negate any guarantees against lapse”; however as explained above, the statement is not prominent, and it may be easily overlooked by the consumer.

The Department recommends enhancing the annual report for all like products so that the important consumer disclosures required for no lapse guarantee products are prominent and explicitly stated.

The Company failed to comply with Section III.F.1(g) of the Individual Universal Life Product Outline when it did not prominently describe policyholder actions (e.g., partial withdrawal or loan) that may impact the secondary guarantee benefit.

The Company failed to comply with Section III.F.1(h) of the Individual Universal Life Product Outline when it did not state whether or not the guarantee is in effect on the date of the report and it did not include an early warning notice that a lump sum may be required to be paid at the end of the no-lapse period to maintain the policy in force, when applicable.

The Company agrees to include language as to whether or not the guarantee is in effect on the date of the report, as well as if a lump sum may be required to be paid at the end of the no-lapse period to maintain the policy in force. The annual report will also include language that describes policyholder actions (e.g., partial withdrawal or loan) that may impact the secondary guarantee benefit. These important consumer disclosures will be added proximate to the Policy Projections section of the annual report.

In June 2022, the Company updated the annual report with the additional language pertaining to loans.

## 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>In light of the amount of the separate accounts business in relation to the total business and the size of the Company, the examiner recommends that the Company consider limiting its exposure to risks associated with its variable annuity guarantee block of business, which has been increasing each year.</p> <p>The Company has in recent years shifted its focus away from annuities with living benefit guarantees and toward accumulation-only variable annuities in New York. Consistent with the evolution, the Company discontinued most new sales of its living benefit annuity by the end of 2021 and new sales of these products were completely discontinued as of mid-2022. The shift in business mix resulting from these changes, which the Company chose to pursue in order to address client needs, has had a positive impact on the Company's overall risk profile (and therefore indirectly addressed the concerns previously raised).</p>
B	<p>The Company violated Section 3209 of the New York Insurance Law and Section 53-2.1 of 11 NYCRR (Insurance Regulation No. 74) by issuing universal life policies without providing the applicant the required preliminary information.</p> <p>The examiner's review verified that the Company provided the applicant with the preliminary information, except that the preliminary information for term life policies does not include the language required by Section 53-2.1(a)(9) of 11 NYCRR 53 (Insurance Regulation 74). Furthermore, the Company indicated that: "the products impacted by the changes are no longer available for sale as of December 31, 2021."</p>
C	<p>The Company violated Section 3209 of the New York Insurance Law and Section 53-2.2 of 11 NYCRR 53 (Insurance Regulation No. 74) by providing policy summary information that failed to include a table of values and benefits based upon current and median policy cost factors for the base policy.</p> <p>The examiner's review verified that the Company revised its policy summary information to include a table of values and benefits based upon current and median policy cost factors for the base policy. Furthermore, the Company indicated that: "the products impacted by the changes are no longer available for sale as of December 31, 2021."</p>

## 6. SUMMARY AND CONCLUSIONS

Following are the violations, recommendations, and comments contained in this report:

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
A	The Company violated Section 51.6(b)(4) of 11 NYCRR 51 (Insurance Regulation 60, Third Amendment) by failing to examine the Disclosure Statements and ascertain that they are accurate and meet the requirements of the Insurance Law and regulations.	8
B	The Company violated Section 51.6(b)(10) of 11 NYCRR 51 (Insurance Regulation 60) by failing to provide the applicant with a revised “Disclosure Statement” when the policy is issued other than as applied for.	9
C	The Company violated Section 51.7(b) of 11 NYCRR 51 (Insurance Regulation 60) by failing to ensure that the Definition of Replacement is signed before the applicant signs the authorization form.	9
D	The examiner recommends that the Company follow its procedures for replacements that was approved by the Department.	9
E	The Company violated Section 224.4 of 11 NYCRR 224 (Insurance Regulation 187) by failing to ensure that the proposed policy is suitable for the policyholder.	10
F	The Company violated Section 2112(d) of the New York Insurance Law by failing to file with the Superintendent notice of the termination of ten certificates of appointment, within 30 days of such termination.	11
G	The Company violated Section 2112(d) of the New York Insurance Law by failing to provide the insurance producer with: a copy of the statement filed with the superintendent within fifteen days after notification has been sent to the superintendent, and a copy of the statement filed with the superintendent to the insurance producer at his, or her or its last known address by certified mail, return receipt requested, postage prepaid or by overnight delivery using a nationally recognized carrier.	11
H	The Company violated Section 53-2.1(a)(9) of 11 NYCRR 53 (Insurance Regulation 74) by not including the required language on the preliminary information for its term life insurance policies.	11

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
I	The Company violated Section 4221(n-1)(2)(H) of the New York Insurance Law by not including the nonforfeiture interest rate in the policy form, the specification page or on the informational policy data pages.	12
J	The Company violated Section 403(d) of the New York Insurance Law and Section 86.4(a) of 11 NYCRR 86 (Insurance Regulation 95) by using claim forms where the required fraud warning statement was omitted.	13
K	The Company violated Section 86.4(d) of 11 NYCRR 86 (Insurance Regulation 95) by using claim forms where the required fraud warning statement was not placed immediately above the space provided for the signature of the person executing the claim form.	13
L	The Company violated Sections 3204(a)(1) and (3) and Section 3204(d) of the New York Insurance Law by adding the automatic policy loan provision without prior written consent from the applicant or policyowner.	14
M	The Company violated Section 3206(d) of the New York Insurance Law by failing to forward a letter to policyholders or contractholders informing them of the initial interest rate and the frequency with which the interest rate would be adjusted.	15
N	The Company violated Section 3211(b)(2) of the New York Insurance Law by disseminating non-compliant premium notices to the policyholders.	15
O	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.	16
P	The Company violated Sections 243.2(a) and (b)(8) and Section 243.3(a)(4) of 11 NYCRR 243 (Insurance Regulation 152) by failing to maintain policy records and failing to establish a duplicate or back-up system sufficient to permit the reconstruction of the missing documents.	17

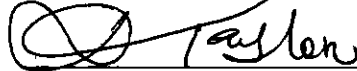
<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
Q	The Company violated Section 53-3.3(g) of 11 NYCRR 53 (Insurance Regulation 74) by failing to show the premium outlay, death benefits and values of the policy in the Numeric Summary for the insured at ages 85 and 90.	17
R	The Department recommends that the Company perform a self-review of policy forms sold in New York since 2014 to identify additional affected policy forms where the basic illustration furnished to the applicant did not comply with Section 53-3.3(g) of 11 NYCRR 53 (Insurance Regulation 74).	18
S	The Company violated Section 53-3.3(a)(7) of 11 NYCRR 53 (Insurance Regulation 74) by failing to clearly label non-guaranteed elements in the Tabular Detail or projection of the policy for policy form 138795 (Variable Universal Life 5 and Variable Universal Life 6).	19
T	The Company violated Section 53-3.3(a)(12) of 11 NYCRR 53 (Insurance Regulation 74) by failing to disclose in close proximity to the illustration of non-guaranteed elements that (i) the benefits and values are not guaranteed; (ii) the assumptions on which they are based are subject to change by the insurer; and (iii) actual results may be more or less favorable in its in-force illustrations.	21
U	The Department has no objection to the Company including this language on page 2, but the Department recommends that the Company modify its illustration software so that the placement of the disclosures required by Section 53-3.3(a)(13) of 11 NYCRR 53 (Insurance Regulation 74) for basic and in-force illustrations is proximate to the illustration showing the stoppage of annual premium outlay (i.e., the Tabular Detail).	22
V	The Company violated Section 53-3.2(a)(5) of 11 NYCRR 53 (Insurance Regulation 74) by failing to include the policy form number of the policy in the in-force illustration.	23
W	The Company violated Section 3209(b)(2)(B) of the New York Insurance Law by failing to describe the alternate index(es) that would be used should the initial index no longer be publicly available in the disclosure information provided to the prospective purchaser on or before the application is signed.	25
X	The Company violated Section 4221(a)(7) of the New York Insurance Law by failing to specify the loan value available to the policyholder under the policy.	25

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
Y	The Company violated Section 53-2.1(c) of 11 NYCRR 53 (Insurance Regulation 74) by failing to provide the preliminary information to the applicant on or before the date that the application was signed.	26
Z	The Department recommends that the Company carefully review the authorized preliminary information for policy form 114434 and like policy forms and remove any statements that are inappropriate, such as the sentence on page 3, “Because these non-guaranteed elements are not included in this proposal, this proposal is not considered an illustration under the applicable state insurance regulation.” The 9-page preliminary information document does show non-guaranteed values as required by Section 53-2.1(a)(4) of 11 NYCRR 53 (Insurance Regulation 74) for policy forms subject to Section 4232(b) of the New York Insurance Law.	27
AA	The Department further recommends that the Company correct the preliminary information for policy form 114434 and like policy forms that are subject to Section 4232(b) of the New York Insurance Law, but are designated as non-illustrated forms, to remove all references to the term life “illustration.”	27
BB	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 in force illustrations to policyholders that were not based upon the current mortality, interest, and expense assumptions.	29
CC	The Department has no objection to the Company maintaining the information provided in the “Non-Guaranteed Values” section, but the Company should add the Section 53-3.3(a)(12) of 11 NYCRR 53 (Insurance Regulation 74) disclosures to pages 4 and 5 where the non-guaranteed elements are depicted.	29
DD	The Department recommends enhancing the annual report for all like products so that the important consumer disclosures required for no lapse guarantee products are prominent and explicitly stated.	32
EE	The Company failed to comply with Section III.F.1(g) of the Individual Universal Life Product Outline when it did not prominently describe policyholder actions (e.g., partial withdrawal or loan) that may impact the secondary guarantee benefit.	32

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
FF	The Company failed to comply with Section III.F.1(h) of the Individual Universal Life Product Outline when it did not state whether or not the guarantee is in effect on the date of the report and it did not include an early warning notice that a lump sum may be required to be paid at the end of the no-lapse period to maintain the policy in force, when applicable.	32



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 17<sup>th</sup> day of May, 2024  
Audrey Hall

Audrey Hall  
Notary Public, State of New York  
Reg. No. 01HA0010698  
Qualified in Kings County  
Commission Expires 07/07/2027

*APPOINTMENT NO. 32530*

*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*

***RIVERSOURCE LIFE INSURANCE CO. OF NEW YORK***

*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 21st day of March, 2023*

*ADRIENNE A. HARRIS  
Superintendent of Financial Services*

*By:*

*Mark McLeod*

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

