MARKET CONDUCT REPORT ON EXAMINATION

OF THE

AMERICAN FAMILY LIFE ASSURANCE COMPANY OF NEW YORK

AS OF DECEMBER 31, 2022

EXAMINER: **IJEOMA NDIKA**

DATE OF REPORT: **JULY 28, 2023**

TABLE OF CONTENTS

ITEM		PAGE NO.
1.	Executive summary	2
2.	Scope of examination	4
3.	Description of Company	5
	A. History	5
	B. Territory and plan of operation	5
4.	Market conduct activities	6
	A. Advertising and sales activities	6
	B. Underwriting and policy forms	9
	C. Treatment of policyholders	13
	D. Record retention	18
5.	Prior report summary and conclusions	19
6.	Summary and conclusions	24

November 20, 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. 32532, dated April 5, 2023, and annexed hereto, an examination has been made into the condition and affairs of American Family Life Assurance Company of New York hereinafter referred to as "the Company." The Company's home office is located at 22 Corporate Woods Boulevard, Albany, New York 12211.

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 41.3(a) of Insurance Regulation 143 by failing to include a statement in advertisements for policies with accelerated death benefit provisions that receipt of accelerated death benefits may affect eligibility for public assistance programs. (A similar violation was contained in the prior report on examination. See item 4A-1 of this report.)
- The Company violated Section 51.7(b) of Insurance Regulation 60 by failing to comply with the orderly working of Insurance Regulation 60 in accomplishing its intended purpose in the protection of policyholders and contract holders. (See item 4A-2 of this report.)
- The Company violated Section 2112(d) of the New York Insurance Law by failing to file notice of termination of the certificates of appointment with the superintendent within thirty days of such termination. (See item 4A-3 of this report.)
- The Company violated Section 3201(b)(1) of the New York Insurance Law by issuing previously approved life application policy forms in a manner outside the scope of the approval and by issuing health policy form riders that were not filed with and approved by the superintendent. (See item 4B-1 of this report.)
- The Company violated Section 3209(b)(1)(A) of the New York Insurance Law by failing to provide some prospective purchasers of individual whole life and term life insurance policies with a copy of the required preliminary information at or prior to the time that the application was taken, and by providing some other prospective purchasers of individual whole life and term life insurance policies with copies of preliminary information that did not comply with the requirements of Sections 3209(d)(1), 3209(d)(3) and 3209(d)(4) of the New York Insurance Law. (See item 4B-2 of this report.)
- The Company violated Section 3211(b)(2) of the New York Insurance Law by failing to state on its premium due notices, the date when premium payment is due, and 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 non-forfeiture benefit. (See item 4C-1 of this report.)

- The Company violated Section 403(d) of the New York Insurance Law by utilizing claim forms with fraud warning statements that differed from the required fraud warning statement. (See item 4C-4 of this report.)
- The Company violated Section 3211(g) of the New York Insurance Law by failing to provide to its whole life insurance policyholders annual notification that includes the address to which the policyowner may make a written inquiry. (See item 4C-5 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 violations and recommendations contained in the prior market conduct 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 March 31, 1964, and was licensed and commenced business on December 18, 1964, as the American Health and Life Insurance Company of New York, a wholly-owned subsidiary of American Health and Life Insurance Company, which in turn was owned by Commercial Credit Company.

On April 2, 1984, the Company, then known as, American Health and Life Insurance Company of New York was acquired and became a wholly owned subsidiary of American Family Life Assurance Company of Columbus. On December 11, 1984, the Company changed its name to its present name, American Family Life Assurance Company of New York.

B. Territory and Plan of Operation

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

The Company is licensed to transact business in six states, namely Connecticut, Massachusetts, New Jersey, New York, North Dakota and Vermont. In 2022, 99.8% of life premiums and 98.9% of accident and health premiums were received from New York. Policies are written on a non-participating basis.

The majority of policies sold during the examination period were accident, cancer (mainly in 2022), short-term disability, and hospital indemnity insurance plans.

The Company also has runoff blocks of annuity and Medicare Supplement business. The Company also issues individual whole life and individual term life products primarily marketed through worksites on a simplified issue basis.

The Company’s agency operations are conducted on a general agency/branch office basis. Most of the Company’s policies are individually underwritten and marketed through independent agents and brokers.

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. Accelerated death benefits disclosure on advertisements:

   Section 41.3 of 11 NYCRR 41 (Insurance Regulation 143) states, in part:

   "In addition to complying with the provisions of Part 219 of this Title (Regulation No. 34-A), any advertisements for accelerated death benefits shall be subject to the following:
   (a) all advertising material shall include a statement that receipt of the accelerated death benefits may affect eligibility for public assistance programs . . ."

Eight life insurance advertisements were utilized during the examination period to advertise products with accelerated death benefits. All eight advertisements failed to include a statement that receipt of accelerated death benefits may affect eligibility for public assistance programs.

The Company violated Section 41.3(a) of Insurance Regulation 143 by failing to include a statement in advertisements for policies with accelerated death benefit provisions that receipt of accelerated death benefits may affect eligibility for public assistance programs. (A similar violation was contained in the prior report on examination.)

2. Replacements

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

   "Where a replacement has occurred or is likely to occur, the insurer that issued the life insurance policy or annuity contract that is to be replaced shall: . . .
   (2) within 20 days of receipt of a request from a licensee of the department, for information necessary for completion of the 'Disclosure Statement' with respect to

> the life insurance policy or annuity contract proposed to be replaced, together with proper authorization from the applicant, furnish the required information simultaneously to the insurance agent or broker of record of the existing life insurance policy or annuity contract being replaced and the agent or broker and insurer replacing the life insurance policy or annuity contract. . . . "
>
> Section 51.6(e) of Insurance Regulation 60 states, in part:
>
> "Both the insurer whose life policy or annuity contract is being replaced and the insurer replacing the life insurance policy or annuity contract shall establish and implement procedures to ensure compliance with the requirements of this Part. . .. All insurers . . . shall furnish the superintendent with these procedures . . . Any changes in these procedures . . . shall be furnished to the superintendent within 30 days of such change."
>
> Section 51.7(b) of Insurance Regulation 60 states, in part:
>
> "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. . ."

2A. During 2018 to 2020, the Department received annual electronic reports indicating which insurer, if any, have failed to provide the information necessary to complete the Disclosure Statement as required in Section 51.6(c)(2) of the regulation. The report from insurers seeking to replace the Company's existing policies alleged that the Company did not reply to requests for information necessary to complete the Disclosure Statement within 20 days of receipt of the request.

The examiner reviewed six of the outgoing replacements and found that in two cases (33.3%), the Company failed to provide the replacing insurer with the existing policy information necessary to complete the Disclosure Statement within 20 days of receipt of the request.

The Company violated Section 51.6(c)(2) of Insurance Regulation 60 by failing to provide the replacing insurer with the existing policy information necessary to complete the Disclosure Statement within 20 days of receipt of the request.

2B. The examiner's review of a sample of 50 life insurance policies issued during the examination period revealed that in 37 policies (74%), the Company obtained electronic signatures

of both the agent and the applicant on the required "Definition of Replacement" form. However, the Company's filed Insurance Regulation 60 procedures did not allow for the use of electronic signatures by its agents and applicants on replacement forms.

The Company violated Section 51.6(e) of Insurance Regulation 60 by failing to submit revised procedures pertaining to the use of electronic signatures to the superintendent within 30 days of such change.

The examiner recommends that the Company submit revised replacement procedures which allows for the use of electronic signatures by both agent and applicant on the required replacement forms.

2C. The examiner reviewed two external replacements and a sample of 35 internal replacements reported during the examination period and noted the deficiencies described below:

(i) The Disclosure Statements for the two external replacements indicate that they were completed before the end of the 20 days during which the replaced insurer would be required to comply and provide the information necessary to complete the Disclosure Statement. The two files did not contain information from the replaced insurer or any evidence that the Company used information provided by the replaced insurer. The Company provided a copy of the existing policy that was not date stamped as received from the replaced insurers therefore, the examiner could not validate the Company's compliance with the prescribed 20-day wait period for the replaced insurer to respond. The agent also failed to indicate that good faith estimates were used to prepare the two Disclosure Statements.

(ii) The examiner's review of the sample of 35 internal replacements revealed that in 3 instances (8.6%), the applicant signed and dated the Definition of Replacement form after the date that the application was signed. The applicant must first be presented with the Definition of Replacement form in order to understand that the transaction is a replacement. The Definition of Replacement form must then be completed (signed and dated) by both the applicant and agent and a copy of the form left with the applicant. An application should not be completed before the Definition of Replacement form even if the replacement

question on the application indicates a replacement. The instances noted above indicate that the Company did not conform to the proper sequence of events.

The foregoing deficiencies for external and internal replacements indicate the Company's failure to ensure the orderly working of the Regulation in accomplishing its intended purpose when it accepted Disclosure Statements that were completed without the replaced policies' information from the replaced insurers or show evidence that the agent waited the required time and subsequently used good faith estimates to prepare the Disclosure Statement. The deficiencies also indicate that the Company failed to examine the replacement forms to make sure that they are accurate and meet the requirements of the Regulation.

The Company violated Section 51.7(b) of Insurance Regulation 60 by failing to comply with the orderly working of Insurance Regulation 60 in accomplishing its intended purpose in the protection of policyholders and contract holders.

3. Producer Licensing

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

> "Every insurer . . . doing business in this state shall, upon termination of the certificate of appointment . . . of any insurance agent licensed in this state, or upon termination for cause . . . file with the superintendent within thirty days a statement, in such form as the superintendent may prescribe . . . "

The examiner's review of a sample of 25 agents that were terminated during the examination period revealed that in 9 cases (36%), the Company failed to file with the Department the notices of termination of the certificates of appointment within 30 days of such termination.

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

B. Underwriting and Policy Forms

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

1. Policy forms

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

   "In this article, 'policy form' means any policy, contract, certificate, or evidence of insurance and any application therefor, . . . specified in paragraph one, two, three or twenty-four of subsection (a) of section one thousand one hundred thirteen of this chapter . . ."

   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. . .."

The examiner reviewed a sample of 50 individual life policies issued during the examination period and noted that application Form NY68001c was used to issue 29 policies in the years 2020 to 2022; application Form NYR63001R was used to issue 17 policies in the years 2018 and 2019; application Form NYR65J01 was used to issue two policies in the year 2019; and application Form NY8848T25 was used to issue one policy in 2018 and one policy in 2021.

The examiner's verification of the signatures on the 50 cases shows that in 38 instances (76% of the policy files), these four forms were signed electronically by the applicant. The forms were not approved by the Department to be signed electronically.

- in years 2020-2022, of the 29 instances with Form NY68001c, 24 (82.8%) applications were signed electronically;
- in years 2018 and 2019, of the 17 instances with Form NYR63001R, 10 (58.8%) applications were signed electronically;
- in 2019, of the two instances with Form NYR65J01, the applications were signed electronically; and
- for Form NY8848T25, the applications were signed electronically once in 2018 and once in 2021.

The Company did not submit a request to the Department to extend the superintendent's approval to include use of electronic signature on the four policy forms.

The examiner's review of a sample of 31 group health policies issued during the examination period revealed that for seven policies (35%), the Company used its affiliate's riders

which had not been filed with and approved by the superintendent to be used in connection with master policies.

The Company violated Section 3201(b)(1) of the New York Insurance Law by issuing previously approved life application policy forms in a manner outside the scope of the approval and by issuing health policy form riders that were not filed with and approved by the superintendent.

2. Preliminary Information

Section 3209(b)(1)(A) of the New York Insurance Law states, in part:

> "No policy of life insurance shall be delivered or issued for delivery in this state after the applicable effective date, as set forth in subsection (n) of this section, unless the prospective purchaser has been provided with the following:
> (A) a copy of the most recent buyer's guide and the preliminary information required by subsection (d) of this section, at or prior to the time an application is taken. . . . "

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

> "The preliminary information shall be in writing and include, to the extent applicable, the following:
> (1) the name and address of the insurance agent or broker or, if no agent or broker is involved, a statement of the procedure to be followed in order to receive responses to inquiries concerning the preliminary information; . . .
> (3) the date of the preliminary information and the generic name, the initial amount of insurance and the initial annual premium for the basic policy;
> (4) the total guaranteed cash surrender values for the basic policy, at the end of the tenth and twentieth policy years or at the end of the premium-paying period if earlier. These values may be shown on a per thousand or per unit basis . . . "

The examiner reviewed 48 (36 whole life and 12 term) individual life policies that were issued during the 2018 to 2022 examination period and noted instances where some insureds did not receive any preliminary information at or prior to the time of application, and in some instances in which the insureds were provided generic sample preliminary information, the disclosures are deficient in terms of what is required by Section 3209(d)(1)-(8) of the New York Insurance Law.

Of the 48 cases reviewed, 19 whole life insureds (39.6%) were not provided any preliminary information at the time of application.

The review also showed that for the remaining 29 (22 whole life and 7 term life), (60.4%) of the 48 insureds were provided copies of deficient preliminary information that did not contain:

- the agent's name and address required under Section 3209(d)(1);
- the date of the preliminary information, the generic name, the initial amount of insurance and the initial annual premium for the policy, as required by Section 3209(d)(3); and
- the total guaranteed cash surrender values for the basic policy at the end of the tenth and twentieth policy years or at the end of the premium-paying period if earlier which are required on whole life policies pursuant to Section 3209(d)(4).

The Company violated Section 3209(b)(1)(A) of the New York Insurance Law by failing to provide some prospective purchasers of individual whole life and term life insurance policies with a copy of the required preliminary information at or prior to the time that the application was taken, and by providing some other prospective purchasers of individual whole life and term life insurance policies with copies of preliminary information that did not comply with the requirements of Sections 3209(d)(1), 3209(d)(3) and 3209(d)(4) of the New York Insurance Law.

3. Premium rates

On November 2, 2020, the Company completed the acquisition of Zurich American Life Insurance Company of New York's ("ZALICONY") U.S. Corporate Life and Pensions business, which consists of group life, disability and absence management products. The Company is reinsuring, on an indemnity basis, the acquired group life, disability and absence management products. In 2022, some of the acquired contracts up for renewal are now issued directly by the Company and "ZALICONY" new business issued in 2022 is also being written by the Company.

In April 2023, during the Company's review of an examination request for underwriting and rating information, it discovered that it had been applying the wrong premium rates to some group long-term disability policies from the ZALICONY acquisition. The Company's analysis of the cause revealed that the ex-patriot business was underwritten using a simplified rater process used by ZALICONY prior to its acquisition. The simplified rater has incorrect formulas for the approved New York rates and the Company stated that the simplified rater only impacted the ex-patriot business block comprising six active groups with 92 covered lives. While the field examination was still in progress, the Company performed additional investigations and analysis

and found that a total of five group long-term disability ("LTD") policies with 37 insured lives were impacted. The erroneous rate application resulted in premium overcharges to the five group LTD policies.

The Company's failure to detect the premium rates misapplication prior to the April 2023 examination request signifies its inadequate quality control audits which did not ensure that policy applications are checked independently for compliance with Company underwriting standards, and that premium billings and rate determinations are sufficiently tested for accuracy and agreement with approved rates, contracts or other supporting documentation.

The examiner recommends that the Company ensure that its reinsurance renewal premium rates and premium rates on reinsured policies that are now issued on the Company's forms, are in line with approved premium rates for use with approved New York policy forms.

The examiner also recommends that the Company ensure adequate quality control reviews and that the audits of underwriting activities comply with its underwriting policy.

The Company has remediated the premium rates error by refunding a total of $48,211.17 in premium credits and check payments to overcharged active policies, and $8,564.23 in interest payments to all affected active and terminated policyowners. Premium refunds and interest payments were calculated based on each affected policy's premium mode, starting with the first premium due date until the date of remediation, and an interest rate of 6% was used.

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. Premium due notice

   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 non-forfeiture benefit."

The examiner's review of a sample of 40 policies (15 term life and 25 whole life policies) revealed that in 21 instances (52.5%), the premium due notices sent to the policyholders did not include the language "unless such payment is made on or before the date when due or within the specified grace period thereafter, the policy shall terminate or lapse except as to the right to any cash surrender value or non-forfeiture benefit."

The examiner also noted that in 17 instances (42.5%), the premium due notices sent to the policyholders did not state the date when premiums are due, as required by Section 3211(b)(2).

The Company violated Section 3211(b)(2) of the New York Insurance Law by failing to state on its premium due notices, the date when premium payment is due, and 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 non-forfeiture benefit.

2. Denied Claims

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 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 30 health denied claims during the examination period. In two out of 30 (6.7%) of the health claims reviewed, the Company failed to advise the claimant in writing of the acceptance of the claim within 15 business days after receipt by the Company of all properly executed proof of loss, statements and forms.

The Company violated Section 216.6(c) of Insurance Regulation 64 by failing to advise the claimant in writing of the acceptance or rejection of the claim within 15 business days after receipt by the Company of all properly executed proof of loss, statements and forms.

The examiner recommends that the Company: (i) advise the claimant in writing of the acceptance or rejection of the claim within 15 business days after receipt by the Company of all properly executed proof of loss, statements and forms; and (ii) implement procedures to clearly generate and provide claimants with denial letters and maintain the denial claims letters in the policy files.

3. Complaints

Section 216.4(e) of Insurance Regulation 64 states:

> "As part of its complaint handling function, an insurer's consumer services department shall maintain an ongoing central log to register and monitor all complaint activity."

The examiner noted that the Company did not include three (3) Department complaints in its complaints log and the Company did not maintain an ongoing central log that registered and monitored all complaint activities for the examination period.

The Company violated Section 216.4(e) of Insurance Regulation 64 by failing to maintain an ongoing central log that registers and monitors all complaint activity.

4. Fraud warning statement

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 95 (Insurance Regulation 95) states, in part:

> (d) Location of warning statements and type size. The warning statements required by subdivisions (a), (b), and (e) of this section shall be placed immediately above the space provided for the signature of the person executing the application or claim form . . ."

The examiner reviewed a sample of nine (9) group life paid claims and 50 individual life claims during the years under examination.

In five out of nine (56%) group life paid claims, the claim forms did not contain the fraud warning statement. The fraud warning statement in the five group life claim forms mentioned above stated the following:

> "I certify that I have read the Claim-Fraud Warning and Other Notices form enclosed with this Life Claim Form for my state of residence, if applicable."

In one out of the 9 group life claims (11%), the claim form contained a fraud warning statement that differed from the language required under Section 403(d) of the New York Insurance Law. The fraud warning statement states:

> "Any person who, with intent to defraud or knowing that he/she is facilitating a fraud against the insurer, submits an application or files a claim containing a false or deceptive statement may be guilty of insurance fraud. The commission of insurance fraud may subject such person to criminal and/or civil penalties. Any insurance company or agent of an insurance company who knowingly attempts to defraud a policyholder or claimant with regard to settlement or award payable from insurance proceeds shall be reported to the Division of Insurance."

The examiner's review of a sample of 46 group denied claims processed during the years under examination revealed that in 4 cases (9%), the claims forms contained a fraud warning statement that differed from the language required under Section 403(d) of the New York Insurance Law. The fraud warning statements on the Company's group life claim forms mentioned above state:

> "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 subjects such person to criminal and civil penalties."

> "Any person who knowingly and with intent to injure, defraud, or deceive any insurer files a statement of claim or an application containing any false, incomplete, or misleading information is guilty of a felony of the third degree."

In 8 out of 50 individual life claims reviewed (16%), the review revealed that the claim forms contained a fraud warning statement that differed from the language required under Section 403(d) of the New York Insurance Law The fraud warning statement in the Company's individual life claim forms mentioned above states:

> "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 subjects such person to criminal and civil penalties."

The Company did not obtain the superintendent's prior approval to use the above alternate fraud statements on claim forms.

The Company violated Section 403(d) of the New York Insurance Law by utilizing claim forms with fraud warning statements that differed from the required fraud warning statement.

Also, the examiner noted that the fraud warning statement was located on another page and not placed immediately above the space provided for the signature of the person executing the claim.

The Company violated Section 86.4(d) of Insurance Regulation 95 by using claim forms that did not have the required fraud warning statement placed immediately above the space provided for the signature of the person executing the claim.

5. Disclosure on policyholder annual notices

   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 . . . The notification pertaining to the cash surrender value shall be set out in a conspicuous manner and shall include the address to which the policyowner may make a written inquiry. Any notice or statement which informs a policyowner of the policy's cash surrender value at least annually shall be deemed to comply with the requirements of this subsection."

The examiner's review of a sample of 20 annual cash surrender value notifications provided to whole life insurance policyholders during the examination period revealed that in 19 cases (95%), the annual notifications did not include the address to which the policyowner may make a written inquiry. The Company failed to provide compliant copies of the notifications that were mailed to the sampled policyholders.

The Company violated Section 3211(g) of the New York Insurance Law by failing to provide to its whole life insurance policyholders annual notification that includes the address to which the policyowner may make a written inquiry.

D. Record Retention

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

"Except as otherwise required by law or regulation, an insurer shall maintain:

(1) A policy record for each insurance contract or policy for six calendar years after the date the policy is no longer in force or until after the filing of the report on examination in which the record was subject to review, whichever is longer. Policy records need not be segregated from the policy records of other states as long as they are maintained in accordance with the provisions of this Part. A separate copy need not be maintained in an individual policy record, provided that any data relating to a specific contract or policy can be retrieved pursuant to Section 243.3(a) of this Part. A policy record shall include . . .

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

The examiner's review of a sample of 39 group declined health policy (application) files revealed that in six cases (15.4%), the Company neither generated nor sent declination letters to the applicant.

The Company violated Section 243.2(b)(1)(iv) of Insurance Regulation 152 by failing to maintain all of the information necessary for reconstructing the rating and underwriting of a contract or policy. (A similar violation was contained in the prior report on examination.)

5. PRIOR REPORT SUMMARY AND CONCLUSIONS

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

Item	Description
A	The Company violated Section 219.5(a) of Department Regulation No. 34-A by failing to maintain at its home office in New York, a complete advertising file for life insurance advertisements including a notation indicating the manner and extent of distribution. The review of a sample of advertisements revealed that the Company maintains at its home office in New York, a complete advertising file for life insurance advertisements including a notation indicating the manner and extent of distribution.
B	The Company violated Section 215.17(a) of Department Regulation No. 34 by failing to maintain at its home office in New York, a complete advertising file for accident and health insurance advertisements including a notation indicating the manner and extent of distribution. The review of the Company's advertising file revealed that the Company maintains at its home office in New York, a complete advertising file for accident and health insurance advertisements including a notation indicating the manner and extent of distribution.
C	The Company violated Section 215.5(c) of Department Regulation No. 34 by failing to place in a prominent place and style in its advertisements, the appropriate statement regarding the expected benefit ratio for the coverage provided. The review of a sample of advertisements revealed that the appropriate statement regarding the expected benefit ratio for the coverage provided was placed in a prominent place and style.
D	The Company violated Section 41.3(a) of Department Regulation No. 143 by failing to include a statement in advertisements for polices with accelerated death benefit provisions that receipt of accelerated death benefits may affect eligibility for public assistance programs. The Company failed to take corrective action in response to this prior report violation. (See item 4A-1 of this report.)

Item	Description
E	The Company violated Section 41.3(b) of Department Regulation No. 143 by failing to include a statement in advertisements for policies with accelerated death benefit provision that receipt of accelerated death benefits may be taxable. The examination revealed that the Company disclosed in its advertising materials that receipt of accelerated death benefits may be taxable.
F	The Company violated Section 51.6(e) of Department Regulation No. 60 by failing to furnish the Superintendent of Insurance with revised Department Regulation No. 60 procedures and by failing to notify the Department of the change in the designated principal officer responsible for monitoring and enforcing such procedures, within thirty days of these changes. The examination revealed that the Company furnished the Superintendent of Insurance with revised Insurance Regulation 60 procedures and notified the Department of the change in the designated principal officer responsible for monitoring and enforcing such procedures, within thirty days of the changes.
G	The examiner recommends that the Company implement a remediation plan acceptable to the Department to mitigate the deficiencies and provide relief to all policyholders that did not receive a complete, accurate and timely disclosure prior to completing an application to replace their existing life insurance policy and/or annuity contract. The remediation plan should include all affected policyholders. The examiner's review of replacements indicated that the Company implemented the remediation plan.
H	The Company violated Section 51.6(a)(1) of Department Regulation No. 60 by failing to adequately train its agents to comply with the requirements of Department Regulation No. 60. The examiner's review of a sample of replacements did not reveal violations of Section 51.6(a)(1) of Insurance Regulation 60.

Item	Description
I	The Company violated Section 51.6(b)(2) of Department Regulation No. 60 by failing to require with or as part of each application a copy of any proposal, including the sales material used in the sale of the proposed life insurance policy and proof of receipt by the applicant of the *IMPORTANT* Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts and the completed Disclosure Statement. The examiner's review of a sample of replacements did not reveal a recurrence of this violation.
J	The Company violated Section 51.6(b)(7) of Department Regulation No. 60 by failing to reject the application where the required forms were not received, or the forms did not meet the requirements of Department Regulation No. 60. The examiner's review of a sample of replacements did not reveal violation of Section 51.6(b)(7) of Insurance Regulation 60.
K	The Company violated Section 51.6(e) of Department Regulation No. 60 by failing to establish and implement procedures to ensure compliance with the requirements of Department Regulation No. 60. The examiner's review of a sample of replacements revealed that the Company implemented an effective corrective action in response to this prior report violation.
L	The examiner recommends that the Company develop and implement an audit plan designed to review, test and monitor compliance with Department Regulation No. 60. Such plan should be approved by the Company's board of directors, or its audit committee and the results of audits performed should also be reviewed by the board of directors or its audit committee. The Company implemented an audit plan which was approved by its board of directors.
M	The Company violated Section 243.2(b)(1)(iv) of Department Regulation No. 152 by failing to maintain all of the information necessary for reconstructing the rating and underwriting of a contract or policy. A similar violation is contained in this report. (See item 4D of this report.)

Item	Description
N	The examiner recommends that the Company implement procedures to clearly document and maintain the basis for the Company's decision to decline or postpone an application for insurance. A similar recommendation is contained in this report. (See item 4D of this report.)
O	The Company violated Section 53-1.4 of Department Regulation No. 74 by failing to maintain at its home office, a complete file containing a specimen copy for each of the preliminary information forms and policy summary forms authorized by the insurer for each policy form sold in New York. The examiner noted that the Company now maintains at its home office, a complete file containing a specimen copy for each of the preliminary information forms and policy summary forms authorized by the insurer for each policy form sold in New York.
P	The Company violated Section 3209(b)(1)(A) of the New York Insurance Law by failing to provide the preliminary information at or prior to the time that the application was taken. The Company failed to take corrective action in response to this prior report violation. (See item 4B-2 of this report.)
Q	The Company violated Section 3204(d) of the New York Insurance Law by adding the automatic policy loan provision to a policy, without prior written consent from the applicant (or policy owner), in cases where the automatic policy loan provision was not affirmatively selected on the application. The examiner's review of a sample of policy loan revealed that the Company added the automatic policy loan provision with prior written consent from the applicant in cases where the loan provision was affirmatively selected on the application.
R	The Company violated Section 3211(b)(2) of the New York Insurance Law by failing to include disclosure language on premium notices provided to whole life insurance policyholders informing such policyholders that unless 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 failed to take or implement an effective corrective action in response to this prior report violation. (See item 4C-1 of this report.)

Item	Description
S	The Company violated Section 3211(g) of the New York Insurance Law by failing to notify whole life insurance policyholders that their 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. The examiner's review of a sample of annual notification indicated that the Company notified whole life insurance policyholders that their policy contains a cash surrender value, but the notifications did not include a statement that further information is available from the insurer upon written request from the policyowner. (See item 4C-4 of this report.)

6. SUMMARY AND CONCLUSIONS

Following are the violations and recommendations contained in this report:

Item	Description	Page No(s).
A	The Company violated Section 41.3(a) of Insurance Regulation 143 by failing to include a statement in advertisements for policies with accelerated death benefit provisions that receipt of accelerated death benefits may affect eligibility for public assistance programs.	6
B	The Company violated Section 51.6(c)(2) of Insurance Regulation 60 by failing to provide the replacing insurer with the existing policy information necessary to complete the Disclosure Statement within 20 days of receipt of the request.	7
C	The Company violated Section 51.6(e) of Insurance Regulation 60 by failing to submit revised procedures pertaining to the use of electronic signatures to the superintendent within 30 days of such change.	8
D	The examiner recommends that the Company submit revised replacement procedures which allows for the use of electronic signatures by both agent and applicant on the required replacement forms.	8
E	The Company violated Section 51.7(b) of Insurance Regulation 60 by failing to comply with the orderly working of Insurance Regulation 60 in accomplishing its intended purpose in the protection of policyholders and contract holders.	9
F	The Company violated Section 2112(d) of the New York Insurance Law by failing to file notice of termination of the certificates of appointment with the superintendent within thirty days of such termination.	9
G	The Company violated Section 3201(b)(1) of the New York Insurance Law by issuing previously approved life application policy forms in a manner outside the scope of the approval and by issuing health policy form riders that were not filed with and approved by the superintendent.	11

Item	Description	Page No(s).
H	The Company violated Section 3209(b)(1)(A) of the New York Insurance Law by failing to provide some prospective purchasers of individual whole life and term life insurance policies with a copy of the required preliminary information at or prior to the time that the application was taken, and by providing some other prospective purchasers of individual whole life and term life insurance policies with copies of preliminary information that did not comply with the requirements of sections 3209(d)(1), 3209(d)(3) and 3209(d)(4) of the New York Insurance Law.	12
I	The examiner recommends that the Company ensure that its reinsurance renewal premium rates and premium rates on reinsured policies that are now issued on the Company's forms, are in line with approved premium rates for use with approved New York policy forms. The Company has taken corrective action regarding this item. (See item 4B-3 of this report.)	13
J	The examiner also recommends that the Company ensure adequate quality control reviews and that the audits of underwriting activities comply with its underwriting policy. The Company has taken corrective action regarding this item. (See item 4B-3 of this report.)	13
K	The Company violated Section 3211(b)(2) of the New York Insurance Law by failing to state on its premium due notices, the date when premium payment is due, and 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 non-forfeiture benefit.	14
L	The Company violated Section 216.6(c) of Insurance Regulation 64 by failing to advise the claimant in writing of the acceptance or rejection of the claim within 15 business days after receipt by the Company of all properly executed proof of loss, statements and forms.	14
M	The examiner recommends that the Company: (i) advise the claimant in writing of the acceptance or rejection of the claim within 15 business days after receipt by the Company of all properly executed proof of loss, statements and forms; and (ii) implement procedures to clearly generate and provide claimants with denial letters and maintain the denial claims letters in the policy files.	14

Item	Description	Page No(s).
N	The Company violated Section 216.4(e) of Insurance Regulation 64 by failing to maintain an ongoing central log that registers and monitors all complaint activity.	15
O	The Company violated Section 403(d) of the New York Insurance Law by utilizing claim forms with fraud warning statements that differed from the required fraud warning statement.	17
P	The Company violated Section 86.4(d) of Insurance Regulation 95 by using claim forms that did not have the required fraud warning statement placed immediately above the space provided for the signature of the person executing the claim.	17
Q	The Company violated Section 3211(g) of the New York Insurance Law by failing to provide to its whole life insurance policyholders annual notification that includes the address to which the policyowner may make a written inquiry.	17
R	The Company violated Section 243.2(b)(1)(iv) of Insurance Regulation 152 by failing to maintain all of the information necessary for reconstructing the rating and underwriting of a contract or policy.	18

Respectfully submitted,

I. Ndika

Ijeoma Ndika
Associate Insurance Examiner

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

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

I. Ndika

Ijeoma Ndika

Subscribed and sworn to before me
this 20th day of November, 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. 32532

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:*

IJEOMA NDIKA

as a proper person to examine the affairs of the

AMERICAN FAMILY LIFE ASSURANCE COMPANY 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 5th day of April, 2023

ADRIENNE A. HARRIS
Superintendent of Financial Services

By: Mark McLeod

MARK MCLEOD
DEPUTY CHIEF - LIFE BUREAU