

STATE OF NEW YORK INSURANCE DEPARTMENT  
REPORT ON EXAMINATION  
OF  
THE NEW YORK LIFE INSURANCE COMPANY  
REGARDING RESPONSE TO  
SUPPLEMENT NO. 1 TO CIRCULAR LETTER NO. 19 (2000)

DATE OF REPORT:

JUNE 30, 2004

EXAMINER:

TORYS LLP

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STATE OF NEW YORK  
INSURANCE DEPARTMENT  
25 BEAVER STREET  
NEW YORK, NEW YORK 10004

June 30, 2004

Honorable Gregory V. Serio  
Superintendent of Insurance  
Albany, New York 12257

Sir:

In accordance with instructions contained in Appointment No. 21765, dated August 16, 2001 and annexed hereto, a limited-scope examination has been made into the condition and affairs of the life insurance business of New York Life Insurance Company, hereinafter referred to as "the Company" or "New York Life," at its home office located at 51 Madison Avenue, New York, New York 10010.

Whenever "Department" appears in this report, it refers to the State of New York Insurance Department.

The report indicating the results of this examination is respectfully submitted.

1. SUPPLEMENT NO. 1 TO CIRCULAR LETTER NO. 19 (2000)

Supplement No. 1 to Circular Letter No. 19 (2000) (the "Supplement"), issued by the Department on June 22, 2000, notified all licensed life insurers and fraternal benefit societies that the Department was investigating allegations of race-based underwriting of life insurance by its licensees. The Supplement defined race-based underwriting as including, but not limited to, one or more of the following practices based solely on an insured's race, color, creed or national origin: refusing to insure; refusing to continue to insure or limiting the amount, extent or kind of coverage available; charging or collecting higher premiums or rates; making or requiring any rebate upon the amount paid; assigning substandard risk classifications; crediting or providing lower dividends, policy benefits or nonforfeiture values; making any distinction as to policy terms or conditions; imposing greater underwriting requirements (medical vs. non-medical); and fixing any fees or commissions in a manner as to encourage or discourage the writing or renewing of a specific type of policy.

The Supplement directed, pursuant to Section 308 of the New York Insurance Law, each domestic and foreign life insurer and fraternal benefit society to review its past and current underwriting practices regarding race-based underwriting and to report its findings to the Department no later than August 15, 2000. The Supplement further directed that all relevant documents, including, but not limited to, rate charts, mortality tables, labor negotiation documents with distribution force unions, agent and broker contracts, compensation schedules, underwriting and agent manuals, applications, policy form filings, board of directors (and committee) minutes, and internal memoranda be included in the insurer's review.

2. NEW YORK LIFE'S RESPONSE TO THE SUPPLEMENT

By letter to the Department dated August 14, 2000 (Exhibit A), New York Life reported its findings regarding past race-based underwriting practices and its finding that no such practices currently are in place. In response to the Department's request for additional information dated September 27, 2000 (Exhibit B), New York Life supplemented its August 14, 2000 response with a letter dated October 16, 2000 (Exhibit C).

A. New York Life's Investigation in Response to the Supplement

The Company's investigation in response to the Supplement consisted of a review of the Company's historical records and selected life insurance policy records. The Company indicated that its review of historical records included the following materials:

- (a) Board of Directors and Standing Committee minutes;
- (b) Company-published histories;
- (c) records of the Company's Actuarial Department, Policy Issue/Selection and Rating Division, Marketing and Sales Department, and Agency Department;
- (d) records of officers' and directors' speeches and writings;
- (e) internal publications;
- (f) Company rate manuals;
- (g) agent contracts and compensation schedules;
- (h) policy form filings;
- (i) dividend histories; and
- (j) underwriting manuals and related documents.

The Company's review of policy records consisted of a review of over 80,000 policy records, including the following records: all inforce substandard policies issued prior to December 31, 1953, all terminated substandard policies issued prior to December 31, 1953 for which the Company continued to retain policy records (*i.e.*, those terminated in 1988 and thereafter), and random samplings of standard policies issued between 1915 and 1950.

#### B. Findings Reported by New York Life

The Company stated in its response to the Supplement, that "New York Life has never sold what are commonly referred to as industrial life or burial policies...." In addition, the Company reported that "New York Life has not used agent rate manuals, policy forms or dividend scales that differentiate among individuals on the basis of race, color, creed or national origin." The response also notes, however, that its review of Company archival records shows that "in the 1800's and early 1900's New York Life's underwriters took race and national origin into consideration when evaluating mortality risk." The response further explains that "historically race was simply one factor among many (e.g., health, family medical history, education, occupation, environment, income, personal habits) taken into consideration in assessing individual mortality risks."

The Company reported that some of its historical records "indicate the Company did historically engage in certain practices where race was a factor." Specifically, the Company reported the following practices with regard to African Americans:

- In 1897, the Company considered reducing agent commissions for African American policies, but by 1908 had decided not to engage in this practice.

- Up to 1920, the Company's practice was "to sell only endowment policies to African Americans, and to add five years in age to those in the laboring occupations..." The Company also noted that at that time it commonly advanced age on individuals in the laboring occupations. In 1920, in response to a study showing above-average mortality for African Americans engaged in "the laboring occupations," the Company changed its definition of "professional" men (who were charged standard rates) "to include only physicians, teachers, ministers and similar occupations."
- In the 1920's and 1930's, business written on non-professional African Americans was "discouraged," and that African American women, "particularly from southern states," were generally not solicited based on the Company's understanding at that time of the mortality risk they presented.

However, the Company also reported:

- By 1938, the Company "was applying its generally applicable underwriting practices to African Americans in states where that was believed to be required, including New York, Connecticut, Massachusetts, Michigan, Minnesota and New Jersey."
- By the 1940's, life insurance products other than endowment policies were being sold to African Americans "in a broad spectrum of occupational classes, including a variety of laboring occupations."
- By 1948, the Company's practice was to underwrite African Americans in accordance with the Company's generally applicable underwriting rules in all states.

The Company's archival records also described the Company's underwriting practices with respect to Japanese and Chinese Americans. The Company reported that, in the early 1900's, it generally limited these individuals to endowment policies and charged them an extra premium based primarily on the Company's mortality experience for such risks. Additionally, the Company reported that, beginning in the late 1940's, the Company's policy was to remove substandard ratings based on race on Japanese and Chinese American insureds upon request of the insured or if new coverage was applied for, which the Company reported was consistent with its review of pre-1954 policy application files. Further, the Company reported that, as of 1952, the Company's practice was to underwrite Japanese and Chinese Americans in accordance with the Company's generally applicable underwriting rules.

The Company additionally reported that its historical records also reflect that, in the early 1900's, it imposed underwriting restrictions based upon national origin. The response indicated

those restrictions principally took the form of declining to issue insurance to immigrants until they had resided in the United States for a certain period of time and obtained gainful employment. The Company reported that immigrants who became eligible for insurance were then limited by the amount and type of policy they could purchase.

As a result of its policy record review, the Company found five instances in which an additional premium was charged or a substandard rating applied due either solely to race or to a combination of race and occupation. The Company reported that remedial action was taken in each of the five instances.

### 3. SCOPE OF THE EXAMINATION

A limited-scope examination was made into the affairs of the Company solely with respect to race-based underwriting policies and practices. The Company was originally chartered in May 1841 as Nautilus Insurance Company and was authorized to write fire and marine insurance, inland navigation and transportation risks. The charter was amended in April 1843 to permit Nautilus Insurance Company to organize as a mutual company and write life insurance. The by-laws were amended in June 1845 to restrict the Company's business to "insurance on life and all and every insurance pertaining to life." The Company's name was officially changed to New York Life Insurance Company on April 5, 1849.

The scope of the examination included a review of life insurance business directly issued by New York Life. The business of New York Life Insurance and Annuity Corporation, an affiliate of New York Life, which was referenced in the Company's response to the Supplement, was not included in the examination because such business was not directly issued or acquired by the Company.

The scope of the examination also included a review of those documents reviewed by the Company in its internal investigation, as well as other documents not reviewed by the Company. The examiners' review included, but was not limited to, the following significant New York Life materials ranging in date from 1890 through 1970:

- (a) all available minutes of the Board of Directors, Executive Committee, Officer's Meeting, Record of Office Committee, and Sub-Office Committee;
- (b) all available Classification Committee correspondence and "Heads of Departments" office memoranda;
- (c) all available Secretary's Office and Medical Department records;

- (d) selected records of the Actuarial Department, Agency Department, Committee on Insurance Practices, Comptroller's Office, Field Operations, Inspection Department, Insurance Operations, Legal Department and Office of Administration Division;
- (e) selected rate books, agent manuals and mortality and occupational rating manuals;
- (f) selected policy and form files;
- (g) selected organizational charts, public relations literature, investor information, advertising materials, speeches, recruitment and training materials;
- (h) selected Company internal and external publications; and
- (i) a manuscript history entitled *125 Years of New York Life*.

In addition, the examination included a review and analysis of New York Life policy application files. The examiners reviewed application files for the 463 substandard policies identified by the Company as being issued to non-Caucasians. Also, by querying the Company's databases using automated techniques based on criteria designed by the Department to enhance the likelihood of identifying non-Caucasian policyholders, the Department selected an additional 453 policy application files for the examiners' review. The Department also performed data analysis of the Company's inforce files to detect patterns of issuance that may indicate race-based underwriting. In addition to the review of New York Life documents and policy application files, the examiners conducted meetings with Company employees responsible for key aspects of New York Life's internal investigation, and interviewed a retired chief underwriter of New York Life.

Certain documentation pertaining to New York Life's policies and practices during the relevant time period had been discarded in accordance with the Company's regular record retention practices, which were not inconsistent with regulatory retention requirements.

This report on examination is confined to comments on those matters which may involve departure from laws, regulations or rules and which in the Department's discretion require explanation or description.

#### 4. EXAMINATION FINDINGS

Set forth below are the examination findings with respect to race-based underwriting practices evidenced at New York Life.

A. Findings from the Review of Company Documents

The following race-based underwriting policies were evidenced in the written records of New York Life:

(1) Age Advance With Limited Coverage

Company historical records indicate that, beginning in the early 1900's and continuing until the late 1930's (in some states) and the late 1940's (in other states), the Company generally restricted coverage on African Americans to limited endowment plans (with no additional benefit coverages) while adding five years to the insured's age in calculating the premium to be charged.

Office Committee minutes, from in or around January of 1911, evidence the Company's determination that it had the "right" under the then-current New York Insurance Law "to accept or reject applications on the lives of negroes, male or female, or to rate up such risks according to the judgment of the Medical Board, taking into consideration all factors including race, color, unsatisfactory environment, etc., etc." An Office Committee ruling from February of 1911 described the statistical basis for the Company's understanding at that time that African Americans generally presented a greater mortality risk than Caucasians, and ruled that African Americans presenting the most favorable mortality risk "are to be taken without advance in age and the others with an advance to cover their condition of health and prospect of longevity."

In 1916, Company documents reflect a general restriction of African Americans to limited endowment plans and the denial of additional benefit coverages. A Company memorandum, dated July 20, 1916, indicates that the Company limited African Americans to 20-year endowment plans, without disability benefits, and at that time also "eliminated" the term extension feature for African Americans. However, a Company memorandum, dated June 19, 1918, supports that exceptions to this policy were made on a case-by-case basis.

Office Committee minutes, dated March 3, 1920, discussing the Company's African American business indicate that it was the Company's "custom ... to limit our business to 10, 15 and 20 year Endowment policies, and to add five years' advance in age to those who are not of the better grade." However, those minutes also note that "As a matter of fact, however, the great bulk of the business is issued without an advance in age." The Office Committee minutes document the approval of the following recommendations made "on account of excessive mortality among negroes": (1) issue only 10, 15 and 20 year Endowment policies maturing no later than age 65 and do not grant disability benefits, double indemnity or term extension; (2)

issue policies without an age advance only to educated men, and principally to the professional classes; (3) charge five years' age advance to farmers, mechanics, chauffeurs and men in similar occupations and (4) only insure African American women who are "educated and live in hygienic surroundings." A handwritten note in the Office Committee minutes amended the recommendation with regard to African American women so that where they were accepted, such applicants would be limited to 20 Year Endowment plans, without disability, double indemnity or term extension benefits and with an advance in age of five years.

Company historical documents confirm the continuation of the above-cited policies throughout the 1920's and the 1930's. Company memoranda also support that exceptions were made on a case-by-case basis during such time period. Company documents evidence that these policies were discontinued by December 1938 in some states but remained in effect in other states until 1948. A Company memorandum, dated December 8, 1948, instructed that African Americans "will be considered for insurance on all plans under the general underwriting practices."

(2) Limiting Policy Face Amounts Available

Limited historical documents suggest that restrictions were placed on the policy face amounts made available to African American women. In documents dated March 25, 1927 and January 29, 1943, reference was made to restricting face amounts issued to African American women to "moderate amounts".

(3) Discouraging Writing

Company documents indicate that, while professional African American women from Northern states were considered for (and issued) insurance, business on African American women from southern states was generally either declined or discouraged from the 1920's to the 1940's. A December 3, 1929 Company memorandum discussing the Company's policy with respect to female African American professionals, states that "[i]t has been generally understood that we did not care to open the doors for this business in the South." While Company memoranda evidence that exceptions to the general policy were made on a case-by-case basis, documents from March 1943 indicate that agency directors of two branch offices in the South where the Company had agreed to consider applications for certain female African-American professionals were instructed "not to encourage their agents to solicit this business".

(4) Imposing Greater Medical Underwriting Requirements

Limited historical documents suggest that medical underwriting was required for African Americans where non-medical underwriting was available to Caucasians. A document dated July 7, 1931, indicating that applications for additional insurance submitted during a selected period of time would be considered without medical examinations, states “Policies will not be issued on unexamined applications to any but Caucasian (white) residents of the United States and Canada...” A document dated August 17, 1942 describing the Company’s Non-Medical Program, indicates that “Special care should be taken on cases where the question of ‘race’ is involved with regard to family history, or any other debit ....” A memorandum dated August 24, 1942 indicates that it had been decided that “applicants not of Caucasian race and low grade risk were not eligible for non-medical business.”

(5) Imposing Residency Requirements for Immigrants

Company historical documents from the early 1900’s until October 1963 include written policies imposing varying residency requirements on immigrants. During various time periods, recent immigrants were not eligible for insurance until they had resided in the United States for a period of time (usually one to five years) and/or were restricted in amount issued and product type availability. In addition, during certain years, medical examinations and inspection reports were required on foreign-born risks not meeting residency requirements. Residency requirements also varied by country of birth. Certain of these written policies predate the adoption of statutory provisions prohibiting such policies.

As of February 12, 1960, however, Section 209(3) of the New York Insurance Law (a predecessor to Section 2606) was amended to prohibit discrimination based on “national origin,” which includes a person’s country of birth. That amended provision provided, in part, that:

No life insurance company doing business in this state . . . shall reject any application for a policy of life insurance issued and sold by it, or refuse to issue such policy after appropriate application therefor . . . solely by reason of the applicant’s race, creed, color or national origin....

Beginning in July 1958, the Company liberalized its residency requirements for foreign-born Chinese and Japanese persons to be considered for life insurance generally and to be considered for life insurance without a medical examination and an inspection report. Notwithstanding, from at least July 1958 to October 1963, Asian-born recent immigrants were subjected to greater residency requirements than other recent immigrants. The policy of

subjecting Asian-born recent immigrants to greater residency requirements than other recent immigrants after February 1960 was contrary to the New York Insurance Law as it then existed. However, the examiners did not identify any applicant affected by such residency requirements.

A Company memorandum, dated October 11, 1963, announced to the Company's agency force that "effective immediately" regular individual life insurance underwriting rules for recent immigrants will apply to nationals of all "Asiatic countries" who intend to reside permanently in the United States or Canada. The memorandum indicated that "The effect of this liberalization is to make our regular rules for immigrants applicable to all immigrants regardless of country of origin."

#### B. Findings from the Review and Analysis of Policy Application Files

According to its response to the Supplement, as previously stated, the Company reviewed policy records for all existing inforce substandard policies issued prior to 1954 and all terminated substandard policies issued prior to 1954 for which the Company continued to retain policy records. In its review, the Company identified 149 inforce substandard policies and 314 terminated substandard policies issued to non-Caucasians.

The examiners reviewed the application files for the 463 substandard policies identified by the Company as being issued to non-Caucasians. Of the 463 policies, 376 were issued to African Americans, 86 were issued to Asians and 1 was issued to a Native American. The issue years of the reviewed policies were distributed by decade as follows: 1920's - 1; 1930's - 14; 1940's - 234; and 1950's - 214. The examiners reviewed an additional 453 policies issued prior to 1970, which were selected using sampling techniques designed by the Department to enhance the likelihood of identifying non-Caucasian insureds. In the 398 files where the race of the insured was identified, 147 insureds were African Americans and 3 insureds were Asians. The race of the applicant was identified from application forms, medical examiner's reports and third-party inspection reports contained in the files.

The examiners' review of policy application files revealed the following:

- Premiums charged to non-Caucasians were consistent with the rate books then in force. The same rate books were used for both Caucasian and non-Caucasian applicants and such rate books did not contain any differentiation in premium rates based on the applicant's race.

- Standard policies were issued to both Caucasians and non-Caucasians. Substandard policies issued with age advances or extra premiums were also noted for both Caucasian and non-Caucasian insureds. Analysis of the medical conditions, occupations or other factors noted as reasons for substandard ratings in the reviewed application files generally indicated that Caucasians and African Americans were treated similarly for similar conditions, occupations and other factors.
- Various types of life insurance products were available and issued to both Caucasians and African Americans. Reviewed application files indicate that other life insurance products (e.g., ordinary life, limited payment life, etc.) in addition to endowment policies were issued to African American insureds.
- Restriction to endowment policies and the charging of extra premiums apparently based on race were generally noted for applicants of Asian ancestry (predominantly Japanese and Chinese). Face amounts were limited and additional benefit coverages such as accidental death and disability waiver were not granted where extra premiums were charged. These practices predated the adoption of statutory provisions prohibiting such practices. Reviewed application files also evidenced that, beginning in the late 1940's and continuing through the mid 1950's, the Company generally removed extra premiums charged on then-inforce policies of Asian insureds and rewrote the previously issued endowment policies as permanent plans of insurance (usually whole life) without extra premiums.

The Company reported in its response to the Supplement that, during its review, two inforce policies issued to Asian Americans were identified in which "the file reflects an additional premium charge solely on account of race." In such cases, the Company notes that the policies, both issued in 1947, had the extra premium charge removed by 1950. The Company's response also notes two terminated policies issued to Asian Americans where the substandard rating appears to have been made "solely on account of race" in one instance and on "a combination of race and occupation" in the second instance. The extra premiums on these policies had been removed in 1952 and 1953, respectively. The examiners' review of inforce and terminated substandard policy application files identified an additional 14 policies on Asian applicants where extra premiums had been charged (and endowments generally issued) apparently consistent with the above described Company policies then in effect for applicants of Asian ancestry. For all but two of these policies, application files document that, during the late 1940's and early 1950's, the extra premiums were removed and the endowment policies were rewritten to ordinary life or limited payment life policies. For the two identified policies (neither issued as an endowment), the extra premium charged apparently based on race had not been removed. When brought to the Company's attention, refunds were made.

As discussed previously in Section 4(A)(1) of this report, a five year age advance was combined with a restriction on the issuance to African Americans of 10, 15 and 20 year endowments and that such practices ceased no later than 1948. These limited year endowment policies issued from 1920 through 1948 therefore are not currently inforce as they ended (i.e., terminated by maturity) no later than 1968. Application files for policies which terminated prior to 1988 are no longer in the Company's possession as they previously were discarded in accordance with regular record retention practices, which were not inconsistent with regulatory

retention requirements. As a result, application files which may have evidenced the practices described in historical documents with regard to African Americans could not be included in the examiners' policy application review. As indicated by the Company in its response to the Supplement, "The best way to determine whether or not a policy reflected race-based underwriting is to review the policy application file." In the absence of such files, alternate examination techniques were implemented.

During the relevant period, the Company prepared brief cards at the time of policy issuance. Brief cards reflect certain basic policy information including, but not limited to, the race of the insured, the "true" age of the insured at issue and the advanced age (if any) at which the policy was issued. While brief cards do not indicate the reason why a policy was issued with a substandard rating, brief cards are the only known available source of information on endowment policies issued to African Americans with an age advance from the 1920's through 1948. In an attempt to identify if policies issued to African Americans during such time period bore characteristics that supported the practice of the Company policies documented in the historical records (i.e., limited endowment policies with age advances), the Company performed (at the request of the Department) surveys of "brief cards" for policies issued from 1920 through the early 1950s.

Based on its brief card samplings, the Company concluded that "Between 1920 and 1940, African Americans were more likely than Caucasians to be issued endowment policies with a five-year age advance, ...." Accordingly, the Company committed "to addressing this apparent historical inequity through a refund program."

## 5. CONCLUSION

The Department's examination revealed that certain race-based underwriting practices were evidenced in the written records of New York Life. In light of the foregoing, on June 30, 2004, the Department entered into a Regulatory Settlement Agreement with New York Life that provides relief with respect to affected policies and/or persons.

Respectfully submitted,

Torys LLP, Consultant

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Partner

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

Charles E. Dorkey III, being duly sworn, deposes and says that the foregoing report is true to the best of his knowledge and belief.

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Charles E. Dorkey III

Subscribed and sworn to before me  
this 16 day of June, 2004

**MICHAEL BUCHWALD**  
Notary Public, State of New York  
No. 01BU6080857  
Qualified in Suffolk County  
Commission Expires Sept. 23, 2008

APPOINTMENT NO. 21765

STATE OF NEW YORK  
**INSURANCE DEPARTMENT**

I, GREGORY V. SERIO, Acting Superintendent of Insurance of the State of  
New York, pursuant to the provisions of the Insurance Law, do hereby appoint:

**TORYS**

as a proper person to examine into the affairs of

**NEW YORK LIFE INSURANCE COMPANY**

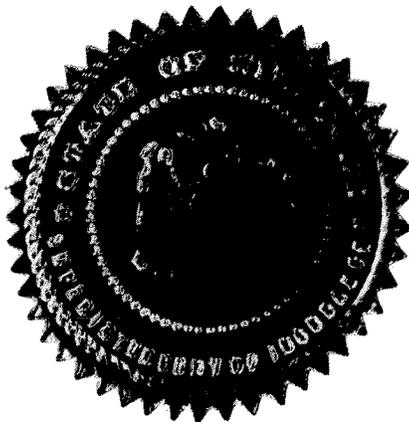
and to make a report to me in writing of the condition of the said

**COMPANY**

with such other information as it shall deem requisite.

In Witness Whereof, I have hereunto subscribed by name  
and affixed the official Seal of the Department  
at the City of New York

this 16th day of August, 2001



**GREGORY V. SERIO**

Superintendent of Insurance

A handwritten signature in cursive script, reading "Audrey M. Samers".

by **AUDREY M. SAMERS**

Deputy Superintendent

And General Counsel

**The Company's August 14, 2000 Response to  
Supplement No. 1 to Circular Letter No. 19 (2000)  
(Exhibit A)**



The Company You Keep®  
www.newyorklife.com

**New York Life Insurance Company**  
51 Madison Avenue, New York, NY 100  
212 576-6973  
Fax 212 576-8339

**Thomas F. English**  
Vice President & Deputy General Counsel

August 14, 2000

Mrs. Ruth Gumaer  
Principal Insurance Examiner - Life Bureau  
New York State Insurance Department  
25 Beaver Street  
New York, NY 10004

Re: Circular Letter No. 19 (2000)

Dear Mrs. Gumaer:

Enclosed is the Response by New York Life Insurance Company and its affiliate New York Life Insurance and Annuity Corporation to Supplement 1 to Circular Letter No. 19 (2000).

New York Life Insurance Company requests that the Insurance Department except the enclosed Response to Circular Letter 19 from disclosure under paragraph (d) of subdivision 2 of section 87 of the Public Officers Law.

Please contact me if you have any questions regarding our Response.

Sincerely,

Thomas English

**NEW YORK LIFE INSURANCE COMPANY  
NEW YORK LIFE INSURANCE AND ANNUITY CORPORATION  
RESPONSE TO CIRCULAR LETTER 19 (2000)**

**Overview**

New York Life, its employees and agents, are firmly committed to ensuring that our products and services are made available to the public without regard to race, color, creed or national origin. New York Life, and its affiliate, New York Life Insurance and Annuity Corporation ("NYLIAC"), do not engage in race-based underwriting practices. Neither company has acquired any block of business that reflects race-based underwriting practices or any insurer that engaged in such practices. Formed in 1980, well after laws prohibiting race-based discrimination in insurance were enacted throughout the country, NYLIAC has never in its comparatively brief history engaged in such practices.

New York Life was founded in 1845, and since the mid-1800's has engaged in the life insurance business in the United States and internationally. New York Life has never sold what are commonly referred to as industrial life or burial policies, having early in its history made a strategic business determination to focus on other markets. Instead, the Company has generally marketed only participating life insurance policies with relatively higher face amounts. New York Life has not used agent rate manuals, policy forms or dividend scales that differentiate among individuals on the basis of race, color, creed or national origin.

Our review of the Company's archival records shows that in the 1800's and early 1900's New York Life's underwriters took race and national origin into consideration when evaluating mortality risk. We also learned during our review that historically race was simply one factor among many (e.g., health, family medical history, education, occupation, environment, income, personal habits) taken into consideration in assessing individual mortality risks. Standard industry practice at that time correlated a person's race with his or her life expectancy. Although that practice was regrettable, our review of existing policy records suggests that it did not have a significant impact on the Company's actual underwriting decisions.

As discussed more fully below, our review of over 80,000 policy records revealed only three instances in which race was an underwriting factor, and two others in which race may have been a factor, in the assignment of a substandard rating. In four of these five cases, the Company ceased charging the extra premium by 1953. In the other case, where occupation may have been the basis for the extra premium charge, we have refunded the extra premium charge, plus interest. None of these cases involved New York residents.

Records show that New York Life ceased using mortality assumptions that took race into consideration when underwriting African Americans in all states by 1948, and had ceased such practices in a number of states at least 10 years earlier. The last group to be treated

on a race-distinct basis was Asian Americans and, according to the record, that practice ended in 1952.

### **Scope of Review**

The Company undertook an extensive search of policy records and historical documentation in preparing this Response. In this context, the Company reviewed: all inforce substandard policies issued prior to December 31, 1953, all terminated substandard policies issued prior to December 31, 1953 for which we continue to retain policy records, and random samplings of standard policies issued between 1915 and 1950.

The following historical documents also were reviewed: Board of Directors' and Standing Committee minutes, Company-published histories, Actuarial Department records, Policy Issue/Selection and Rating Division records, Marketing and Sales Department records, Agency Department records, records of officers' and directors' speeches and writings, internal publications, Company rate manuals, agent contracts and compensation schedules, policy form filings, dividend histories, and underwriting manuals and related documents.

### **Review of Policy Application Files**

The best way to determine whether or not a policy reflected race-based underwriting is to review the policy application file. A significant portion of our review, therefore, was devoted to identifying, retrieving and analyzing the application files for all inforce and terminated substandard policies issued to non-Caucasian individuals prior to 1954. We selected December 31, 1953 as our cut-off date because, as noted above, New York Life ceased considering race when evaluating mortality risk in all states by 1952.

The oldest substandard policy application file that New York Life has in its possession that was issued to a non-Caucasian individual is for a policy that was issued in 1929. The Company does not have application files for any substandard policies that were issued prior to that date to non-Caucasian individuals since they have been disposed of over the course of time, in accordance with the Company's record retention procedures, which are in conformity with New York law. Furthermore, with respect to the terminated policies, our review was limited to those policies that were terminated in 1988 and thereafter, since the Company has not retained application files prior to that date in conformity with its existing record retention procedures.

Without an application file, we have no record from which to determine conclusively the basis for a substandard premium on any individual policy.

### *Inforce Substandard Policies*

The Company reviewed policy records for all existing inforce substandard policies issued prior to 1954 to determine the basis for the substandard rating for non-Caucasian individuals. Of the 8,850 policy records reviewed, the Company only found two cases where the file reflects that an additional premium charge was made solely on account of race. Both of these policies were issued to Asian Americans in 1947. In both cases, the extra premium charge was removed by 1950. Neither policy was issued in New York.

In a third case, the basis noted by the underwriter for the substandard rating appears to have been a combination of race and occupation. While the occupation alone appears sufficient to explain the substandard rating, the underwriters' handwritten notes indicate that race may have been an additional consideration in their rating. The policy was issued in 1940 to an African American employed as an Investigator for the Department of Public Assistance. It was not issued in New York.

That policy has a face amount of \$1,000, an annual premium of \$23.92 and a cash value of \$890. The dividends paid on this policy since inception total \$1,074.90 and the current year's dividend is \$38.73. The extra premium paid on this policy due to the substandard rating is \$0.66 quarterly, and the total amount of the extra premium paid to date is approximately \$160. After the Company became aware of this policy during the course of our historical review, we refunded the extra premium paid, with interest, without requiring a corresponding reduction of the cash value or dividends to which that extra premium contributed. On a going forward basis we eliminated the extra premium charge. Those actions were taken even though occupation appears to be the cause for the rating, because we could not definitively rule out race as a contributing factor.

### *Terminated Substandard Policies*

The Company reviewed policy records for all terminated substandard policies issued prior to 1954, which terminated in 1988 and later. Of the 18,106 records reviewed, the Company only found one case in which an additional premium charge was made solely on account of race. That policy was issued to an Asian American in 1945. The extra premium was removed in 1952.

In a second case, the basis for the substandard rating appears to have been a combination of race and occupation. That policy was issued in 1947 to an Asian American kitchen worker. Although the occupation alone appears sufficient to explain the substandard rating, the underwriters' handwritten notes indicate that race may have been an additional consideration in their rating. The extra premium was removed in 1953.

Neither of these terminated substandard policies was issued in New York.

## **Validation of Results**

A detailed review of all other existing policy records for inforce and terminated substandard policies which were issued to non-Caucasian individuals prior to 1954 shows that they had been rated based on occupation or medical history.

In order to test the validity of the rating, we tested whether occupation was a proxy for race by checking whether or not the occupation rating on a sampling of application files was consistent with the occupational rating manual in use for a particular policy issue year. We also sampled application files where Caucasian individuals had the same occupation to determine whether the occupational rating was consistently applied regardless of race.

We found the sample tested to be consistent with the rating manual and the Caucasian application files. Furthermore, the rating manuals, dating back to the early 1900's, make no reference to, or distinction based on, race.

In addition to the foregoing, we randomly sampled over 50,000 individual policy records of policies that were issued on a standard basis in 1915, 1925, 1935, 1940, 1945 and 1950. We found that policies were issued to African Americans and other non-Caucasian individuals on a standard rate basis in each issue year sampled.

## **Review of Other Underwriting and Historical Records**

The Company has retained certain historical Home Office records from the late 1800's and early 1900's. Those documents, while not complete, do provide insight into the evolution of the Company's underwriting practices. Some of those documents indicate the Company did historically engage in certain practices where race was a factor. As noted above, however, in the absence of policy application file records, these documents cannot be tied directly to the underwriting basis for any particular case.

Records indicate that in 1897 the Company considered reducing agent commissions to a flat 10% on policies insuring African Americans due to "excessive" mortality experience. We cannot determine from the historical records whether that practice was ever put into effect. In any event, by 1908 it appears that the Company had determined not to engage in that practice.

Up to 1920, the historical record reflects it was the Company's practice to sell only endowment policies to African Americans, and to add five years in age to those in the laboring occupations (i.e., a 25 year old would be charged the age 30 rate). During that time, it was common practice for the Company to advance age on individuals employed in laboring occupations, regardless of race, due to the extra mortality risk the underwriters associated with such occupations. "Professional" men were underwritten as standard risks. Records from 1920 noted an increase in the Company's African American business and indicated that the majority of the business written by the Company on African Americans to that point was issued on a standard basis without an advance in age

because the category of professional men was being broadly interpreted to include farmers.

In the 1920's and 1930's, business written on non-professional African Americans was discouraged, and it appears African American women, particularly from southern states, were generally not solicited, based on the Company's understanding at that time of the mortality risk they presented. As the Company did not have enough data to conduct its own mortality study, it relied in 1920 on the Medico-Actuarial Mortality Investigation published by other companies to evaluate the risk presented by the recent increase in the number of African American insureds. That study showed that African American mortality in the laboring occupations (including farmers, mechanics and chauffeurs) was 47% in excess of the norm for all other insured lives. In response to that "excessive mortality" the Company, in 1920, decided to redefine "professional" men (i.e., those who would be charged standard rates), to include only physicians, teachers, ministers and similar occupations.

In the 1930's, however, historical records indicate that the Company was applying its generally applicable underwriting practices to African Americans in states where that was believed to be required, including New York, Connecticut, Massachusetts, Michigan, Minnesota and New Jersey. By the 1940's the Company was issuing other life insurance products in addition to endowment policies to African Americans in a broad spectrum of occupational classes, including a variety of laboring occupations. In 1948, Home Office records state that the Company practice was to underwrite African Americans in all states in accordance with its generally applicable underwriting rules.

The Company's underwriting practices applicable to Japanese Americans and Chinese Americans in the early 1900's are also described in some archival documents. The Company had determined, based primarily on its own mortality experience for Japanese and Chinese risks, that product availability would be generally limited to endowment policies and that an extra premium was warranted. The underwriters were more liberal in underwriting Japanese Americans and Chinese Americans born in the United States and those in professional and business occupations, and were more restrictive with foreign-born individuals and those in laboring occupations. Beginning with the Sino-Japanese war in 1937 and continuing through World War II the records indicate the Company restricted its underwriting of Japanese Americans and Chinese Americans due to war-time concerns. In 1952 the Company's records show that the Company practice was to underwrite Japanese Americans and Chinese Americans in accordance with its generally applicable underwriting rules.

Beginning in the late 1940's the Company had a policy of removing these substandard ratings on previously issued policies upon request, or if new coverage was applied for. That is consistent with our review of pre-1954 policy application files which showed the removal, by 1953, of the race-based premium component in each of the four cases we found where Asian Americans were charged an extra premium.

Aside from the foregoing, the historical records reflect that in the early 1900's the Company imposed certain underwriting restrictions based on national origin. Principally, these pertained to recent immigrants who were not eligible for insurance until they had resided in the United States for a period of time (usually one to five years) and had found gainful employment. Product selection was limited by face amount and type (usually endowment policies). The Company's underwriters placed great emphasis on an applicant's occupation and living environment when evaluating mortality risk. Consequently, there was a preference to write business on individuals engaged in professional occupations. New York Life's underwriters were also concerned about the difficulty of obtaining adequate proofs of death if individuals returned to their countries of origin.

### **Conclusion**

New York Life never engaged in the industrial life or burial insurance business. For a period of time in the late 1800's and early 1900's the Company's underwriters did take race into consideration when evaluating mortality risk. Regrettably, in the social and legal environment of that period in the United States, this was standard industry practice. At New York Life those practices ended decades ago. As discussed above, our review has only identified five cases where race was or may have been a factor, and in each of the cases where it was a factor the extra premium charge was removed by 1953. New York Life and NYLIAC are committed to making their products and services available without regard to an individual's race, color, creed or national origin.

August 14, 2000

State of New York }  
                          }  
County of New York }      ss:

Seymour Sternberg, Chairman of the Board, President and Chief Executive Officer of New York Life Insurance Company, being duly sworn, deposes and says that, to the best of his information, knowledge and belief, the attached Report is true and complete and not misleading and contains the most accurate information available at the time of its submission

\_\_\_\_\_  
Seymour Sternberg, Chairman of the Board,  
President and Chief Executive Officer

Subscribed and sworn to before me this

14<sup>th</sup> day of August 2000

\_\_\_\_\_  
Notary Public

DAVID A.K. HARLAND  
Notary Public, State of New York  
No. 24-4871224  
Qualified in New York County  
Commission Expires August 25, 2002  
State of New York }  
                          }  
County of New York }      ss:

Frederick J. Sievert, President of New York Life Insurance and Annuity Corporation, being duly sworn, deposes and says that, to the best of his information, knowledge and belief, the attached Report is true and complete and not misleading and contains the most accurate information available at the time of its submission.

\_\_\_\_\_  
Frederick J. Sievert, President

Subscribed and sworn to before me this

14<sup>th</sup> day of August 2000

\_\_\_\_\_  
Notary Public

DAVID A.K. HARLAND  
Notary Public, State of New York  
No. 24-4871224  
Qualified in New York County  
Commission Expires August 25, 2002

The Department's September 27, 2000 Request  
for Additional Information  
(Exhibit B)



STATE OF NEW YORK  
INSURANCE DEPARTMENT  
25 BEAVER STREET  
NEW YORK, NEW YORK 10004

September 27, 2000

Mr. Thomas F. English  
Vice President and Deputy General Counsel  
New York Life Insurance Company  
51 Madison Avenue  
New York, New York 10010

Re: New York Life Insurance Company ("New York Life")  
New York Life Insurance and Annuity Corporation ("NYLIAC")  
Supplement No. 1 to Circular Letter No. 19 (2000)

Dear Mr. English:

We have completed our review of New York Life's submission made pursuant to Supplement No. 1 to Circular Letter No. 19 (2000).

Based upon our review of the filed report, we have the following queries and comments:

1. The filed report stated that race and national origin were taken into consideration (as one factor among others that included health, family medical history, education, occupation, etc.) when evaluating mortality risk in the 1800's and early 1900's. The report also indicates that New York Life ceased using mortality assumptions that took race into consideration when underwriting African Americans in all states by 1948 (and a number of states at least 10 years earlier). However, there is no discussion in the report indicating how this consideration of race was manifested in the underwriting of African Americans. In discussing this issue, please specify which race-based practice (e.g., refusal to insure, limiting of amount, extent or kind of coverage, assignment of rating, collecting higher rates, etc.) resulted from the consideration of race when evaluating mortality risk.
2. The filed report states that the oldest substandard policy application file that New York Life has in its possession that was issued to a non-Caucasian is for a policy that was issued in 1929. No further information was provided about such policy. Please indicate underwriting practices applied in the issuance of such policy and if any race-based practices were noted with regard to such policy. If race-based practices were noted, please also discuss the remediation made on such policy.
3. The filed report discusses five instances in which race was or may have been a factor in assignment of a substandard rating. Two of the three inforce policies paid additional premium from issue in 1947 until the extra premium was removed in 1950. The third inforce policy appears to have paid an extra premium from issue in 1940 until discovered during this review. The report indicated that the extra premium was refunded with interest. With regard

to the two terminated substandard policies, the report indicated that extra premiums were removed in 1952 and 1953 which was approximately six years after the issue of these policies. Please indicate if a refund of the extra premiums with interest was made on the two inforce substandard policies issued in 1947 and the two terminated substandard policies.

4. The filed report indicates that, in the 1920's and 1930's, business written on non-professional African Americans was discouraged. The filed report also indicates that, beginning with the Sino-Japanese war in 1937 and continuing through World War II, New York Life restricted the underwriting of Japanese Americans and Chinese Americans. Please indicate the method utilized to discourage business or restrict underwriting in the above situations.
5. The Supplement stated that the report should discuss the insurer's findings with regard to the marketing and/or sale of business directly issued by the insurer and business acquired by the insurer as a result of assumption, merger, acquisition, consolidation or purchase. The only reference to acquired business in the filed report was a statement that neither New York Life nor NYLIAC acquired any block of business that reflects race-based underwriting practices or any insurer that engaged in such practices. The filed report failed to specify the scope of New York Life's review of acquired business and document availability. In addition, the filed report fails to identify the scope of NYLIAC's review of directly issued business and document availability. Please amend the report to discuss these issues.

The amended report should include the information specified above in addition to the information included in your previous submission. The amended report must be filed, accompanied by a jurat in the form specified in Supplement No. 1 of Circular Letter No. 19 (2000), no later than 15 days from receipt of this letter.

Please direct any questions and your response to:

Mrs. Ruth Gumaer  
Principal Insurance Examiner – Life Bureau  
New York State Insurance Department  
25 Beaver Street  
New York, New York 10004  
Phone: (212) 480-4763 Fax: (212) 480-5329  
E-mail: rgumaer@ins.state.ny.us

Very truly yours,

Ruth Gumaer  
Principal Insurance Examiner

The Company's October 16, 2000 Supplement to Report  
Pursuant To  
Supplement No. 1 to Circular Letter No. 19 (2000)  
(Exhibit C)



The Company You Keep®

**New York Life Insurance Compar**  
51 Madison Avenue, New York, NY 10017  
212 576-8932 Fax: 212 447-4268

**Brian M. O'Neill**  
Associate General Counsel

EXPRESS MAIL

October 16, 2000

Mrs. Ruth Gumaer  
Principal Insurance Examiner - Life Bureau  
New York State Insurance Department  
25 Beaver Street  
New York, NY 10004

Re: Circular Letter No. 19 (2000)

Dear Mrs. Gumaer:

In accordance with your letter of September 27th, enclosed is the Supplemental Response by New York Life Insurance Company and its affiliate New York Life Insurance and Annuity Corporation to Supplement 1 to Circular Letter No. 19 (2000).

New York Life Insurance Company requests that the Insurance Department except the enclosed Supplemental Response to Circular Letter 19 from disclosure under subdivision 2 of section 87 of the Public Officers Law.

Please contact me if you have any questions regarding our Response.

Sincerely,

NEW YORK LIFE INSURANCE COMPANY  
NEW YORK LIFE INSURANCE AND ANNUITY CORPORATION  
SUPPLEMENT TO RESPONSE TO CIRCULAR LETTER 19 (2000)

- 1. The filed report stated that race and national origin were taken into consideration (as one factor among others that included health, family medical history, education, occupation, etc.) when evaluating mortality risk in the 1800's and early 1900's. The report also indicates that New York Life ceased using mortality assumptions that took race into consideration when underwriting African Americans in all states by 1948 (and a number of states at least 10 years earlier). However, there is no discussion in the report indicating how this consideration of race was manifested in the underwriting of African Americans. In discussing this issue, please specify which race-based practice (e.g., refusal to insure, limiting of amount, extent or kind of coverage, assignment of rating, collecting higher rates, etc.) resulted from the consideration of race when evaluating mortality risk.**

*New York Life undertook an extensive search of policy records and historical documentation in preparing its response to Circular Letter 19 (2000). As discussed in the Response, we have no record from which to determine conclusively the basis for a substandard premium on any individual policy in the absence of an application file. Our review of substandard policy application files identified only one policy on the life of an African American where race (together with occupation) may have been a consideration in assigning a substandard rating. The policy was not issued in New York. In that case, the substandard rating was manifested by advancing the insured's age by five years, resulting in a quarterly premium that was \$0.66 higher than would have been the case if the rate was based on the insured's actual age. A full refund of premium, plus interest, was made on that policy.*

*Our review of historical Home Office records from the late 1800's and early 1900's provides anecdotal evidence that prior to the 1940's consideration of race was manifested in the underwriting of some African Americans by limiting the type of coverage to endowment policies, adding five years in age for premium calculation purposes to those engaged in laboring occupations (a practice that appears to have generally applied to all races) and discouraging solicitation of African Americans, particularly women from southern states. It is noteworthy that records from 1920 indicated that the majority of business written by the Company on African Americans to that point was issued on a standard basis without an advance in age. The historical records shows that the Company's underwriting practices were subject to frequent change, throughout the period in question.*

*The historical records reflect that the Company's underwriting practices were based on its understanding at any particular time of mortality risk considerations.*

*In the late 1800's and early 1900's it had been standard industry practice to correlate a person's race with his or her life expectancy.*

*By the 1930's New York Life was applying its generally applicable underwriting practices to African Americans in states where that was believed to be required, including New York. By 1948 the Company practice was to underwrite African Americans in all states in accordance with its generally applicable underwriting rules.*

2. **The filed report states that the oldest substandard policy application that New York Life has in its possession that was issued to a non-Caucasian is for a policy that was issued in 1929. No further information was provided about such policy. Please indicate underwriting practices applied in the issuance of such policy and if any race-based practices were noted with regard to such policy. If race-based practices were noted, please also discuss the remediation made on such policy.**

*This 1929 application file was identified as a point of reference to indicate that the Company did not have in its possession any application files for substandard policies issued to non-Caucasians prior to that date. No race-based underwriting practices were noted with respect to this file.*

3. **The filed report discussed five instances in which race was or may have been a factor in assignment of a substandard rating. Two of the three inforce policies paid additional premium from issue in 1947 until the extra premium was removed in 1950. The third inforce policy appears to have paid extra premium from issue in 1940 until discovered during this review. The report indicated that the extra premium was refunded with interest. With regard to the two terminated substandard policies, the report indicated that extra premiums were removed in 1952 and 1953 which was approximately six years after the issue of these policies. Please indicate if a refund of the extra premiums with interest was made on the two inforce substandard policies issued in 1947 and the two terminated substandard policies.**

*The historical records indicate that a premium refund was made on all four policies referenced above at the time the extra premiums were removed. No interest appears to have been credited. None of these policies was issued in New York.*

4. **The filed report indicates that, in the 1920's and 1930's, business written on nonprofessional African Americans was discouraged. The filed report also indicated that, beginning with the Sino-Japanese war in 1937 and continuing through World War II, New York Life restricted the underwriting of Japanese Americans and Chinese Americans. Please indicate the**

**method utilized to discourage business or restrict underwriting in the above situations.**

*As indicated in our response to question no. 1 above, without an application file we have no record from which to determine conclusively the basis for a substandard premium on any individual policy. Our review of historical Home Office records provides anecdotal evidence that the Company's underwriters preferred to underwrite individuals in professional and business occupations because of the favorable mortality they believed those groups enjoyed. The historical records reflect that the Company's underwriters were concerned with the "excessive mortality" (based on the 1920 Medico-Actuarial Mortality investigation published by other companies that showed African-American mortality in the laboring occupations to be 47% in excess of the norm for all other insured lives) associated with non-professional African-Americans in the early 1900's. It appears that the Company's risk preference in favor of professionals and businessmen was conveyed to its sales force.*

*Other than the four policies discussed in our Response, the Company has no record of a race-based underwriting practice having been applied to any individual policy on an Asian American. Historical Home Office records reflect that prior to the early 1950's product selection for Asian Americans, particularly those in laboring occupations, was generally restricted to endowment policies and an extra premium was charged. Those practices were based on the Company's mortality experience for Asian Americans and were subject to frequent change. By 1952 the Company's practice was to underwrite Japanese Americans and Chinese Americans in accordance with its generally applicable underwriting rules.*

- 5. The Supplement stated that the report should discuss the insurer's findings with regard to the marketing and/or sale of business directly issued by the insurer and business acquired by the insurer as a result of assumption, merger, acquisition, consolidation or purchase. The only reference to acquired business in the filed report was a statement that neither New York Life nor NYLIAC acquired any block of business that reflects race-based underwriting practices or any insurer that engaged in such practices. The filed report failed to specify the scope of New York Life's review of acquired business and document availability. In addition, the filed report fails to identify the scope of NYLIAC's review of directly issued business and document availability. Please amend the report to discuss these issues.**

*New York Life undertook an extensive review of its available records, including a search for records relating to any acquired business, in preparing its Response to Circular letter 19 (2000). We were able to identify several instances where the Company acquired association group life insurance programs from other carriers in the relatively recent past. No race-based underwriting practices were noted*

*with respect to those programs. We were unable to identify any historic acquisitions of blocks of life insurance.*

*Because NYLIAC was formed relatively recently (1980) a great amount of its business records remain available for review. The review of NYLIAC's directly insured business was as extensive as that described for New York Life in the "Scope of Review Section" of our Response to Circular Letter 19 (2000). NYLIAC has acquired blocks of individual corporate-owned life insurance. No race-based underwriting practices were noted with respect to that business.*

