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**TARGETED MARKET CONDUCT REPORT ON EXAMINATION**

**OF THE**

**NEW YORK LIFE INSURANCE AND ANNUITY CORPORATION**

**AS OF DECEMBER 31, 2020**

**EXAMINER:**

**ANN MARIE THOMPSON**

**DATE OF REPORT:**

**SEPTEMBER 30, 2021**

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KATHY HOCHUL  
Governor



ADRIENNE A. HARRIS  
Superintendent

March 23, 2023

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

Dear Adrienne A. Harris:

In accordance with instructions contained in Appointment No. 32146, dated September 29, 2020, and annexed hereto, an examination has been made into the condition and affairs of New York Life Insurance and Annuity Corporation, hereinafter referred to as "the Company". The Company's home office is located at 51 Madison Avenue, New York, NY 10010. Due to the COVID-19 pandemic, the examination was conducted remotely.

Wherever "Department" appears in this report, it refers to the New York State Department of Financial Services.

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

## 1. EXECUTIVE SUMMARY

The material findings and violations contained in this report are summarized below.

- The Company violated Section 3211(g) of the New York Insurance Law and Section 53-3.6(c) of 11 NYCRR 53 (Insurance Regulation 74) by providing in force illustrations to universal life policyholders that were not based upon current mortality, interest, and expense assumptions. (See item 4D-1 of this report.)
- The Company violated Section 4221(a)(7) of the New York Insurance Law by failing to specify the loan value available to the policyholder under the policy in the annual report. (See item 4D-3 of this report.)

## 2. SCOPE OF EXAMINATION

For the review of the market conduct activities, this examination covers the period from January 1, 2015, to December 31, 2019, for items A, B, and D and covers the period from January 1, 2018, to December 31, 2020, for item C.

The examination comprised a review of targeted 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 market conduct activities reviewed include the Company's practices and procedures regarding identification of unclaimed death benefits, locating beneficiaries, and making prompt payments, as well as the use of death information, including information available from the Social Security Administration Death Master File, in relation to the requirements set forth in 11 NYCRR 226 (Insurance Regulation 200); the Company's complaint handling practices and procedures; the examiner's review of the Company's filed annual illustration certifications in relation to compliance with 11 NYCRR 53 (Insurance Regulation 74) and other New York statutory requirements; and the Company's electronic application process and related market conduct activities.

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 originally incorporated in the State of Delaware on November 3, 1980. A Certificate of Authority, issued by the Delaware Insurance Commissioner on December 26, 1980, and amended on September 12, 1983, authorizes the Company to transact the business of insurance: including annuities, variable annuities, credit life insurance, health insurance, credit health insurance, and variable life insurance. The Company has been a direct, wholly owned subsidiary of New York Life Insurance Company since its inception.

#### 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 all 50 states, the District of Columbia, Guam, and the U.S. Virgin Islands. In 2020, 11.8% of life insurance premiums, 10.4% of annuity considerations, and 9.9% of deposit-type funds were received from New York. Policies are written on a non-participating basis.

The following tables show the percentage of direct premiums received, by state, and by major lines of business for the year 2020:

<u>Life Insurance Premiums</u>		<u>Annuity Considerations</u>	
California	18.1%	California	12.9%
New York	11.8	New York	10.4
Texas	7.1	Texas	7.8
Florida	6.1	Florida	6.6
Georgia	<u>4.3</u>	Massachusetts	<u>5.2</u>
Subtotal	47.4%	Subtotal	42.9%
All others	<u>52.6</u>	All others	<u>57.1</u>
Total	<u>100.0%</u>	Total	<u>100.0%</u>

Deposit Type Funds

California	10.3%
New York	9.9
Texas	9.3
Florida	9.0
Massachusetts	<u>6.2</u>
Subtotal	44.7%
All others	<u>55.3</u>
Total	<u>100.0%</u>

#### 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. Insurance Regulation 200

The examiner reviewed the Company's practices and procedures regarding identification of unclaimed death benefits, locating beneficiaries, and making prompt payments, as well as the use of death information, including information available from the Social Security Administration Death Master File.

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

##### B. Complaint Handling

The examiner reviewed the Company's complaint handling practices and procedures.

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

##### C. Electronic Application Process

The examiner reviewed various elements of the Company's electronic application processes for life insurance policies and annuities to determine compliance with applicable statutes and regulations and the operating rules of the Company.

###### 1.) Advertising and Sales Activities

The examiner reviewed a sample of the Company's sales activities, solicitation, and the replacement of insurance policies as part of the Company's electronic application process review.

Based upon the reviewed, no significant findings were noted.

###### 2.) Underwriting and Policy Forms

The examiner reviewed a sample of new underwriting files, both issued and declined, and the applicable policy forms as part of the Company's electronic application process review.

Based upon the reviewed, no significant findings were noted.

3.) Option to Opt-Out

The examiner verified that the applicants had an opportunity to opt out of the electronic process as required by Section 309 of the New York State Technology Law.

D. Annual Illustration Certifications

1.) In-Force Illustrations of Universal Life Policy Forms

The Company has several policy forms subject to Section 4232(b) of the New York Insurance Law that were designated by the Company as being marketed with an illustration. The examiner reviewed illustrations furnished to New York policyholders for these policy forms.

Section 3211(g) of the New York Insurance Law states, in part:

“In the case of life insurance policies to which this section is applicable and which contain a cash surrender value, the insurer must provide an annual notification that the policy contains a cash surrender value and that further information, including the amount thereof, is available from the insurer upon written request from the policyowner. Such notification shall include a statement that the insured has the right to request an updated policy illustration based . . . in respect to a policy subject to subsection (a) of section four thousand two hundred thirty-two of this chapter, on the then current mortality, interest and expense assumptions . . .”

Section 53-3.6(c) of 11 NYCRR 53 (Insurance Regulation 74) states:

“Upon the request of the policyowner, the insurer shall furnish an in force illustration of current and future benefits and values based on the insurer’s present illustrated scale. This illustration shall comply with the requirements of Sections 53-3.2(a), 53-3.3(a), and 53-3.3(e) of this Subpart. No signature or other acknowledgement of receipt of this illustration shall be required.”

The Company stated that effective May 1, 2018, Company authorized illustrations for policies issued in New York that are in force for one year or more show illustrated values using both the guaranteed scale and currently payable scale of charges and crediting rates for all life insurance products.

With respect to policy forms 316-60.13, 313-54.13, 313-184.13, 313.130.13, 305-51.13 with 8758-04, 308-51.13 with 8861-07, 308-180.13, 308-180.13 with 8861-07, 308-180.13, 869-52, 898-55A.13, 898-50.A.13 with 8548-97, 869-52, and 869-52 with 8417-91, the in force

illustrations provided to policyholders prior to May 1, 2018, displayed guaranteed elements only and were not based on the insurer's current interest, mortality and expense assumptions.

The Company violated Section 3211(g) of the New York Insurance Law and Section 53-3.6(c) of 11 NYCRR 53 (Insurance Regulation 74) by providing in force illustrations to universal life policyholders that were not based upon current mortality, interest, and expense assumptions.

As of April 30, 2018, the Company identified 20,469 policies in force for the affected policy forms.

The Company indicated that corrective action has been taken.

## 2.) Annual Reports - Universal Life Policies with Secondary Guarantees

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

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

(h) The annual report must state whether or not the guarantee is in effect on the date of the report. If a lump sum is projected to be required to be paid at the end of the no-lapse period to maintain the policy in force, it is recommended that the annual report include an early warning notice to that effect.”

The examiner reviewed annual reports furnished to universal life policyholders with secondary guarantee provisions. “Active” samples are for policies that had a positive cash value, no loans were taken, and the no lapse guarantee while not in effect is still potentially of value to the policyholder in the future. “Inactive” samples are for policies that had a positive cash value but the policyowner took out a loan or missed a planned premium and the no lapse guarantee is no longer even available should the cash value reach zero in the future. “Invoked” samples are for policies that had zero cash value, no loan activity, all planned premiums were made, and the no lapse guarantee was operative during the reporting period.

For “active” annual reports, the Company lists the No Lapse Guarantee Rider in the “Additional Benefits” section of the report; however, the annual report did not include the required warning whether a lump sum is projected to be required to be paid at the end of the no lapse period to maintain the policy in force. The Company implied that by listing the rider under “Additional Benefits”, it has sufficiently disclosed whether or not the secondary guarantee is in effect on the date of the report. The examiner disagrees because the annual report was completely silent on the

operation of the secondary guarantee. The lack of disclosure about the secondary guarantee does a disservice to the policyowner because it is a key component of how the policy operates, its current status, and what the policyholder's options are. The important disclosures were not addressed under the Conditions of Policy Coverage section of the annual report, either.

With regard to "inactive" annual reports furnished to universal life policyholders with a secondary guarantee, the annual report should be revised to state that the no lapse guarantee is no longer in effect.

For policyowners whose secondary guarantee benefit is now in "inactive" status and who received a deficient annual report in previous reporting periods that failed to disclose that certain policyholder actions may have a negative impact on or even nullify the secondary guarantee benefit (for example, taking out a loan), the lack of disclosure may have been a factor in the guarantee now being inactive.

The examiner recommends that, going forward, the Company revise the annual reports furnished to universal life policyholders to clarify the policyholder actions that may result in an "inactive" status (i.e., loss of the secondary guarantee benefit or cause the policy to lapse).

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

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

The examiner recommends that the Company perform a self-review to identify additional policy forms in which the annual report did not contain the important policyowner disclosures concerning the policy's no lapse guarantee provisions.

The Company's review identified an additional 18 products (total of 19 products in all) issued using 17 policy forms.

The Company identified a total of 24,630 policies in force with an active no lapse guarantee rider or benefit as of June 30, 2019, in which the policyholder did not receive the important disclosures in their annual report.

The Company indicated that corrective action has been taken.

3.) Annual Reports - Policies subject to Section 4232(b) of the New York Insurance Law

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

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

The examiner reviewed the annual report furnished to New York policyholders for additional universal life policy forms, other than those described in the previous section of this report. The annual report disclosed the amount of an outstanding policy loan, if any, as of the end of the reporting period, but it did not specify the maximum loan value available to the policyholder under the policy, should they wish to take a loan against the policy.

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

The Company identified 51,314 policies subject to Section 4232(b) of the New York Insurance Law in which the policyholder did not receive information about the amount available to them as a loan under their policy as of June 30, 2019.

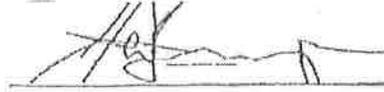
The Company indicated that corrective action has been taken.

## 5. SUMMARY AND CONCLUSIONS

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

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
A	The Company violated Section 3211(g) of the New York Insurance Law and Section 53-3.6(c) of 11 NYCRR 53 (Insurance Regulation 74) by providing in force illustrations to universal life policyholders that were not based upon current mortality, interest, and expense assumptions.	8
B	The examiner recommends that, going forward, the Company revise the annual reports furnished to universal life policyholders to clarify the policyholder actions that may result in an “inactive” status (i.e., loss of the secondary guarantee benefit or cause the policy to lapse).	9
C	The Company failed to comply with Section III.F.1(g) of the Individual Universal Life Product Outline when it did not prominently describe any policyholder action (e.g. partial withdrawal or loan) that may negatively impact the secondary guarantee.	9
D	The Company failed to comply with Section III.F.1(h) of the Individual Universal Life Product Outline when it did not state whether or not the guarantee is in effect on the date of the annual report and the annual report did not include a notice that a lump sum may be required to be paid at the end of the no lapse period to maintain the policy in force.	9
E	The examiner recommends that the Company perform a self-review to identify additional policy forms in which the annual report did not contain the important policyowner disclosures concerning the policy’s no lapse guarantee provisions.	9
F	The Company violated Section 4221(a)(7) of the New York Insurance Law by failing to specify the loan value available to the policyholder under the policy in the annual report.	10

Respectfully submitted,



Ann Marie Thompson  
Senior Insurance Examiner

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

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



Ann Marie Thompson

Subscribed and sworn to before me

this 23rd day of March, 2023



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

Respectfully submitted,

\_\_\_\_\_/s/  
Courtney Williams  
Principal Insurance Examiner

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

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

\_\_\_\_\_/s/  
Courtney Williams

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

**APPOINTMENT NO. 32146**

**NEW YORK STATE**

**DEPARTMENT OF FINANCIAL SERVICES**

I, **LINDA A. LACEWELL**, Superintendent of Financial Services of the State of New York, pursuant to the provisions of the Financial Services Law and the Insurance Law, do hereby appoint:

**ANN MARIE THOMPSON**

as a proper person to examine the affairs of the  
**NEW YORK LIFE INSURANCE AND ANNUITY CORPORATION**  
and to make a report to me in writing of the condition of said  
**COMPANY**

with such other information as he shall deem requisite.

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

this 29th day of September, 2020

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

By: *Mark McLeod*

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

