

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES  
MARKET CONDUCT REPORT ON EXAMINATION  
OF THE  
LIBERTY LIFE ASSURANCE COMPANY OF BOSTON

CONDITION:

SEPTEMBER 30, 2017

DATE OF REPORT:

NOVEMBER 18, 2020

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EXAMINER:

FLORA EGBUCHULAM

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## Department of Financial Services

**ANDREW M. CUOMO**  
Governor

**LINDA A. LACEWELL**  
Superintendent

December 8, 2020

The Honorable Linda A. Lacewell  
Superintendent of Financial Services  
New York, New York 10004

Linda Lacewell:

In accordance with instructions contained in Appointment No. 31686, dated November 20, 2017, and annexed hereto, an examination has been made into the condition and affairs of Liberty Life Assurance Company of Boston, now known as Lincoln Life Assurance Company of Boston, hereinafter referred to as “the Company,” at its primary location of books and records, located at 100 Liberty Way, Dover, NH 03820. The Company’s home office is located at 150 N. Radnor Chester Road, Suite A300, Radnor, PA 19087.

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 several sections of 11 NYCRR 51 (Insurance Regulation 60) by failing to: (i) review Disclosure Statements and ascertain that they were accurate and met the requirements of the Regulation, (ii) furnish the replaced insurer with the required replacement materials and the completed Disclosure Statement within the required time frame, (iii) require an accurate and complete Disclosure Statement signed by the insurance agent or broker in the form prescribed in Appendices 10A and 10B of the Regulation, (iv) either have the deficiencies on the Disclosure Statement corrected or reject the application and notify the applicant of the reason for the rejection, (v) maintain copies of the sales material, including any proposal used in the sale of the annuity contracts, and (vi) provide the applicant with a revised Disclosure Statement when the insurance policy issued differed from the policy applied for. (See items 4A-2 to 4A-7 of this report.)
- The Company violated Section 53-2.8 of 11 NYCRR 53 (Insurance Regulation 74) by utilizing a buyer's guide that did not include a significant portion of the of the required addendum to life insurance buyer's guide. (See item 4A-8 of this report.)
- The Company violated Section 3201(b)(1) of the New York Insurance Law by issuing annuity contracts and life insurance policies using unapproved insurance applications, amendments to applications, and endorsement forms. (See item 4B of this report.)
- The Company violated Section 3211(b)(2) of the New York Insurance Law by failing to include on the notice of premium due the statement 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. (See item 4C-1 of this report.)
- The Company violated several paragraphs of Section 3230 of the New York Insurance Law and several sections of 11 NYCRR 41 (Insurance Regulation 143) by failing to prominently display required accelerated death benefit disclosures on insurance applications and claim forms and by failing to include other statutorily required disclosures on the said forms. (See item 4C-2 of this report.)

## 2. SCOPE OF EXAMINATION

This examination covers the period from January 1, 2011, to September 30, 2017. As necessary, the examiner reviewed matters occurring subsequent to September 30, 2017, 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.

This report on examination is confined to comments on matters which involve departure from laws, regulations or rules, or matters 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 Hampshire on September 17, 1963, under the name of Liberty Life Assurance Company. It commenced business on January 15, 1964. The words “of Boston” were added to the Company’s title on January 20, 1969. The Company obtained its New York license on January 1, 1977.

Effective May 1, 2018, The Lincoln National Life Insurance Company (“Lincoln”), an Indiana life insurer that operates under the marketing name of Lincoln Financial Group, acquired the Company from its parent, Liberty Mutual Insurance Company (“LMIC”). The transaction included reinsuring the Company’s individual life and annuity business to Protective Life Insurance Company, whereas Lincoln maintains and operates the Company’s group insurance business.

Effective September 1, 2019, the Company’s name was changed to Lincoln Life Assurance Company of Boston.

This is the Company’s first statutory examination by the Department.

#### 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, and the country of Canada. As of September 30, 2017, 13.9% of life insurance premiums, 31.4% of annuity considerations, 7.2% of accident and health insurance premiums, and 0.2% of deposit-type contract funds were received from New York. Policies are written on a participating and non-participating basis.

The following tables show the percentage of direct premiums received, by state, and by major lines of business as of the September 30, 2017 examination date:

| <u>Life Insurance Premiums</u>                    |               | <u>Annuity Considerations</u> |               |
|---|---------------|-------------------------------|---------------|
| New York  | 13.9%         | Delaware                      | 32.9%         |
| California  | 9.3           | New York                      | 31.2          |
| Texas   | 7.3           | New Jersey                    | <u>7.3</u>    |
| Pennsylvania                                      | <u>7.2</u>    |                               |               |
| Subtotal  | 37.7%         | Subtotal                      | 71.4%         |
| All others  | <u>62.3</u>   | All others                    | <u>28.6</u>   |
| Total   | <u>100.0%</u> | Total                         | <u>100.0%</u> |
| <br><u>Accident and Health Insurance Premiums</u> |               | <br><u>Deposit Type Funds</u> |               |
| California  | 16.7%         | Delaware                      | <u>60.0%</u>  |
| Texas   | 8.0           |                               |               |
| New York  | <u>7.2</u>    | Subtotal                      | 60.0%         |
| Subtotal  | 31.9%         | All others                    | <u>40.0</u>   |
| All others  | <u>68.1</u>   | Total                         | <u>100.0%</u> |
| Total   | <u>100.0%</u> |                               |               |

The principal lines of business sold during the examination period were individual life insurance, ordinary annuity products, and group life and disability products. The products offered included whole life, term life, universal life policies, deferred and immediate annuity products, as well as short-term and long-term disability products. The Company generated most of its New York premium income from Single Premium Universal Life (\$990,465,158) and Single Premium Deferred Annuity (\$721,434,258).

The Company's agency operations are conducted on a general agency and salaried sales representative basis. The Company utilizes two individual insurance distribution methods: career sales representatives who are employed by the Company's parent, LMIC; and independent broker-dealers and insurance sales agencies that are associated with unaffiliated U.S. banks engaged in insurance sales. Group life insurance products are marketed through licensed independent producers in collaboration with LMIC's salaried sales representatives.



#### 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 sales activities of the agency force including trade practices, solicitation and the replacement of insurance policies.

1. Section 219.4(p) of 11 NYCRR 219 (Insurance Regulation 34-A) states, in part:

"In all advertisements made by an insurer, or on its behalf, . . . [i]f a specific policy or policy series is being advertised, the form or series number or other appropriate description shall be shown. . . ."

Section 219.5(a) of 11 NYCRR 219 (Insurance Regulation 34-A) states, in part:

"Each insurer shall maintain at its home office a complete file containing a specimen copy of every printed, published or prepared advertisement hereafter disseminated in this state, with a notation indicating the manner and extent of distribution and the form number of any policy advertised. . . ."

The examiner reviewed a copy of advertising Form No. 2013033, which was used to market the Freedom Series Flexible Payment Deferred Annuity product during the examination period. The review revealed that the advertisement did not show the policy form number of the product being advertised.

The Company violated Section 219.4(p) of 11 NYCRR 219 (Insurance Regulation 34-A) by failing to include the form number of the product being advertised.

The examiner reviewed a sample of 40 out of 275 examination period advertisements (14.5%). The review revealed that neither the 40 selected advertisements nor the rest of the examination period advertisements contained the extent of distribution. The Company failed to note the extent of distribution for all 275 advertisements included in the examination period's advertisements log.

The Company violated Section 219.5(a) of 11 NYCRR 219 (Insurance Regulation 34-A) by failing to include a notation indicating the manner and extent of distribution for every advertisement disseminated in New York.

2. Section 51.6(b) of 11 NYCRR 51 (Insurance Regulation 60, Second Amendment) states, in part:

“Where a replacement has occurred, or is likely to occur, the insurer replacing the life insurance policy or annuity contract shall: . . .

(3) Examine any proposal used, including the sales material used in the sale of the proposed life insurance policy or annuity contract, and the ‘Disclosure Statement’, and ascertain that they are accurate and meet the requirements of the Insurance Law and this Part . . .”

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

“Where a replacement has occurred, or is likely to occur, the insurer replacing the life insurance policy or annuity contract shall: . . .

(4) examine the sales material, including any proposal, used in the sale of the life insurance policy or annuity contract, and the ‘Disclosure Statement’, and ascertain that they are accurate and meet the requirements of the Insurance Law and regulations promulgated thereunder . . .”

The examiner reviewed a sample of internal and external replacement policy files consisting of 24 annuity contracts and 60 life policies issued during the examination period. The review revealed several inconsistencies from the requirements of Insurance Regulation 60 and significant inconsistencies from the Company’s established replacement guidelines and procedures as summarized below.

In 9 of 24 annuity files (37.5%) and in 19 of 60 life files reviewed (31.7%), the agent failed to indicate the type of annuity contract or life insurance policy being replaced.

In 4 of the 24 annuity files (16.7%) and in 15 of the 60 life files reviewed (25.0%), the agent failed to indicate the existing policy’s or contract’s issue date.

In 31 of the 60 life files reviewed (51.7%), the agent failed to indicate the existing policy’s contestable period or suicide clause expirations.

In 7 of the 24 annuity files reviewed (29.2%), the agent failed to describe the surrender charge rates (percentages) imposed each year on the new contract; and in 27 of the 60 life policy files reviewed (45.0%), the agent failed to record existing contract's or policy’s surrender charge.

And in 2 of the 24 annuity files (8.3%) and in 43 of the 60 life files reviewed (71.7%), the agent indicated that sales materials were used when the review revealed that they were not. The Company expressed that the materials were maintained in its imaging system (“Lunar”); however, the materials were not found in Lunar at the time of the review.

The Company violated Section 51.6(b)(3) of 11 NYCRR 51 (Insurance Regulation 60, Second Amendment) and Section 51.6(b)(4) of 11 NYCRR 51 (Insurance Regulation 60, Third Amendment) by failing to examine and ascertain that the Disclosure Statement was accurate and met the requirements of the Regulation.

3. Section 51.6(b) of 11 NYCRR 51 (Insurance Regulation 60, Second Amendment) states, in part:

“Where a replacement has occurred or is likely to occur, the insurer replacing the life insurance policy contract shall: . . .

(4) Within ten days of receipt of the application furnish to the insurer whose coverage is being replaced a copy of any proposal, including the sales material used in the sale of the proposed life insurance policy or annuity contract, and the completed ‘Disclosure Statement’ . . .”

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

“Where a replacement has occurred, or is likely to occur, the insurer replacing the life insurance policy or annuity contract shall: . . .

(6) within ten days of the delivery of the life insurance policy or annuity contract, furnish to the insurer that issued the coverage that is being replaced the completed ‘Disclosure Statement’ and a list of the sales material, including any proposal, used in the sale of the life insurance policy or annuity contract with an offer to provide a copy of such material within ten days of a request for the material . . .”

In 12 of the 60 life insurance policy replacements reviewed (20.0%) and in 5 of 24 annuity contract replacements reviewed (20.8%), the Company failed to, within ten days of receipt of the complete application, provide the replaced company with a copy of the proposal, including the sales material used in the sale of the proposed life insurance policy or annuity contract, and the completed Disclosure Statement.

The Company violated Section 51.6(b)(4) of 11 NYCRR 51 (Insurance Regulation 60, Second Amendment) by failing to, within ten days of receipt of the complete application, furnish the replaced insurer with a copy of any proposal, including the sales material used in the sale of the proposed life insurance policy or annuity contract, and the completed Disclosure Statement.

Also, in 10 of the 60 life insurance policy replacements reviewed (16.7%) and in 4 of 24 annuity contract replacements reviewed (16.7%), the Company failed to, within ten days of the delivery of the life insurance policy or annuity contract, furnish the insurer that issued the coverage

that was being replaced with the completed Disclosure Statement and a list of the sales material, including any proposal used in the sale of the life insurance policy or annuity contract, with an offer to provide a copy of such material within ten days of a request for the material.

The Company violated Section 51.6(b)(6) of 11 NYCRR 51 (Insurance Regulation 60, Third Amendment) by failing to, within ten days of delivery of the life insurance policy or annuity contract, furnish the replaced insurer with the completed Disclosure Statement and a list of the sales material, including any proposal, used in the sale of the life insurance policy or annuity contract with an offer to provide a copy of such material within ten days of a request for the material.

4. Section 51.6(b) of 11 NYCRR 51 (Insurance Regulation 60, Third Amendment) states, in part:

“Where a replacement has occurred, or is likely to occur, the insurer replacing the life insurance policy or annuity contract shall: . . .

(3) prior to the delivery of the life insurance policy or annuity contract, require an accurate and complete ‘Disclosure Statement’ signed by the insurance agent or broker in the form prescribed in Appendices 10A or 10B to this Part, including the primary reason or reasons for recommending the new life insurance policy or annuity contract and why the existing life insurance policy or annuity contract cannot meet the applicant's objectives. . . .”

In 9 of the 24 annuity files (37.5%) and in 13 of the 60 life files (22.0%), the agent recorded incorrect surrender charges on the replaced policy.

In 11 of the 60 life files reviewed (18.3%), the agent recorded premium amounts that differed from the amounts in the supporting documents.

In 1 of the 60 life files (1.7%), the agent recorded an incorrect guaranteed interest rate for the existing policy.

In 2 of the 60 life files (3.3%), the agent recorded a guaranteed death benefit amount that differed from the amount in the supporting documents.

The Company violated Section 51.6(b)(3) of 11 NYCRR 51 (Insurance Regulation 60, Third Amendment) by failing to require an accurate and complete Disclosure Statement signed by the insurance agent or broker in the form prescribed in Appendices 10A and 10B of the Regulation.

5. Section 51.6(b) of 11 NYCRR 51 (Insurance Regulation 60, Second Amendment) states, in part:

“Where a replacement has occurred or is likely to occur, the insurer replacing the life insurance policy contract shall: . . .

(7) Where the required forms are not received with the application, or if the forms do not meet the requirements of this Part or are not accurate, within ten days from the date of receipt of the application either have any deficiencies corrected or reject the application and so notify the applicant of such rejection and the reason therefor. In such cases, the insurer shall maintain any material used in the proposed sale, in accordance with the guidelines of Section 51.6(b)(6) herein . . .”

In 22 of 60 life replacement policy files reviewed (36.7%), the agent failed to, within ten days from the date of receipt of the application, either have the deficiencies corrected or reject the application and notify the applicant of the reason for the rejection.

The Company violated Section 51.6(b)(7) of 11 NYCRR 51 (Insurance Regulation 60, Second Amendment) by failing to, within ten days from the date of receipt of the application with a deficient Disclosure Statement, either have the deficiencies corrected or reject the application and notify the applicant of the reason for the rejection.

6. Section 51.6(b) of 11 NYCRR 51 (Insurance Regulation 60, Second Amendment) states, in part:

“Where a replacement has occurred, or is likely to occur, the insurer replacing the life insurance policy or annuity contract shall: . . .

(6) Where the required forms are received with the application and found to be in compliance with this Part, maintain copies of: any proposal, including the sales material used in the sale of the proposed life insurance policy or annuity contract; . . . for six calendar years or until after the filing of the report on examination in which the transaction was subject to review by the appropriate insurance official of its state of domicile, whichever is later . . .”

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

“Where a replacement has occurred, or is likely to occur, the insurer replacing the life insurance policy or annuity contract shall: . . .

(8) maintain copies of: the sales material, including any proposal, used in the sale of the life insurance policy or annuity contract; or annuity contract . . . that is to be replaced, indexed by insurance agent and broker, in accordance with Part 243 of this Title (Regulation 152) . . .”

In 17 of the 24 annuity replacements (70.8%) and in 3 of the 60 life files reviewed (5.0%), the Company did not maintain copies of the sales material or proposal used in the sale of the annuity contracts.

In 4 of the 24 annuity files reviewed (16.7%), the copies of the replacement notice to the replaced insurer were not maintained in the files.

A copy of the replacement authorization from the applicant was not maintained in 1 of the 60 life policy files reviewed (1.7%), and a copy of the Important Notice was not maintained in 9 of the 60 life policy files reviewed (15.0%).

The Company violated Section 51.6(b)(6) of 11 NYCRR 51 (Insurance Regulation 60, Second Amendment) and Section 51.6(b)(8) of 11 NYCRR 51 (Insurance Regulation 60, Third Amendment) by failing to maintain copies of the sales material, including any proposal used in the sale of the annuity contracts, copies of the Important Notice, and copies of the authorization for replacement signed by the applicants.

7. Section 51.6(b) of 11 NYCRR 51 (Insurance Regulation 60, Second Amendment) states, in part:

“Where a replacement has occurred, or is likely to occur, the insurer replacing the life insurance policy or annuity contract shall: . . .

(9) In the event the life insurance policy or annuity contract issued differs from the life insurance policy or annuity contract applied for, ensure that the requirements of this Part are met with respect to the information relating to the life insurance policy or annuity contract as issued, including but not limited to the revised ‘Disclosure Statement’, any revised or additional sales material used and acknowledgement by the applicant of receipt of such revised material.”

In 5 of the 60 life replacement files reviewed (8.3%), the life insurance policies issued differed from the life insurance policies applied for, but the agent failed to issue revised Disclosure Statements and to obtain acknowledgements by the applicants of the receipt of such revised statement, including any revised or additional sales material used.

The Company violated Section 51.6(b)(9) of 11 NYCRR 51 (Insurance Regulation 60, Second Amendment) by failing to provide the applicant with a revised Disclosure Statement when the insurance policy issued differed from the policy applied for.

8. Section 53-2.8 of 11 NYCRR 53 (Insurance Regulation 74) states, in part:

“Addendum to Life Insurance Buyer's Guides.

After you have decided which kind of life insurance fits your needs, look for a good buy. Your chances of finding a good buy are better if you use two types of index numbers that have been developed to aid in shopping for life insurance. One is called the ‘Surrender Cost Index’ and the other is the ‘Net Payment Cost Index’. It will be worth your time to try to understand how these indexes are used, but in any event, use them only for comparing the relative costs of similar policies. LOOK FOR POLICIES WITH LOW COST INDEX NUMBERS. . . .”

The examiner reviewed a copy of the life insurance buyer’s guide (the “Buyer’s Guide”) provided to applicants during the examination period. The review revealed that the Buyer’s Guide did not include a significant portion of the addendum required by Section 53-2.8, especially the information on cost indexes. Additionally, the examiner’s review of the underwriting files revealed that the preliminary information and policy summary forms referred applicants to the information on cost indexes, even though such information was not disclosed in the Buyer’s Guide.

The Company violated Section 53-2.8 of 11 NYCRR 53 (Insurance Regulation 74) by utilizing a buyer’s guide that did not include a significant portion of the required addendum to life insurance buyer’s guide.

#### B. Underwriting and Policy Forms

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

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

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

The examiner reviewed a sample of 55 annuity contracts and 197 individual life policy files. The review revealed that 3 of the 55 annuity contracts (5.5%) and 15 of the 197 individual life policies (7.6%) were issued with an unfiled amendment to an application form, Form PLA-20052138. The review also revealed that 50 of the 55 annuity contracts (90.9%) and 20 of the 197 individual life policies (10.2%) were issued with an unfiled endorsement to an application form, Form PLA-20052139.

The examiner's review of a sample of group disability files also revealed that an unapproved version of a group long term disability form, Form GLU-443 NY R was used to issue two contracts. The version the Department approved on July 12, 2002, is Form GLU-443R2 (NY), and it includes the required fraud warning statement. In addition, three group disability contracts were issued with a group policy application form, Form LLP-DBL-APP.1. The Company could not provide a copy of the Department's approval letter or the date the form was submitted and approved by the Department, stating that the form was filed around 1989. There is also no record of this form being filed with the Department. The Company failed to provide the total number of contracts that were issued with these two forms; however, other Company records indicated that 8,762 certificate holders were enrolled in the related contracts' term life benefit.

The Company violated Section 3201(b)(1) of the New York Insurance Law by issuing 3 annuity contracts and 15 life insurance policies using an unapproved amendment to an application form, Form PLA-2008138; by issuing 50 annuity contracts and 20 life insurance policies with unapproved endorsement to an application form, Form PLA-2005139; by issuing 2 group contracts with unapproved form, Form GLU-443 NY R; and by issuing 3 group disability contracts with an unapproved application form, Form LLP-DBL-APP-1. The Company believes that the application form was filed around 1989; however, the Company was not able to locate the stamped-approved copy of the application form.

On November 15, 2019, form GLU-443 R4 (NY) was approved to replace form GLU-443 R2 (NY). On January 30, 2019, forms A-2018168 and E-2018169 were approved to replace forms PLA-2005138 and PLA-20015138 respectively. On June 16, 2020 form LLP-DBL-APP-2 was approved to replace form LLP-DBL-APP-1.



### C. Treatment of Policyholders

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

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

“The notice [of premium due] required by paragraph one of subsection (a) hereof shall: . . .

(2) state the amount of such payment . . . and shall also state that unless such payment is made on or before the date when due or within the specified grace period thereafter, the policy shall terminate or lapse except as to the right to any cash surrender value or nonforfeiture benefit.”

The examiner reviewed a sample of premium due and lapse notices mailed to 48 owners of lapsed policies, which comprised 17 whole life, 25 term life, and 6 universal life policies. The examiner’s review revealed that the pending (reminder) and the lapse (termination) notices varied in contents based on the product type, but the premium due notice was the same form letter regardless of the product type or the billing frequency. The premium due notice did not include the required statement that, unless such payment is made on or before the date when due or within the specified grace period thereafter, the policy shall terminate or lapse except as to the right to any cash surrender value or nonforfeiture benefit. The premium due notices were mailed to 2,670 whole life policyholders; 649 universal life policyholders; and 4,806 term life policyholders during the examination period.

The Company violated Section 3211(b)(2) of the New York Insurance Law by failing to include on the notice of premium due the statement 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 conducted a study to identify insureds who have died within one year of the lapse of their policy. The Company’s research included a cross-check through the social security death master file. The Company identified 13 policies where death occurred within one year of policy lapse processing and paid the death benefits to the stated beneficiaries of the identified policies. Based on the records provided by the Company and reviewed by the examiner, a total of \$1,060,599.42 in death benefits have been paid out as a result of this examination’s finding, which included \$127,111.47 in interest payments.

2. Accelerated Death Benefit Disclosures on Insurance Applications and Claim Forms

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

“The application for a life insurance policy or policy rider which provides for accelerated payment of death benefits or a special surrender value shall:

(1) contain a notice, prominently displayed, to read as follows: ‘Receipt of accelerated death benefits may affect eligibility for public assistance programs and may be taxable.’ . . .”

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

“The application to accelerate benefits shall: . . .

(2) contain a notice, prominently displayed, to read as follows: ‘Receipt of accelerated death benefits may affect eligibility for public assistance programs such as medical assistance (Medicaid), family assistance and supplemental security income. Receipt of accelerated death benefits in periodic payments may be treated differently than receipt in a lump sum. Prior to applying for accelerated death benefits, policyowners should consult with the appropriate social services agency concerning how receipt will affect the eligibility of the recipient and/or the recipient’s spouse or dependents.’

(3) contain a notice, prominently displayed, to read as follows: ‘Receipt of accelerated death benefits may be taxable. Receipt of accelerated death benefits in periodic payments may be treated differently than receipt in a lump sum. Prior to applying for such benefits, policy owners should seek assistance from a qualified tax adviser.’; and

(4) contain a statement by the policy owner that such application is voluntary and without coercion on the part of any third party; and

(5) contain a statement of the remaining death benefit available to the beneficiary.”

Section 3230(d) of the New York Insurance Law states:

“Within five days of receipt of an application to accelerate benefits an insurer must provide the policy owner with the following:

(1) an illustration demonstrating the effect of the accelerated benefit on the policy’s cash value and policy loans;

(2) a numerical computation of the amount of the death benefit which would be payable upon death;

(3) a numerical computation of the amount of the death benefit that would be payable upon acceleration; and

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

Section 41.4(c) of 11 NYCRR 41 (Insurance Regulation 143) states:

“The application for a life insurance policy or an enrollment form for group life coverage providing for accelerated payment of death benefits pursuant to sections 1113(a)(1)(A), (B) or (C) of the Insurance Law shall contain: a prominent notice stating, ‘Receipt of accelerated death benefits may affect eligibility for public

assistance programs and may be taxable'. The notice, except for non-contributory group life coverage, must also include the amount of any separate premium charge or cost of insurance charge. If no separate identifiable premium or cost of insurance charge is made, such notice must disclose whether a discount or lien is associated with the acceleration and any administrative charge required upon the exercise of the benefit.”

Section 41.4(e) of 11 NYCRR 41 (Insurance Regulation 143) states, in part:

“In the case of accelerated payment of death benefits pursuant to sections 1113(a)(1)(A) (B) or (C) of the Insurance Law, the application or claim form to accelerate the payment of the death benefit of a life insurance policy shall provide for the following:

(1) a notice prominently displayed to read ‘Receipt of accelerated death benefits may affect eligibility for public assistance programs such as medical assistance (Medicaid), Aid to Families with Dependent Children and Supplemental Security Income. Receipt of accelerated death benefits in periodic payments may be treated differently than receipt in a lump sum. Prior to applying for accelerated death benefits, (policyowners) (certificate holders) should consult with the appropriate social services agency concerning how receipt will affect the eligibility of the recipient and/or the recipient's spouse or dependents’;

(2) a notice prominently displayed to read ‘Receipt of accelerated death benefits may be taxable. Receipt of accelerated death benefits in periodic payments may be treated differently than receipt in a lump sum. Prior to applying for such benefits, (policyowners)(certificate holders) should seek assistance from a qualified tax advisor’;

(3) a statement by the policyowner or certificate holder that such application is voluntary and without coercion on the part of any third party; . . .

(5) a statement setting forth the remaining death benefits, if any, available to the beneficiary; . . .

(7) the application must be dated by the insurer upon transmittal and be completed and signed by the policyowner or certificate holder not more than 30 days thereafter;

(8) the application or claim form must set forth the statements required by this subsection directly above the policyowner or certificate holder’ s signature. The notices required by this subsection must be set forth in the application or claim form used to apply for the acceleration of death benefits.”

Section 41.4(g) of 11 NYCRR 41 (Insurance Regulation 143) states, in part:

“In the case of accelerated payment of death benefits pursuant to section 1113(a)(1)(A), (B) or (C) of the Insurance Law not later than five days after receipt of an application or claim form to accelerate the payment of the death benefit of a life insurance policy, the insurer shall provide the policyowner or certificateholder with the following:

- (1) a numerical computation of the amount of the death benefit that has been requested to be accelerated and the amount to be paid in cash to the policyowner or the certificate holder;
- (2) a numerical computation of the amount of the death benefit which would be payable upon death, if no part of the death benefit were accelerated;
- (3) an illustration demonstrating the effect of the accelerated death benefit requested on the policy's face amount, specified amount, death benefit . . . as provided under the terms of the policy; and
- (4) a notice that other means may be available to achieve the intended goal, including a policy loan.”

Section 41.4(h) of 11 NYCRR 41 (Insurance Regulation 143) states:

“When the insurer agrees to accelerate the death benefits in a lump sum, the insurer shall issue a new policy or an amended schedule page to the policyowner or give written notification or an equivalent explanation of benefits statement to the certificate holder under a group life policy to reflect any new reduced in-force face amount and other values provided by the policy.”

The Company offered the accelerated death benefit (“ADB”) rider to insureds of newly issued life insurance policies with a face amount of \$20,000 or more. The Company stated that 40,497 qualified policies were issued during the examination period using five life insurance application forms: APP-2008063 NY Rev 06/08, APP-2012139 NY Rev 09/12, SPWL-200314-APP-NY, APP-2008062 NY Rev 06/08, and APP-2007140 NY1 Rev 07/10.

The examiner’s review of the five application forms revealed that the forms included the statement that receipt of accelerated death benefits may be taxable; however, the statement was not prominently displayed on the forms. Each application form has itemized sections that conspicuously states other key information in capital letters, but the ADB statement was inconspicuously included in a paragraph under a section labeled “LIBERTY’S LIVING BENEFIT”—the statement should have been set out by itemization or capitalization in the same format as other key sections of the application forms.

The Company violated Section 3230(a)(1) of the New York Insurance Law and Section 41.4(c) of 11 NYCRR 41 (Insurance Regulation 143) by failing to prominently display the required accelerated death benefit notice on its life insurance application forms.

The examiner reviewed six accelerated death benefit claims, representing the entire population of accelerated death benefits claims processed for New York policies during the examination period. The review revealed that all six claims were processed with claim Form CLM-2009177, which did not include the required disclosure notices of Section 3230(b) of

the New York Insurance Law and several sections of 11 NYCRR 41 (Insurance Regulation 143). Although the form included the language required by Section 41.4(e)(1) of Regulation 143 and partially included the notice provided by Section 3230(b)(2) of the New York Insurance Law that states, “receipt of accelerated death benefits may be taxable,” the notices were not prominently displayed on the form. The form did not contain the notices or statements required by Sections 3230(b)(3), 3230(b)(4) and 3230(b)(5) of the New York Insurance Law and Sections 41.4(e)(2), 41.4(e)(3), 41.4(e)(5), and 41.4(e)(8) of Regulation 143.

The Company stated that claim form CLM-200977 does not include all the required disclosures because the form is only used to initially collect claim information from the claimant and the claimant’s physician, and that it uses disclosure forms PLA-200389, PLA-96134, DS-2008059 NY, DC-2005054, DC-2008060, and PLA-9721 to comply with disclosure requirements of Section 3230 of the New York Insurance Law and Section 41.4 of Regulation 143. These forms’ review revealed that the forms were not compliant with the statutes or regulation. Forms PLA-200389, PLA-96134, DC-2005054, and DC-2008060 were found not to prominently display the notices required by Sections 41.4(e)(1) and 41.4(e)(2) of Regulation 143; Form PLA-200389 does not include the statement required by Section 41.4(e)(5) of Regulation 143; Form PLA-96134 does not contain the notices and statements required by Sections 41.4(e)(1), 41.4(e)(2), 41.4(e)(3), 41.4(e)(4), and 41.4(e)(5) of Regulation 143; and forms PLA-96134 and DC-2008060 did not comply with the requirement of Section 41.4(e)(7) of Regulation 143.

Furthermore, the Company did not issue new policies or amended schedule pages to the policyowners of the six policies to reflect any new reduced in force face amounts and other values provided by the policies where the related accelerated benefit claims were requested and paid in lump sums, in accordance with Section 41.4(h) of Regulation 143.

The Company violated Sections 3230(b)(2), 3230(b)(3), 3230(b)(4) and 3230(b)(5) of the New York Insurance Law and Sections 41.4(e)(1), 41.4(e)(2), 41.4(e)(3), 41.4(e)(5), 41.4(e)(7), and 41.4(e)(8) of 11 NYCRR 41 (Insurance Regulation 143) by processing six accelerated death benefit claims using a claim form, Form CLM-2009177, that did not conform to the disclosure requirements of the said sections and by failing to do one or more of the following: (1) include the required notices and statements, (2) prominently display the required notices and statements,

and (3) comply with the requirement provided by the said sections of the Regulation on four of its accelerated death benefits disclosure forms.

The Company violated Section 41.4(h) of 11 NYCRR 41 (Insurance Regulation 143) when it accelerated the death benefits for six policies in lump sums without issuing new policies or amending the schedule pages to the policyowners of such policies to reflect any new reduced in force face amounts and other values provided by the policies.

The examiner reviewed the numerical computations of the requested amounts of the death benefits, the illustrations of the effect of the requested accelerated death benefits on policy values, other benefit amounts available, and the benefits processing fee. The review revealed that Form DS-2008058 NY is being used for all policy types even although the numerical computation and illustration are specific to only cash value policies. The form's illustration does not include any reference to death benefit, the brief description of the benefit does not indicate that the Company allows an acceleration of 90% of the death benefit; and the list of the qualifying events for the payment of the death benefit disclosure is not adequately displayed. Form PLA-96134 shows a benefit administrative fee of \$150 when all related insurance application forms and the mostly used claim form CLM-2009177 shows only \$100 one-time processing fee, but in practice the fee is based on policy provisions or the fee amount is determined at the time the accelerated death benefit is paid. Two of the six reviewed claims were assessed \$150 based on the policy provisions although the related insurance and claim applications show \$100 one-time processing fee.

The Company violated Sections 3230(d)(1), 3230(d)(2), and 3230(d)(3) of the New York Insurance Law and Sections 41.4(g)(1), 41.4(g)(2), 41.4(g)(3), and 41.4(g)(4) of 11 NYCRR 41 (Insurance Regulation 143) by utilizing disclosure forms with numerical computations, illustrations and other accelerated death benefit disclosures that failed to conform to the prescribed disclosures and by stating on such forms a different benefit processing fee from what is being stated on policy application form, or from what is being charged, when the accelerated death benefit option is exercised.

3. Section 86.4 of 11 NYCRR 86 (Insurance Regulation 95) states, in part:

“(a) Except with respect to automobile insurance, all claim forms for insurance, and all applications for commercial insurance and accident and health insurance, provided to any person residing or located in this State in connection with insurance policies for issuance or issuance for delivery in this State, shall contain the following statement:

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

(d) Location of warning statements and type size. The warning statements required by subdivisions (a) . . . 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 and shall be printed in type which will produce a warning statement of conspicuous size. On claim forms which require execution by a person other than the claimant, or in addition to the claimant, the warning statements required by subdivisions (a) . . . and (e) of this section shall be placed at the top of the first page of the claim form or on the page containing instructions, either in print, by stamp or by attachment and shall be in type size which will produce a warning statement of conspicuous size.

(e) Notwithstanding the provisions of subdivisions (a) and (b) of this section, insurers may use substantially similar warning statements provided such warning statements are submitted to the Insurance Frauds Bureau for prior approval.”

The examiner reviewed a sample of 25 paid claims and 5 denied group life claims. The review revealed that all 25 paid claims (100%) and 3 denied claims (60%) were processed with 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.

The examiner also reviewed a sample of 35 denied and 64 paid individual life claims processed during the examination period. The review revealed that 32 of the 35 denied claims (91%) and 61 of the 64 paid claims (95%) were also processed with 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.

The Company violated Section 86.4(d) of 11 NYCRR 86 (Insurance Regulation 95) by failing to place the required fraud warning statement immediately above the space provided for the signature of the person executing the claim form.

The examiner reviewed eight long term disability denied claims and noted that in four of the eight claims (50%), the fraud warning statement is placed immediately above the space provided for the signature of the person executing the claim form; however, the fraud warning statement is part of the section regarding the recovery of an overpayment and is not a stand-alone, separate statement from any paragraph or provision. This alternate use of the statement by the Company was not submitted to the Department for approval.

The examiner recommends that the Company either amend its claim form to separate the fraud warning statement from other sections of the form to conform to the requirement of Section 86.4(d) of 11 NYCRR 86 (Insurance Regulation 95) or submit its alternate use of the fraud warning statement to the Department for review and approval under Section 86.4(e) of the said Regulation.



## 5. SUMMARY AND CONCLUSIONS

Following are the violations and recommendations contained in this report:

| <u>Item</u> | <u>Description</u>  | <u>Page No(s).</u> |
|-------------|---|--------------------|
| A           | The Company violated Section 219.4(p) of 11 NYCRR 219 (Insurance Regulation 34-A) by failing to include the form number of the product being advertised.  | 6                  |
| B           | The Company violated Section 219.5(a) of 11 NYCRR 219 (Insurance Regulation 34-A) by failing to include a notation indicating the manner and extent of distribution for every advertisement disseminated in New York  | 6                  |
| C           | The Company violated Section 51.6(b)(3) of 11 NYCRR 51 (Insurance Regulation 60, Second Amendment) and Section 51.6(b)(4) of 11 NYCRR 51 (Insurance Regulation 60, Third Amendment) by failing to examine and ascertain that the Disclosure Statement was accurate and met the requirements of the Regulation.  | 8                  |
| D           | The Company violated Section 51.6(b)(4) of 11 NYCRR 51 (Insurance Regulation 60, Second Amendment) by failing to, within ten days of receipt of the complete application, furnish the replaced insurer with a copy of any proposal, including the sales material used in the sale of the proposed life insurance policy or annuity contract, and the completed Disclosure Statement.  | 8                  |
| E           | The Company violated Section 51.6(b)(6) of 11 NYCRR 51 (Insurance Regulation 60, Third Amendment) by failing to, within ten days of delivery of the life insurance policy or annuity contract, furnish the replaced insurer with the completed Disclosure Statement and a list of the sales material, including any proposal used in the sale of the life insurance policy or annuity contract, with an offer to provide a copy of such material within ten days of a request for the material. | 9                  |
| F           | The Company violated Section 51.6(b)(3) of 11 NYCRR 51 (Insurance Regulation 60, Third Amendment) by failing to require an accurate and complete Disclosure Statement signed by the insurance agent or broker in the form prescribed in Appendices 10A and 10B of the Regulation.   | 9                  |
| G           | The Company violated Section 51.6(b)(7) of 11 NYCRR 51 (Insurance Regulation 60, Second Amendment) by failing to, within ten days of receipt of the application with a deficient Disclosure Statement, either have the deficiencies corrected or reject the application and notify the applicant of the reason for the rejection.   | 10                 |

| <u>Item</u> | <u>Description</u>  | <u>Page No(s).</u> |
|-------------|---|--------------------|
| H           | The Company violated Section 51.6(b)(6) of 11 NYCRR 51 (Insurance Regulation 60, Second Amendment) and Section 51.6(b)(8) of 11 NYCRR 51 (Insurance Regulation 60, Third Amendment) by failing to maintain copies of the sales material, including any proposal used in the sale of the annuity contracts, copies of the Important Notice, and copies of the authorization for replacement signed by the applicants.  | 11                 |
| I           | The Company violated Section 51.6(b)(9) of 11 NYCRR 51 (Insurance Regulation 60, Second Amendment) by failing to provide the applicant with a revised Disclosure Statement when the insurance policy issued differed from the policy applied for.   | 11                 |
| J           | The Company violated Section 53-2.8 of 11 NYCRR 53 (Insurance Regulation 74) by utilizing a buyer's guide that did not include a significant portion of the of the required addendum to life insurance buyer's guide.   | 12                 |
| K           | The Company violated Section 3201(b)(1) of the New York Insurance Law by issuing 3 annuity contracts and 15 life insurance policies using an unapproved amendment to an application form, Form PLA-2008138; by issuing 50 annuity contracts and 20 life insurance policies with unapproved endorsement to an application form, Form PLA-2005139; by issuing 2 group contracts with unapproved form, Form GLU-443 NY R; and by issuing 3 group disability contracts with an unapproved application form, Form LLP-DBL-APP.1. | 13                 |
| L           | The Company violated Section 3211(b)(2) of the New York Insurance Law by failing to include on the notice of premium due the statement 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.   | 14                 |
| M           | The Company violated Section 3230(a)(1) of the New York Insurance Law and Section 41.4(c) of 11 NYCRR 41 (Insurance Regulation 143) by failing to prominently display the required accelerated death benefit notice on its life insurance application forms.  | 17                 |

- N The Company violated Sections 3230(b)(2), 3230(b)(3), 3230(b)(4) and 3230(b)(5) of the New York Insurance Law and Sections 41.4(e)(1), 41.4(e)(2), 41.4(e)(3), 41.4(e)(5), 41.4(e)(7), and 41.4(e)(8) of 11 NYCRR 41 (Insurance Regulation 143) by processing six accelerated death benefit claims using a claim form, Form CLM-2009177, that did not conform to the disclosure requirements of the said sections and by failing to do one or more of the following: (1) include the required notices and statements, (2) prominently display the required notices and statements, and (3) comply with the requirement provided by the said sections of the Regulation on four of its accelerated death benefits disclosure forms. 18
- O The Company violated Section 41.4(h) of 11 NYCRR 41 (Insurance Regulation 143) when it accelerated the death benefits for six policies in lump sums without issuing new policies or amending the schedule pages to the policyowners of such policies to reflect any new reduced in force face amounts and other values provided by the policies. 19
- P The Company violated Sections 3230(d)(1), 3230(d)(2), and 3230(d)(3) of the New York Insurance Law and Sections 41.4(g)(1), 41.4(g)(2), 41.4(g)(3), and 41.4(g)(4) of 11 NYCRR 41 (Insurance Regulation 143) by utilizing disclosure forms with numerical computations, illustrations and other accelerated death benefit disclosures that failed to conform to the prescribed disclosures and by stating on such forms a different benefit processing fee from what is being stated on policy application form, or from what is being charged, when the accelerated death benefit option is exercised. 19
- Q The Company violated Section 86.4(d) of 11 NYCRR 86 (Insurance Regulation 95) by failing to place the required fraud warning statement immediately above the space provided for the signature of the person executing the claim form. 20
- R The examiner recommends that the Company either amend its claim form to separate the fraud warning statement from other sections of the form to conform to the requirement of Section 86.4(d) of 11 NYCRR 86 (Insurance Regulation 95) or submit its alternate use of the fraud warning statement to the Department for review and approval under Section 86.4(e) of the said Regulation. 21

Respectfully submitted,

\_\_\_\_\_/s/  
Flora Egbuchulam  
Associate Insurance Examiner

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

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

\_\_\_\_\_/s/  
Flora Egbuchulam

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

NEW YORK STATE

**DEPARTMENT OF FINANCIAL SERVICES**

I, MARIA T. VULLO, 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:

**FLORA EGBUCHULAM**

as a proper person to examine the affairs of the

**LIBERTY LIFE ASSURANCE COMPANY OF BOSTON**

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 20th day of November, 2017

MARIA T. VULLO  
Superintendent of Financial Services

By:



MARK MCLEOD  
DEPUTY CHIEF - LIFE BUREAU

