

(III) EXECUTIVE SUMMARY

This was a target examination focused primarily on claims processing, replacement procedures, consumer complaints and marketing and sales generally covering the period January 1, 2000 through December 31, 2002.

The examiners found that the Company failed to pay the required amount of interest on death proceeds, in Violation 8 V.S.A. § 3665. Additionally, the Company failed to pay such required amounts of interest since 1993, a period of approximately eleven (11) years. The examiners are recommending that the Company immediately start paying the correct rate of interest on all death claims paid under Vermont policies, unless a higher rate is mandated by the law of the beneficiary's state of residence. Further, the Company should go back and recalculate the interest which should have been paid on such proceeds over the past eleven (11) years and remit to these beneficiaries the proper amounts together with additional interest at the rate of six percent (6%) per annum from the dates the original claims were paid until the present.

The examiners found a total of eighteen (18) violations of replacement regulations.

Recommendations were made for revising some of the Company's standards for determining suitability and for including the MainStay series of annuities in the process.

The Company is not in full compliance with Vermont's Variable Life Insurance Regulation 88-3 § 10.

(IV) COMPANY PROFILE

(A) HISTORY

New York Life Insurance and Annuity Corporation was organized and incorporated as a stock life insurer under the laws of the state of Delaware on November 3, 1980. The company is a wholly owned subsidiary of New York Life Insurance Company and commenced operations on December 26, 1980.

New York Life Insurance and Annuity Corporation is licensed in all 50 states and the District of Columbia. The operations are conducted on the branch office plan with the aid of a nationwide computer network linking each general sales office with the home office in New York City and a data processing center in New Jersey.

(B) BUSINESS ENVIRONMENT AND FINANCIAL EFFECT

The Company experienced a growth in fixed life (non-variable) and annuity products during the examination period, 2000 through 2002. The Company partially attributes the increase in fixed life (non-variable) and annuity premiums to the public's uncertainty about the stock market. In 2002, New York Life Insurance and Annuity Corporation introduced a new product, the Choice Fixed Annuity. The Company reports that within three months after its introduction, the Choice Fixed Annuity represented more than 30 percent of all fixed deferred annuities sold by their agents. The Company credits this product's popularity to the higher interest-crediting rate in a market where interest rates are low.

In 2002, annuity premiums increased by 65.6% over annuity premiums in 2001. Similarly, life insurance premiums increased by 43.4% for the same period.

(C) STATUTORY HOME OFFICE

200 Continental Drive
Newark, Delaware 19713

(D) VERMONT REPORTED PREMIUMS

Written premiums in Vermont for the years indicated are as follows:

	2000	2001	2002
Life	3,429,228	3,697,468	5,302,534
Annuities	13,467,337	13,277,267	21,992,104
A & H	0	0	0
Totals	16,896,565	16,974,735	27,294,638

The examiners observed that the state page for Vermont, contained in the Company's annual statement for the year 2002, reported an unusually large increase in both the number of policies and the amount of insurance. Upon inquiry by the examiners, the Company checked the figures and discovered that they had inadvertently reported Virginia figures on the Vermont state page. The Company indicated that they have now amended and refiled the Vermont state page to correct the error.

(V) CLAIMS PROCEDURES AND PROCESSING

The examination included a review of the Company's practices and procedures with regard to life insurance claims. The review entailed all those activities concerning the administration of claims, from the first receipt of notice of loss to the point of final settlement.

The examiners utilized several tests in order to determine compliance with Vermont's statutes and regulations, specifically 8 V.S.A. § 3665 and Regulation 79-2.

Vermont Reported Death Benefits Paid (Ordinary Life) NYLIAC

Year	Death Benefits
2000	\$407,098
2001	\$1,043,599
2002	\$803,289

(A) Claim Practices and Procedures Not In Compliance With 8 V.S.A. § 3665

It is the Company's practice to pay the policy contract rate of 3.5% from the date of death on life insurance proceeds unless the beneficiary's residence state mandates a higher rate. The Company has applied the 3.5% rate since 1993 according to a table depicting interest rate history, which was furnished by the Company. The table is attached to the report as Appendix I A. This practice contravenes 8 V.S.A. § 3665 (c) (2) in that it permits a minimum rate of interest on policy proceeds of 3.5%, whereas the statute requires that "the interest rate shall be the rate paid on proceeds left on deposit, or six percent whichever rate is greater."

Additionally, in those cases where the Company fails to pay a claim within thirty (30) days of receipt of proof of loss, they use the higher of Option 1 (the rate paid on proceeds left on deposit) or 6% from the date of death. 8 V.S.A. § 3665 (d) requires that "if an insurer fails to pay timely a claim, it shall pay interest on the amount of the claim beginning 30 days after a beneficiary files a properly executed proof of loss. In the event judgment is entered for a beneficiary or a settlement agreement between the insurer and the beneficiary is executed, interest shall accrue from thirty days after the beneficiary filed a proof of loss. The interest rate imposed on the insurer shall be the judgment rate allowed by law." The judgment rate in Vermont pursuant to 12 V.S.A. § 2903 (b) is 12%.

The examiners recommend that the Company revise its claim procedures to conform to both 8 V.S.A. § 3665 (c) (2) and 8 V.S.A. § 3665 (d) so that the required interest is paid on all death claim proceeds.

From the table in Appendix I A it can be seen that the Company failed to pay the statutory interest on death claims all the way from 1993 to the present, a period of eleven (11) years.

In view of the above, it is recommended that the Company immediately start paying the correct rate of interest on all death claims paid to beneficiaries under Vermont policies, in addition to recalculating the interest applicable to all such policies for which underpayments of interest were made beginning in 1993. The required amounts of additional interest should include interest at the rate of six percent (6%) per annum, calculated from the original date the claims were paid until the additional amounts are paid.

The additional interest payments described above should be made under the supervision of the Vermont Department. Such payments should be mailed to the last known addresses of the beneficiaries together with a form letter, approved by the Vermont Department, explaining the reason for making the additional payments. In those cases where the checks are returned and the beneficiaries cannot be located, such amounts should be processed in accordance with 27 V.S.A. § 1208 et. seq. (Unclaimed Property Act) of the State of Vermont.

See Appendix I

(VI) PRODUCER LICENSING

This examination included testing the Company's compliance with applicable Vermont licensing laws and rules. The method the examiners employed in this test involved the review and comparison of information from Company records pertaining to license/appointments held by persons soliciting business on behalf of the Company. One such review revealed an irregularity as discussed below.

According to the Company's listing of licensed/appointed agents, agent # 65478's appointment with the Company terminated effective 3-31-00. The examiners note that five (5) annuity contracts were written after the agent was terminated and no longer an appointed agent of the Company, an apparent violation of 8 V.S.A. § 4793. The examiners reviewed the notice of Termination of Contract sent to the State. The section in the notice, which provides the reason for termination, is marked, "was terminated at agent's request".

Upon advising the Company of this discrepancy the Company responded as follows.

In conjunction with the March 2000 Vermont renewals, Mr. . "name's" appointment was terminated in error. Since there was no indication that this rep should be and/or had been terminated, our systems did not reflect the termination and we accepted new business. Corrective steps (including, among others, request copies of all state reports, billing notices, etc. from our Corporate Licensing Review Unit for review and system updates) have been taken to significantly reduce the possibility of future similar occurrences."

See Appendix II

(VII) REPLACEMENTS

(A) Replacement Sample **(Sample VI)**

The examiners selected a random sample of fifty-one (51) replacement files from a total population of four hundred seventy-one (471) to review for possible violations of applicable replacement regulations.

Those policies/contracts that were issued prior to 3-1-02 were tested for compliance with Vermont Replacement Regulation 88-2 and those policies/contracts that were issued after 3-1-02, were tested for compliance with Vermont Regulation 2001-3 (Life Insurance & Annuity Replacement Regulation) effective 3-1-02.

The following chart lists the violations found by the examiners from the replacement sample files. The numbers in the right hand column represent violations of various sections of the replacement regulations and are keyed to the legend that identifies the applicable sections of the regulations.

Violations of Replacement Regulations Replacement Sample

Policy Number	Apparent Violations (Numbers are keyed to legend)
62831296	4
63655355	1,3
63661053	1,2
63641276	1,3
63667181	2,3
63665293	3

There are a total of ten (10) separate violations listed in the above chart.

LEGEND

- 1** No evidence of written communication to existing insurer- Reg. 88-2 § 8 B (2)
- 2** Failure to leave policy illustration with applicant- Reg. 88-2 § 6 B (3)
- 3** No evidence of "Notice Regarding Replacement"- Reg. 88-2 § 8 (C)
- 4** Notice to existing insurer not sent within 5 business days- Reg. 2001-3 § 5 A (2)

(B) Life Stages Annuities (Sample I)
Replacement Violations

The examiners observed violations of Vermont's Replacement Regulation 88-2 during the course of the review of the Company's Life Stages annuities' sample (Sample I). The sample contained fifty (50) policy files that were randomly selected from a population of six hundred fifty-three (653) records. The following chart describes the findings of the review.

Contract #	Criticism/violation
# 58150724	Replacement form not signed at time of taking the application/ no 20 day right to cancel notice in file. 88-2 § 6 B. 1., 88-2 § 8 B. 1. & 2., 88-2 § 8 D.
# 57219272	Replacement form not signed at time of taking the application, letter to existing insurer sent beyond 5 day requirement. 88-2 § 6 B. 1., 88-2 § 8 B. 1., 2. & D.

There were a total of eight (8) separate violations listed in the above chart.

The examiners recommend that the Company assign specific staff members the responsibility for reviewing each replacement file to insure that all of the documents are included and that all of the required procedures have been followed. This review should be made before any file is closed.

(VIII) POLICY LOANS

The examiners observed that, in most cases, it is more beneficial to the insured to have payments which they remit on flexible premium life insurance applied toward repayment of outstanding policy loans, rather than treated as premium payments, for the following three reasons:

1. A premium expense charge is deducted from each premium payment and the premium net of such charge is then applied to increase the cash value. No such charge would be deducted from a loan repayment, thus, the full remittance would be added to the cash value for loan repayments as opposed to premium payments.
2. Repayment of a loan reduces or eliminates the policy loan interest, which must be paid or charged against the policy's cash value. If the remittance were treated as a premium payment it would not abate the accrual of policy loan interest in any way.
3. The Company credits higher rates of interest to the unloaned portion of the policy's cash value than it does to the loaned portion. Thus, if an insured's remittance were applied as a loan repayment it would increase the "unloaned" portion of the cash value and therefore, the cash value would receive more interest credited to it by virtue of the loan repayment.

In response to the examiners' suggestion that the Company advise policyholders of the advantages of having their remittances applied as policy loan repayments rather than premium payments, the Company reviewed their billing/administrative practices and voluntarily agreed to change their loan bills to provide additional disclosure to customers. The revised bills are to include a statement advising customers that it can be more beneficial to their policy's performance to repay their loan than to pay premiums. This administrative change is to be implemented within the 120 days from October 1, 2003.