

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

Andrew M. Cuomo
Governor

James J. Wrynn
Superintendent

September 6, 2011

Kathleen A. McGah, Esq.
Vice President and Counsel
Phoenix Life Insurance Company
One American Row
P.O. Box 5056
Hartford, CT 06102-5056

Re: Phoenix Life Insurance Company
COI Increase – U607 NY and 05PAUL
File No. 1005160

Dear Ms. McGah:

I write in regard to the Department's investigation into Phoenix Life Insurance Company's ("Phoenix's") cost of insurance ("COI") rate increase for Phoenix's flexible premium adjustable universal life ("UL") insurance policy forms 05PAUL ("Accumulator UL") and U607 NY ("Accumulator UL II") (collectively, the "Policies").

With regard to the COI rates, the Policies state that the COI rate will be based upon certain characteristics: insured's age at issue, risk class and sex, and policy duration, for the Accumulator UL II; and sex, age, risk classification, basic face amount, supplemental face amount, net amount at risk, and the duration that the coverage has been in force for the insured, for the Accumulator UL.

As to the Accumulator UL II, there is no language in the policy that states that Phoenix will take into consideration a funding ratio of the policy's accumulated value to the face amount when adjusting COI rates. In addition, the change made to the COI rates based on the new formula using the funding ratio is contrary to the language in the policy that any change in rates will be made on a uniform basis for all insureds in the same class. The change in the COI rate varies from policy to policy based on the funding ratio. Therefore, by increasing COI rates in a manner that is inconsistent with the terms of the Accumulator UL II, Phoenix violated Insurance Law § 3201.

Furthermore, Phoenix violated Insurance Law § 3204(a)(1), because it used the funding ratio as a factor for a change in the COI rates even though the Accumulator UL II does not include the funding ratio as a factor for any change in COI rates. Section 3204(a)(1) requires a policy to contain the entire contract between the parties and prohibits incorporation by reference, unless a copy of the referenced document is endorsed upon or attached to the policy when issued.

With regard to the Accumulator UL, page 12 of this policy form states that rates for the COI charge as of the policy date are based on the sex (if applicable), age, risk classification, basic face amount, supplemental face amount, net amount at risk, and duration that the coverage has been in force for the insured. While the Accumulator UL refers to the net of amount of risk as a basis for determining the initial COI rates, this reference alone is insufficient to alert policyholders that Phoenix may take into consideration the funding of their account values relative to their face amounts when deciding whether to increase their COI rates. While page 3 of the Accumulator UL states that the actual premiums paid will affect the policy value, the duration of insurance coverage, and the amount of the death benefit, it does not indicate that actual premiums paid will affect COI rate increases.

From the aforementioned policy language, it would be unreasonable to expect a policyholder to conclude that the funding ratio of his or her policy is a factor that Phoenix may use in a new formula developed after policy issuance to increase COI rates. Nor would the Department have anticipated that a COI rate increase would apply as a function of the funding ratio based on the policy's use of the phrase "net amount at risk."

As a result, the Accumulator UL violates Insurance Law §§ 3102(c)(1)(A) and (B), which require that insurers write insurance policies in a clear and coherent manner and that wherever practicable, insurers use words with common and everyday meanings to facilitate readability and to aid the insured or policyholder with understanding the coverage provided. The Accumulator UL policy, without further explanatory language on how the term net amount risk could be utilized by the insurer to take into consideration a policy's funding ratio for COI rate increases, does not meet this standard. The Accumulator UL is also inconsistent with Insurance Law § 3201(c) (1) because it is misleading to the policyholder.

In addition, the Accumulator UL violates Insurance Law § 4232(b)(2), because page 12 of the Accumulator UL states that COI rates will be based, in part, upon Phoenix's expectations of capital and reserve requirements and tax assumptions. Section 4232(b)(2) only permits insurers to guarantee or credit additional amounts based upon reasonable assumptions as to investment income, mortality, persistency, and expenses.

With regard to the advertising materials that you submitted to the Department, given the way in which Phoenix implemented the COI rate increase, the materials are misleading and misrepresent the benefits and advantages of the Policies in violation of Insurance Law §§ 2123(a)(1) and 4226(a)(1) and 11 NYCRR Part 219 (Regulation 34-A). The advertising materials make numerous statements emphasizing premium payment flexibility, but do not make any statements to the effect that a person's failure to fund the policy at a certain level may affect

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expectations with regard to future mortality, persistency, investment earnings, and expenses, thereby resulting in a COI rate increase.

In light of the foregoing, Phoenix is hereby directed to take the following remedial actions:

(1) Phoenix must reduce the COI rate for the affected policies to the COI rate that was in effect prior to the increase.

(2) Phoenix must credit the positive difference, if any, between the COI rates paid and the revised COI rates accumulated, with credited interest, to the policy values of the affected policies.

(3) Going forward, Phoenix may not use a policy's funding ratio as a basis for determining the allocation of COI rates among policy classes for these policies, and must implement changes in COI rates consistent with the Insurance Law and regulations promulgated thereunder, the relevant provisions of the Policies, and Phoenix's advertising materials.

The Department at this time will not address the Insurance Law §§ 4224(a)(1) and 4232(b)(4) issues related to the COI rate increases, as addressed in your February 8, 2011 submission to Supervising Insurance Examiner Ruth Gumaer. However, the Department reserves the right to revisit these issues.

Phoenix is directed to file with the Department, within 30 days from the date of this letter, a written plan describing the steps Phoenix will take to implement the remedial actions described above and a timeline for those steps, which shall be undertaken as expeditiously as possible. The written plan, and any questions regarding the foregoing, should be directed to the undersigned.

Very truly yours,



Michael Maffei
Assistant Deputy Superintendent and Chief
Life Bureau

cc: James J. Wrynn, Esq., Superintendent
Martin A. Schwartzman, First Deputy Superintendent
Martha A. Lees, Deputy Superintendent and General Counsel