

New York Life Agents Purchasing Group Sponsored Agents E&O Program Professional Liability Plan (“PLP”) Frequently Asked Questions

Frequently Asked Questions

1. [Who Is the Insurer?](#)
2. [Who Is the Sponsor of the Group Life Insurance Agents’ Errors and Omissions Liability Policy \(hereinafter referred to as “PLP”\)?](#)
3. [Who/What are Insureds Under the PLP?](#)
4. [Am I Required to Enroll in the PLP?](#)
5. [Do I Need to Submit Proof of My Errors and Omissions Coverage If It Is Not Through the PLP?](#)
6. [What Are Damages?](#)
7. [What Are Your Limits of Liability?](#)
8. [Can I Change My Limits During the Plan Year?](#)
9. [What Professional Services Are Covered?](#)
10. [Am I Covered for The Loss and Unauthorized Disclosure of Private, Personal Information?](#)
11. [What Is Your Deductible?](#)
12. [Are Prior Acts Covered Under the PLP?](#)
13. [Is Financial Planning Covered?](#)
14. [Am I Covered for the Sale of the Insurance Products of Other Life Insurance Companies?](#)
15. [Does Berkshire Hathaway Provide a Defense?](#)
16. [Does Berkshire Hathaway Cover Regulatory Inquiries, Subpoenas or Other Requests for Information?](#)
17. [Can I Settle a Claim Without Berkshire Hathaway’s Consent?](#)
18. [Is Personal Injury Coverage Provided Under the Policy?](#)
19. [Am I Covered for Any Activities Related to Property and Casualty Insurance?](#)
20. [Am I Covered for claims from my prior company that I violated a non-compete provision contained in that prior carrier’s agent contract?](#)
21. [Is the Cost of this Policy Competitive?](#)
22. [What Does “Claims Made and Reported” Mean?](#)
23. [What Is a Cost of Correction or Trade Error Claim?](#)
24. [When Does My Coverage for Professional Services Terminate?](#)
25. [Can I Get a Refund If I Terminate My Contract with NYL?](#)
26. [Is There an Extended Reporting Period \(ERP\)?](#)
27. [I Need to File a Claim – What Do I Do?](#)

1. Who Is the Insurer?

National Fire & Marine Insurance Company, a Berkshire Hathaway Specialty Insurance company (hereinafter referred to as “Berkshire Hathaway”) which has an A.M. Best rating of A++ as of June 2020.

2. Who Is the Sponsor of the Group Life Insurance Agents’ Errors & Omissions Liability Policy (hereinafter referred to as “PLP”)?

The New York Life Agents Purchasing Group.

3. Who/What Are Insureds Under the PLP?

• Enrolled Agents

Enrolled Agents who have an agent's contract with NYL or a NYL subsidiary and are licensed by the appropriate authorities to solicit and sell life, accident, and health insurance products and/or services.

- **Enrolled Registered Representatives of NYLIFE Securities LLC**
Enrolled Registered Representatives who have an agent's contract with NYL or a NYL subsidiary and a registered representative agreement with NYLIFE Securities LLC (hereinafter referred to as "NYLSEC") and are licensed by the appropriate regulatory authorities.
- **Enrolled Grandfathered NYL Agents**
An enrolled grandfathered NYL agent who is associated with a broker/dealer other than NYLSEC and who has met all of the following conditions: i) is currently enrolled in the PLP, ii) renews coverage under the PLP, iii) has permission from NYL to associate with an outside broker/dealer that is registered with FINRA, iv) has a registered representative agreement with that broker/dealer, v) sells all securities through that broker/dealer, and vi) is licensed by the appropriate regulatory authorities. NYL will provide a list of these agents to Berkshire Hathaway.
- **Employees of Insured**
Employees acting on behalf of an Insured, but only with respect to professional services as defined in the policy (hereinafter called "Professional Services") provided by the Insured.
- **Enrolled Employees of NYL**
Enrolled employees of NYL or a NYL subsidiary who are engaged in Professional Services. TAS agents are included in this group.
- **Owned Business Entity**
Any corporation, partnership, or other business entity that engages in Professional Services and is either owned or controlled by an Insured Agent is generally covered under the Insured's policy. Such entity is covered only with respect to those operations of the business entity related to the Professional Services provided by the Insured Agent.
- **Enrolled IARs of Eagle Strategies LLC**
Enrolled Investment Adviser Representatives ("IARs") of Eagle Strategies LLC (hereinafter referred to as "Eagle" or "Eagle Strategies") who: i) have an agent's contract with NYL and are properly licensed; and ii) render financial investment advice on behalf of Eagle for compensation pursuant to a written contract defining the scope of their services and the amount of compensation.
- **Licensed or Registered Service Assistants**
Licensed or Registered Service Assistants are generally covered under the Supervising Agent's policy for any services that they perform on the Supervising Agent's behalf while assisting the Supervising Agent in the sale or servicing of covered insurance products, mutual funds, and securities. This is conditioned on the Licensed or Registered Service Assistants' acting within the scope of their duties as defined by the appropriate regulatory authorities.
- **NYL and Subsidiaries and Referring Agents/Subagents**
NYL and its subsidiaries, and also Referring Corporate Agents, Referring Corporate Subagents, and Referring Business Agents (hereinafter referred to as "Referring Agent(s)/Subagent(s)"), who have a non-soliciting Memorandum of Understanding with NYL are covered as Additional Insureds under the Insured Selling Agent's policy. This means that they are covered to the extent that a claim involves liabilities arising from the Selling Agent's allegedly negligent acts, errors, or omissions. For example, if a Referring Agent/Subagent is sued solely because of an allegedly negligent referral to the Selling Agent s/he will not be covered under the Selling Agent's policy (hence the need for separate coverage).

Each Referring Agent/Subagent, who has a Non-Soliciting Memorandum of Understanding with New York Life and is enrolled in the PLP, is generally covered for claims of an improper referral to a Selling Agent. Activities or services beyond the scope of providing a referral will not be covered.

Subject to a \$25,000 deductible per claim, NYLIFE Securities LLC and NYLINK Insurance Agency Incorporated are each covered for \$1M per claim/\$5M in the aggregate for direct liability in their capacity as General Agents.

Important Note: Coverage limits afforded to the Agent are shared with the individuals or entities covered under the Agent's policy. Coverage for NYLIFE Securities LLC and NYLINK Insurance Agency in their capacities as General Agents will not erode an individual Agent's limits unless NYLIFE Securities LLC or NYLINK Insurance Agency is sued as the result of an Agent's negligent acts, errors, or omissions.

- **Referring Broker Sub-producers¹**

Referring Broker Sub-producers under the Professional Alliance Program who enroll in the PLP and pay a premium are covered for referrals to Soliciting Agents, who are enrolled in the PLP, for individual life insurance policies, annuities, and health insurance policies issued by NYL. Coverage is subject to limits of \$1M per claim and \$1M per policy period. Coverage does not extend to any acts, errors, or omissions unrelated to the referral of a client to a New York Life Agent for the sale of the products specified.

4. Am I Required to Enroll in the PLP?

No. Enrollment in the PLP is voluntary, but NYL requires that you have E&O coverage that meets the following criteria:

- Minimum Limit of Liability of \$1M per Claim/\$3M annual aggregate or \$2M per claim/\$2M annual aggregate.²
- Coverage for other life insurance company products, not just NYL products.
- Coverage is written by a carrier rated A or higher by A.M. Best.
- Covers professional services as defined in Sections II.F.1, 2 and 4 in the Highlights.
- Provides vicarious liability coverage for NYL by naming NYL as an Additional Insured under your E&O policy.

If you are an IAR registered with Eagle, the coverage must also encompass the investment advisory services and financial planning services provided through Eagle Strategies Corporation.

5. Do I Need to Submit Proof of My Errors and Omissions Coverage If It Is Not Through the PLP?

Yes. If you opt out of the PLP, you must purchase coverage that meets the criteria set forth in the answer to question number 4. Then you must submit proof annually of that coverage to Aon.

6. What Are Damages?

Damages are monetary amounts for which an Agent is legally liable. Damages do not include fines or penalties imposed by law, punitive or treble damages, the return or withdrawal of fees, commissions or brokerage charges or surrender charges (other than those surrender charges that exceed commissions), non-pecuniary or injunctive relief, or amounts from acts deemed uninsurable by law.

7. What Are Your Limits of Liability?

Each Established Agent or enrolled employee has the option of purchasing a limit of liability of one

¹ In these FAQs, "Referring Broker Sub-producer(s)" refers to someone with a Referring Sub-producer's Contract (for use with the Referring Broker Contract for Corporations) and also the licensed and appointed individual (e.g., sole proprietor) associated with a Referring Broker's Contract for Businesses.

² Referring Broker Sub-producers have different limit requirements (See Section 7).

of the following: \$1,000,000 each Claim/\$3,000,000 Annual Aggregate or \$2,000,000 each Claim/\$6,000,000 Annual Aggregate³. TAS Agents in their first contract year, Referring Agents/Subagents, PTAS Agents and College Interns can only elect \$1,000,000 each Claim/\$3,000,000 Annual Aggregate.

Referring Broker Sub-producers have only one option: \$1,000,000 each Claim/\$1,000,000 Annual Aggregate, which covers them for their referrals to Established Agents.

Claims arising out of cybersecurity breaches are subject to sublimits of liability (please see Section II (U) of the PLP Highlights for more information).

Please note that your per claim limit is the maximum Berkshire Hathaway will pay on your behalf in damages for any one claim. The aggregate limit is the maximum amount Berkshire Hathaway will pay for damages in any policy period for each Agent or Referring Broker Sub-producer, regardless of the number of claims. However, with exception of cybersecurity claims, coverage for defense costs is in addition to the limits of liability.

8. Can I Change My Limits During the Plan Year?

No. Limit changes (increases or decreases) can only be made during annual enrollment.

9. What Professional Services Are Covered?

For Agents, "Professional Services" shall mean:

1. The sale or servicing and the attempted sale or servicing of:

- a. Life Insurance, Accident and Health Insurance, Workers' Compensation Insurance as part of a 24-Hour Accident and Health Insurance product, Disability Income Insurance, Annuities, and Long Term Care Insurance;
- b. Variable products, including, but not limited to Variable Annuities, Flexible and Scheduled Premium Annuities, and Variable Life Insurance;
- c. Employee Benefit Plans, other than "Placement of Coverage with Multiple Employer Welfare Arrangements" ("MEWAs"), including Group Plans, Group or Ordinary Pension or Profit Sharing Plans, Retirement Annuities, Life, Accident and Health, and/or Disability Plans;
- d. Mutual Funds registered with the Securities and Exchange Commission.
- e. (1) "Securities" for which NYLSEC acted as "Broker/Dealer" in connection with the specific sale out of which the "Claim" arose;
- (2) "Securities" sold through a "Broker/Dealer" authorized by New York Life or its "Subsidiary"; or
- (3) "Securities" sold through a prior "Broker/Dealer" under the following circumstances:
 - (a) the prior "Broker/Dealer" is a FINRA member firm;

³ Certain Agents who are 2019 or 2020 Chairman's Council agents, or agents who have qualified for Chairman's Council at least twice within the last five years (2016 – 2020 Council years), and Agents who are Investment Advisor Representatives of Eagle Strategies who are required to maintain this level of coverage in the discretionary LWP programs are eligible to purchase limits of \$5,000,000 each Claim/\$10,000,000 Annual Aggregate.

- (b) the “Insured” Registered Representative had a contract with the prior “Broker/Dealer” to sell “Securities” at the time the sale took place; and
 - (c) the “Securities” were approved products of the prior “Broker/Dealer”.
- 2. The provision of financial planning services or investment advice and the delivery of financial planning or investment products and programs, but only if the “Claim” involves the products listed above in Section 9.1 and the referral of discretionary trusts funded solely with the products listed in Section 9.1 above. Investment Advisor Representatives are not limited to the products set forth in Section 9.1. See Section 13.
- 3. The referral of a person or organization to a Named Insured by an “Insured” Referring Agent/Subagent.
- 4. Providing investment advice as a fiduciary adviser pursuant to the Pension Protection Act of 2006, and any amendments thereto.
- 5. The recruiting, hiring, contracting, selecting, training or supervision of anyone in the conduct of an “Insured’s” profession, except with respect to any “Claim” alleging wrongful termination or discrimination.
- 6. The referral of a person to a covered Agent by a covered Referring Broker Sub-producer resulting in the sale of individual life insurance policies, annuities or health insurance policies issued by NYL.

10. Am I Covered for Loss or Unauthorized Disclosure of Private, Personal Information?

Yes, within certain sublimits of liability, each Agent is covered for cybersecurity claims, incident response costs, and extortion demands. This coverage may be triggered by a claim by a customer seeking damages for the loss of his or her personally identifiable information, such as social security number, or protected health information. Coverage may also be triggered by an inquiry or action by a regulator. The coverage will also pay for expenses incurred in response to a privacy event, such as costs for notification to customers, expert analysis of an Agent’s network that was breached, or credit monitoring services offered to affected customers. You may also be eligible for certain qualified business interruption expenses, while your network is inoperable. Please refer to Section II (U) of the PLP Highlights for details, including applicable sublimits.

11. What Is Your Deductible?

There is no deductible for any claims with only three exceptions, for which a \$2,500 per claim deductible applies (please see Exclusion S in Section III, as well as the coverage extensions described in Sections II.V and II.Y of the PLP Highlights for these exceptions).

12. Are Prior Acts Covered Under the PLP?

Yes, Prior acts are covered as long as:

- a. The Insured had no knowledge prior to his or her original date of enrollment in the PLP of a circumstance that could reasonably be expected to result in a Claim;
- b. There is no other valid and collectible insurance available;
- c. The alleged errors or omissions fall within the scope of covered professional services; and
- d. If a claim involves the sale of a securities product, the covered Agent’s prior broker/dealer:

- was a member firm

- had a registered representative agreement with the covered Agent at the time of sale; and
- approved the security that was sold

13. Is Financial Planning Covered?

Yes. For Agents who are not Investment Advisor Representatives (“IAR”) of Eagle Strategies, financial planning and investment advice are covered as long as they are incidentally rendered in relation to products included within the definition of “Professional Services”. Agents who are also Investment Adviser Representatives of Eagle Strategies are covered for financial planning and investment advice for all products, other than those that are excluded. IARs are also covered for providing: i) investment advice as a fiduciary adviser under ERISA to a plan sponsor (but NOT for acts taken in their capacities as plan sponsors, trustees or other Named Fiduciaries as defined by ERISA); ii) referral or advice regarding third-party investment managers evaluated by Eagle; and iii) service provider support and plan participant education and enrollment. This coverage is afforded provided that the IARs have a written contract with Eagle Strategies that defines the scope of such advice and/or services and their compensation.

14. Am I Covered for the Sale of the Insurance Products of Other Life Insurance Companies?

Yes. For Agents, Berkshire Hathaway’s policy covers you for the professional services you render as a life insurance agent for other companies. The rating of the other company issuing the product does not affect coverage except in the event a claim is made against you based on that company’s insolvency or inability to pay policyholder claims (see Exclusion J of the PLP highlights).

15. Does Berkshire Hathaway Provide a Defense?

Yes. Berkshire Hathaway has the right and duty to defend a claim against you alleging negligent acts, errors, or omissions in rendering or failing to render Professional Services for third parties in your capacity as a NYL agent. Subject to the policy terms and conditions, a defense is provided even if the suit is groundless, false, or fraudulent. This means that Berkshire Hathaway will appoint counsel for you. You should not retain your own counsel unless Berkshire Hathaway gives you written consent to do so. Doing so could jeopardize your coverage.

16. Does Berkshire Hathaway Cover Regulatory Inquiries, Subpoenas or Other Requests for Information?

Yes, coverage under the PLP is triggered when an insured reports a Claim, which is defined generally as a demand for monetary Damages, but Berkshire Hathaway also extends coverage for pre-Claim assistance in certain instances. Berkshire Hathaway will retain an attorney to assist an insured agent in responding to a regulatory inquiry, subpoena, or other formal request for information if related to Professional Services. Potential Claims and requests for pre-Claim assistance may be reported in the same manner described in FAQ #27, below.

17. Can I Settle a Claim Without Berkshire Hathaway’s Consent?

No. You should not make any payment, admit any liability or settle any claim without Berkshire Hathaway’s prior written consent. Doing so may jeopardize your coverage under the policy.

18. Is Personal Injury Coverage Provided Under the Policy?

Yes. Personal injury (which includes defamation, libel, or slander) is covered as long as it arises in connection with the rendering or failing to render professional services as defined in the policy for clients in your capacity as an Agent or Registered Representative.

19. Am I Covered for Any Activities Related to Property and Casualty Insurance?

No.

20. Am I Covered for claims from my prior company that I violated a non-compete provision contained in that prior carrier's agent contract?

No.

21. Is the Cost of this Policy Competitive?

The premium for this policy is considerably less than the cost of procuring comparable insurance independently. In addition, this group policy provides broader coverage than most group policies at very competitive rates.

22. What Does "Claims Made and Reported" Mean?

A Claim is "made" when you first receive an oral or written demand for monetary damages, including but not limited to the service of suit or the institution of arbitration proceedings. A Claim is reported by your giving written notice of it to Aon.

It is critical to remember that any Claim be reported to Aon in writing as soon as possible so that Aon can report the claim to Berkshire Hathaway on your behalf. Please see Section 27 below or Section IV of the Highlights for instructions.

23. What Is a Cost of Correction or Trade Error Claim?

A cost of correction or trade error claim ("Trade Error Claim") generally arises from your failure to follow or implement directions from a client in connection with a registered insurance product or investment. If the error is not immediately corrected, a client would typically bring a claim. Trade Error Claims are covered under the policy so long as the negligent act, error, or omission would otherwise be covered under the policy, the correction is approved by and made by NYL or a NYL subsidiary, and timely reported to Berkshire Hathaway. Please note that if an agent or registered representative makes a correction, the coverage does not apply.

24. When Does My Coverage for Professional Services Terminate?

You are covered for the Professional Services described above until the expiration of the **current** policy period or the cancellation of your Certificate of Insurance under the NYL PLP, whichever occurs earlier.

25. Can I Get a Refund If I Terminate My Contract with NYL?

Yes, you may obtain what is known as a "short rate" refund of a portion of your premiums if you send Aon a written request to cancel your certificate of insurance. For agent terminations/resignations and agents who become NYL employees, all cancellation requests must be received within 60 days of the date the agent terminated/resigned or became a NYL employee. All other cancellation requests must be received no later than October 31st, 2021. Please note that the short rate refund would be less than a pro rata refund. More importantly, acts or omissions occurring subsequent to the effective date and time of the cancellation of the policy will not be covered under the PLP. Therefore, depending on whether you have obtained coverage under another policy and the scope of such coverage (e.g., whether it covers prior acts), you may have a gap in coverage and could be exposed to claims for which you do not have any insurance. If you wish to cancel your certificate of insurance, please contact Aon Affinity for additional information.

If you do not send Aon a written request to cancel your certificate of insurance after your contract has been terminated or you do not otherwise cease having coverage under the PLP, the PLP will continue as your primary coverage until the end of the policy period unless you have obtained applicable coverage under another policy. Under those circumstances, the PLP will constitute excess coverage through the expiration of the current policy period. Assuming that you are covered on either a primary or excess basis until the PLP policy period expires, there will be no refund.

26. Is There an Extended Reporting Period (ERP)?

Yes. There is an automatic unlimited ERP during which you may report claims arising out of Professional Services rendered before the termination of your coverage under the NYL PLP. This ERP is available for as long as Berkshire Hathaway continues to underwrite the NYL PLP. In the event that Berkshire Hathaway were no longer the underwriter for the PLP, the ERP would default to three years for claims arising from the sale and servicing of NYL products or to one year for claims arising from the sale and servicing of outside products.

Please note that the ERP only enables you to report claims involving acts or omissions that occurred prior to your termination of coverage under the PLP, as described above. The automatic ERP requires no additional premium payment.

If you meet the eligibility requirements set forth below and want to protect yourself against possible gaps in coverage because of the possibility that the unlimited ERP described above was no longer available (i.e., Berkshire Hathaway was no longer the underwriter of the PLP), you have the right to purchase an optional ERP that is broader than the automatic ERP applicable under those circumstances. You must pay an additional premium for the optional ERP. The amount of the additional premium depends on the length of the ERP you elect to purchase. The ERP extends for the duration of the reporting period the same Limits of Liability you had when your contract with NYL was terminated. Please call Aon for further information.

Further, under no circumstances will there be coverage for sales made or services provided after the earlier of the expiration of the policy period or the cancellation of your coverage (i.e., the termination of your coverage). Finally, the ERP will not be available if you have other applicable coverage

ERP Eligibility:

- Automatic ERPs -- The automatic ERP extends to all agents enrolled in the NYL PLP who terminate their agent contract with NYL and who do not have other applicable insurance. The automatic ERP does not extend to any professional services rendered after termination of coverage under the PLP.
- Optional ERPs -- Those eligible include the enrollees in the PLP who retire or become disabled, the representatives of deceased agents, as well as any other enrollees who cease rendering Professional Services (including agents who terminate their agent contract and become employees of NY Life). As with all ERPs described herein, the Optional ERPs apply only in the absence of other applicable insurance.

ERP Election:

- Automatic ERPs -- no election required. Subject to the terms and conditions of the policy, the ERP is automatically provided to those who are eligible at no additional cost.
- Optional ERPs -- those eligible must elect to purchase by contacting Aon and paying the applicable premium and fees within the later of 60 days from the expiration of the policy period or cancellation of the agent's coverage under the Berkshire Hathaway policy or 30 days from the date of mailing or delivery of the notice about the ERPs from Berkshire Hathaway.

ERP Inception:

The ERPs begin upon the expiration of the current policy period or the cancellation of your coverage, whichever is earlier.

27. I Need to File a Claim – What Do I Do?

- Complete the Claim Report Form found on the last page of the Professional Liability Plan Highlights. The Highlights can be found linked in the Professional Liability Plan Field News.
- Promptly send the completed Claim Report Form and all supporting documentation to Aon at the address listed at the bottom of the Claim Report Form. If the claim is a lawsuit, send a copy of the complaint with the claim report by overnight express mail.
- Upon receipt of the information, Aon will forward it immediately to Berkshire Hathaway and you will then be contacted by the Berkshire Hathaway claims attorney assigned to handle your claim.
- Develop a written chronology of events giving rise to the claim. This should be forwarded to Berkshire Hathaway after the claims adjuster has been identified.
- Be prepared to provide a copy of your file to the Berkshire Hathaway claims adjuster. Do not discard any emails and/or documents related in any way to the claim.
- Do not discuss the claim with anyone other than representatives from Berkshire Hathaway, Aon, or NYL's Office of the General Counsel, Corporate Compliance, Corporate Insurance Management, or Agency Departments.
- Do not admit liability or agree to settle a claim without Berkshire Hathaway's prior written consent.
- Do not retain counsel. Berkshire Hathaway will appoint counsel to represent you.
- Cooperate fully with Berkshire Hathaway and your defense counsel, if any.