



# Errors & Omissions Highlight Guide



THIS OUTLINE PROVIDES GENERAL INFORMATION ON YOUR ERRORS AND OMISSIONS PROGRAM WITH BERKSHIRE HATHAWAY. IT IS NOT INTENDED TO INTERPRET THE TERMS OF THE POLICY OR TO GIVE LEGAL ADVICE, BUT RATHER TO SUMMARIZE OUR UNDERSTANDING OF THE COVERAGE PROVIDED. IF THERE IS AN INCONSISTENCY BETWEEN THIS OUTLINE AND THE POLICY LANGUAGE, THE TERMS AND CONDITIONS OF THE POLICY SHALL CONTROL.

## Highlights of the Errors and Omissions Professional Liability Plan (PLP)

This is a voluntary program for the Agents of New York Life Insurance Company

Sponsored by the New York Life Agents' Purchasing Group

### *Policy Number*

*42-PLA-151408-01*

### *Policy Period*

*September 1, 2020 to September 1, 2021*

### *Insurer*

*Berkshire Hathaway National Fire & Marine Insurance Company (a Berkshire Hathaway Company)*

*85 Broad St, New York, New York 10004*

### *Broker*

*Aon Risk Services Northeast, Inc.*

*1 Liberty Plaza, New York, NY 10006*

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# I. Current Program Review

<b>Carrier:</b>	National Fire & Marine Insurance Company (a Berkshire Hathaway Company), a non-admitted insurer rated A++(Superior):XV by A.M. Best
<b>Policy Owner:</b>	New York Life Agents Purchasing Group
<b>Individual Insureds:</b>	Agents of New York Life Insurance Company Agents of New York Life Insurance and Annuity Corporation Agents of NYLIFE Insurance Company of Arizona Investment Adviser Representatives of Eagle Strategies LLC Registered Representatives of NYLIFE Securities LLC The Agents and Registered Representatives of NYLIFE Securities LLC Members of the New York Life Agents' Purchasing Group
<b>Policy Period:</b>	September 1, 2020 to September 1, 2021
<b>Policy Number:</b>	42-PLA-151408-01
<b>Limits of Liability:</b>	<b><i>(Defense costs are outside the limits of liability)*</i></b> <b><i>*Cybersecurity Coverage sublimits apply -</i></b> <b><i>See Section II.U for details.</i></b>
<b>Option 1:</b>	\$1,000,000 each Claim/Each Certificate Holder \$3,000,000 Annual Aggregate/Each Certificate Holder
<b>Option 2:</b>	\$2,000,000 each Claim/Each Certificate Holder \$6,000,000 Annual Aggregate/Each Certificate Holder
<b>Option 3**:</b>	\$5,000,000 each Claim/Each Certificate Holder \$10,000,000 Annual Aggregate/Each Certificate Holder <b><i>**This option is only available to 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.</i></b>
<b>Option 4***:</b>	\$1,000,000 each Claim/Each Certificate Holder \$1,000,000 Annual Aggregate/Each Certificate Holder <b><i>***This option is only available to Referring Broker Sub-producers</i></b>
<b>Deductible:</b>	\$0 Each Claim (please see Section III.S for one exception)
<b>Retroactive Date:</b>	None

## II. Questions and Answers

**A. Who Is the Insurer?**

National Fire & Marine Berkshire Hathaway Insurance Company, a Berkshire Hathaway Company, (hereinafter “Berkshire Hathaway”), a non-admitted insurer with an A.M. Best rating of A++ (Superior) as of June 2020.

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

The New York Life Agents Purchasing Group is the sponsor of the PLP.

**C. Who/What Are Insureds Under the PLP?**

**1. 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.

**2. 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.

**3. 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.

**4. 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.

**5. 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.

**6. 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, but only with respect to those operations of the business entity related to the Professional Services provided by the Insured Agent.

## **7. Enrolled IARs of Eagle Strategies Corp.**

Enrolled Investment Adviser Representatives ("IARs") of Eagle Strategies Corporation or 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.

Associate Financial Advisers (AFA) are Registered Service Assistants who are affiliated with Eagle Strategies. The AFAs are generally covered under the Supervising IAR'S policy for any services that they perform on the Supervising IAR'S behalf while assisting the IAR Agent in the sale or servicing of covered insurance products, mutual funds, and securities. This is conditioned on the Associate Financial Advisors' acting within the scope of their duties as defined by the appropriate regulatory authorities.

## **8. Licensed/Registered Service Assistants**

Licensed/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 provided that the Licensed/Registered Service Assistants are acting within the scope of their duties as defined by the appropriate regulatory authorities.

## **9. NYL and Subsidiaries and Referring Agents**

NYL and its subsidiaries, Referring Corporate Agents, Referring Corporate Subagents, and Referring Business Agents 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 they are sued for liabilities arising from the Selling Agent's allegedly negligent acts, errors, or omissions.

For example, if a Referring Corporate Agent, Referring Corporate Subagent, or Referring Business Agent is sued solely because of an allegedly negligent referral to a Selling Agent, s/he will not be covered under the Selling Agent's policy (hence the need for separate coverage).

Similarly, if a claim alleges that NYL is vicariously liable as principal for the negligent acts of one of its agents, NYL would have coverage as an Additional Insured.

Each Referring Corporate Agent, Referring Corporate Subagent, and Referring Business Agent who has a Non-Soliciting Memorandum of Understanding with New York Life and is enrolled in the PLP is generally covered for claims that s/he acted improperly in connection with his/her referral of a customer to a Selling Agent. Activities/services beyond the scope of providing a referral will not be covered.

## **10. Referring Broker Sub-producers**

For purposes of these PLP Highlights, "Referring Broker Sub-producer" 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 sole

proprietor or partner associated with a Referring Broker's Contract for Businesses.

Referring Broker Sub-producers under the Professional Alliance Program who enroll in the PLP and pay the premium are covered for referrals to Soliciting Agents. The Soliciting Agent also must be enrolled in the PLP and the referral must be for individual life and health policies and annuities. Coverage is subject to limits of \$1M per claim and 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.

***Important Note:*** Coverage limits afforded to the Agent are shared with the individuals or entities covered under the Agent's policy. Subject to a \$25,000 deductible per claim, NYLIFE Securities LLC and NYLINK Insurance Agency Incorporated each are covered for \$1M per claim/\$5M for direct liability in the aggregate in their capacity as General Agents. Coverage for NYLIFE Securities LLC and NYLINK Insurance Agency does 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.

**D. What Are Damages?**

Damages are monetary amounts for which an Insured 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 commission), non-pecuniary or injunctive relief, or amounts from acts deemed uninsurable by law.

**E. What Are Your Limits of Liability?**

Each Established Agent and enrolled employee has the option of purchasing a limit of liability of either \$1,000,000 each Claim/\$3,000,000 Annual Aggregate or \$2,000,000 each Claim/\$6,000,000 Annual Aggregate. TAS Agents in their first contract year, Referring Agents, PTAS Agents and College Interns can only elect \$1,000,000 each Claim/\$3,000,000 Annual Aggregate. Chairman's Council agents can purchase a limit of \$5,000,000 each Claim/\$10,000,000 in the Annual Aggregate if they are 2019 or 2020 Chairman's Council Agents, or Agents that have qualified for Chairman's Council at least twice within the last five years (2016 – 2020 Council years).

Referring Broker Sub-producers have only one option: \$1,000,000 each Claim/\$1,000,000 Annual Aggregate.

As detailed in Section II.U, claims arising out of cyber breaches are subject to sublimits of liability.

Please note that your per claim limit is the maximum Berkshire Hathaway will pay on your behalf for any one claim. The aggregate limit is the maximum amount Berkshire Hathaway will pay in any policy period for each Agent regardless of the number of claims. Berkshire Hathaway will pay defense costs subject to the terms of the policy and payment will not reduce the Limits of Liability.

**F. What Professional Services Are Covered?**

“Professional Services” shall mean:

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

Variable products, including, but not limited to Variable Annuities, Flexible and Scheduled Premium Annuities and Variable Life Insurance;

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;

Mutual Funds registered with the Securities and Exchange Commission.

- (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;
    - 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 F.1. and the referral of discretionary trusts funded solely with the products listed in Section F.1., above. This does not apply to Investment Advisor Representatives. See Section I below.
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 Referring Broker Sub-producer for the sale of individual life insurance policies, annuities or health insurance policies issued by NYL.



**G. What Is Your Deductible?**

With limited exceptions, there is no deductible for any claims. (Please see Sections- II.V, II.Y, and III.S for exceptions with a \$2,500 per claim deductible.)

**H. 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.

**I. Is Financial Planning Covered?**

Yes, for all Agents relating only to products for which services are intended to be covered under the PLP. Investment Adviser Representatives ("IAR") of Eagle Strategies are covered for financial planning and investment advice for all products, other than those that are excluded, provided they have a written contract with Eagle Strategies that defines the scope of such advice and/or services and their compensation. The Eagle IARs are also covered for the following services:

- investment advice provided as a fiduciary adviser to a plan sponsor established under ERISA. This coverage does not apply if the Eagle IARs are appointed as Named Fiduciary.
- referral or advice to a plan sponsor with respect to a third-party discretionary investment manager evaluated by Eagle
- service provider support services and plan participant education and enrollment

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

Yes. Berkshire Hathaway's policy covers you for the professional services you render as a life insurance agent for other companies

**K. 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.

**L. 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 the written consent of Berkshire Hathaway. Doing so may jeopardize your coverage under the policy.

**M. Is Personal Injury Coverage Provided Under the Policy?**

Yes. Personal injury (which includes libel, slander and defamation) 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.

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

No.

**O. 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.

**P. 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 should be reported to AON in writing as soon as possible. Please see Section IV for instructions.

**Q. 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 as 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.

**R. 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.

**S. Can I Get a Refund If I Terminate My Contract With NYL?**

If your contract is terminated or you otherwise cease being a NYL agent during the policy period, your coverage under the PLP will continue as your primary coverage until the end of the policy period.

An exception to this rule is that if you obtain applicable coverage under another policy, 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 current policy period expires, there will be no refund.

You may obtain what is known as a "short rate" refund of a portion of your premiums if you send 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 31<sup>st</sup>, 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 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.

**T. Is there an Extended Reporting Period (ERP)?**

**1. Automatic ERPs**

Yes. There is an automatic unlimited ERP during which you may report claims arising out of Professional Services that predate termination of your coverage under the NYL PLP. This ERP is available for as long as Berkshire Hathaway continues to underwrite the NYL PLP. If Berkshire Hathaway were no longer to underwrite 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, errors or omissions that occurred prior to the earlier of the expiration of the current policy period or the cancellation of your certificate of insurance under the NYL PLP. The ERP will enable you to receive coverage for claims commenced against you after your coverage under the NYL PLP has terminated. The automatic ERP requires no additional premium payment.

**2. Optional ERPs**

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 PLP could be moved to another insurance carrier, 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. Please call Aon for further information.

Further, under no circumstances will there be coverage for sales made or services provided after the current policy period expires or you cancel your coverage, whichever is earlier. Finally, the ERP will not be available if you have other applicable coverage.

### **3. ERP Eligibility**

Automatic ERPs - The automatic ERP extends to all agents enrolled in the NYL PLP who terminate their coverage during the policy period 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 following enrollees in the PLP: retired, disabled, and deceased NYL agents, NYLSEC registered representatives, terminated NYL agents (including agents who terminate their agent contract and become employees of NYL), and registered representatives of NYLSEC (and other broker dealers who have been approved by Berkshire Hathaway) who do not have other applicable insurance.

### **4. 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 or their representatives must elect to purchase by contacting AON and paying the applicable premium and fees within the greater 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.

### **5. ERP Inception**

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

## **U. Does the Policy Provide Cybersecurity Coverage?**

Yes. Berkshire Hathaway provides significantly enhanced cybersecurity coverage for claims against you and for expenses incurred as a result of a Privacy Event loss, such as the loss or unauthorized disclosure of a customer's private personal information. Berkshire Hathaway will pay up to \$250,000 per Agent for actual customer claims and for actions brought by a regulator. No deductible will apply to claims relating to this coverage. Further, in the absence of an actual demand or regulatory action, Berkshire Hathaway will cover expenses you incur in response to such loss or unauthorized disclosure up to \$250,000. These expenses may include notification costs, expert analysis of computer network, and credit monitoring services for affected customers. No deductible applies to coverage for these privacy event response costs. New this year, Berkshire Hathaway will extend coverage to cyber extortion demands and reimburse for qualifying business interruption and expenses while your network is down (up to \$1,000 per day to a maximum of 10 days). This coverage is within the \$250,000 sublimit per Insured.

Please note the limits of liability for cybersecurity coverage are included in, and not in addition to, each Agent's Limit of Liability as set forth in Section I. These limits may be subject to an overall policy aggregate of \$2,500,000. With respect to cybersecurity coverage only, defense costs and other incident response costs are covered within, and will therefore erode, the limits of liability.

**V. Does the Policy Cover Losses Due to Fraudulently Induced Transfer of Client Funds?**

Yes, new this year, the Policy extends coverage to losses that result from a deceptive communication to transfer client funds to a third party. Berkshire Hathaway will pay up to \$250,000 per Insured to cover losses of client funds up to an overall policy limit of \$1,000,000 that may apply. A deductible of \$2,500 per claim will apply to this coverage. Please note that the limits of liability for fraudulent transfer coverage are included in, and not in addition to, each Agent's Limit of Liability as set forth in Section I.

**W. Does the Policy Provide Pre-Claim Assistance?**

Yes, the Policy will provide coverage in certain circumstances that may involve a covered Professional Service, as defined in Section II.F, even in the absence of an actual demand for monetary damages. Some examples of when this coverage may be triggered include the receipt of a subpoena, inquiry by a regulatory authority, and demand from a third party for document production. A sublimit of \$25,000 applies to each Pre-Claim coverage event; no deductible applies.

**X. Does the Policy Cover Per-Diem Expenses Incurred by Agents in Defending a Claim?**

Yes, Berkshire Hathaway will pay up to \$500 per day to reimburse Agents for their reasonably incurred expenses related to the defense of their claims, up to an overall limit of \$5,000 per Claim. Qualifying expenses may include travel and meals expenses incurred while attending a hearing or trial. Such expenses do not include your time in discussing the Claim with Berkshire Hathaway or defense counsel and providing documentation relevant to the defense of the Claim. Agents have a general obligation to cooperate in the defense of their Claims submitted for coverage under the Policy.

**Y. Does the Policy Cover Expenses Incurred for Expungement Proceedings?**

Yes, Berkshire Hathaway will cover the costs of an expungement proceeding related to a covered customer dispute under the Policy. Sublimits of \$10,000 per expungement proceeding and an aggregate sublimit of \$20,000 per Agent apply and are included within, and not in addition to, each Agent's Sublimits of Liability as set for in Section I. A \$2,500 deductible applies for each expungement proceeding.

# III. Policy Exclusions

This Policy shall not apply to:

**A. Fraud**

Any "Claim" arising out of any act, error, or omission of the "Insured" committed with dishonest, fraudulent, malicious or knowingly wrongful purpose or intent; however, notwithstanding the foregoing, the "Insured" shall be afforded a defense, subject to the terms of this Policy, until the allegations are subsequently proven by a final adjudication. In such event, the "Insured" shall reimburse the Company for all "Defense Costs" incurred by the Company;

**B. Bodily Injury/Property Damage**

Any "Claim" alleging bodily injury, sickness, or death of any person, or injury to or destruction of any tangible property, including loss of use thereof;

**C. Contractual Liability**

Any "Claim" alleging the liability of others assumed by the "Insured" under any contract or agreement unless such liability would have attached to the "Insured" even in the absence of such agreement; this includes contractual liability for, among other claims, any breach of a contractual non-compete provision.

**D. Insured Owned/Controlled Enterprises**

Any "Claim" by an enterprise which one or more "Insureds" own, operate, control, or manage; or any "Claim" by an enterprise which owns, operates, controls, or manages an "Insured";

**E. Insured Sponsored Benefit Plan**

Any "Claim" made against the "Insured" based upon or arising out of any Pension, Profit Sharing, Health and Welfare, or other Employee Benefit Plan or Trust sponsored by the "Insured" as an employer;

**F. Willful Violations of Security Regulations**

Any "Claim" arising out of a willful or alleged willful violation of the rules or regulations of the Financial Industry Regulatory Authority (FINRA) or the Securities and Exchange Commission or the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940 or the Investment Advisers Act of 1940 and any amendments thereto, or of any state securities statute or regulatory agency; however, notwithstanding the foregoing, the "Insured" shall be afforded a defense, subject to the terms of this Policy, until the allegations are subsequently proven by a final adjudication. In such event, the "Insured" shall reimburse Berkshire Hathaway for all "Defense Costs" it incurs which are allocable to defending such "Claim".

**G. Promises/Guarantees About Future Security Values**

Any "Claim" based upon a loss arising out of the "Insured" making or stating any promises or guarantees about the future values of "Securities"; this exclusion, however, shall not apply to a loss arising from the sale of insurance products that are also "Securities" products including, but not limited to, variable products such as variable universal life insurance and variable annuities nor shall this exclusion apply to any "Claim" based upon or arising out of the making or stating any promises about the future value of any insurance products including, but not limited to, whole life and universal life insurance;

**H. Third Party Professional Services**

Any "Claim" arising out of services performed by the "Insured" as an actuary, accountant, attorney or real estate agent or real estate broker, property/casualty insurance agent or third-party claims administrator;

**I. Commingling or Use of Client Funds**

Any "Claim" arising out of, or contributed to by, any commingling of, or use of client funds;

**J. Insolvency**

Any "Claim" directly arising out of the insolvency, receivership, bankruptcy, or inability to pay of any organization in which the "Insured" has placed or obtained coverage or in which an "Insured" has placed the funds of a client or account; however, this exclusion shall not apply if the "Claim" is based upon the insolvency, receivership, liquidation or inability to pay of:

1. Any life, accident, or health insurer or any product approved for sale by NYLSEC that was rated as "A-" or better by A.M. Best Company or had an equivalent rating by Moody's or Standard and Poor's or any other comparable rating agency at the time the business was placed; or
2. Horizon Healthcare of New Jersey, Inc.
3. Horizon Healthcare of New York, Inc.
4. Group Health Incorporated
5. Health Insurance Plan
6. Vytra Health Plans
7. Humana Inc.
8. Golden West Health Plan, Inc.

Furthermore, this exclusion shall not apply if the "Claim" is based upon the insolvency, receivership, liquidation or inability to pay of i) UnumProvident Corporation or any of its subsidiaries ("Unum Provident") provided that UnumProvident was rated "B" or better by A.M. Best or had an equivalent rating by Moody's or Standard & Poor's or any other comparable rating agency at the time the business was placed with Unum Provident, or ii) Assurant, Inc., Time Insurance Company and John Alden Life Insurance Company (collectively "Assurant Health") provided that Assurant Health was rated B++ or better by A.M. Best or any other comparable rating agency at the time the business was placed with Assurant Health;

**K. Claims by Other Insured Agents or NYL**

Any "Claim" arising out of disputes by or between "Insureds" or between an "Insured" and an "Additional Insured" or any other insurance agent or broker, including but not limited to disputes concerning commissions, fees, client lists or entitlements;

**L. Failure to Collect or Pay Premium or Tax Monies**

Any "Claim" arising out of the "Insured's" inability or refusal to pay or collect premium, claim or tax monies;

**M. MEWA's**

Any "Claim" arising from or contributed to by the "Placement of Coverage with Multiple Employer Welfare Arrangements" as defined in the Employee Retirement Income Security Act of 1974 and any amendments thereto; "Placement of Coverage with Multiple Employer Welfare Arrangements" shall mean the placement of coverage with a multiple employer welfare arrangement where the direct contract for providing benefits is between the multiple employer welfare arrangement and the recipient of the benefit. However, "Placement of Coverage with Multiple Employer Welfare Arrangements" shall not include placement of coverage where the direct contract for providing benefits is between the recipient of the benefit and an insurance company (1) recognized as a carrier by the insurance regulatory agency in the applicable state or jurisdiction and (2) appropriately licensed to provide the coverage in the state or jurisdiction where the coverage is in force.

**N. Investment Products Owned by Agents**

Any "Claim" against an "Insured" arising out of or involving investment products partially or totally owned by the "Insured" Agent or Employee;

**O. Unlicensed Organizations**

Any "Claim" arising from or contributed to by the placement of a client's coverage or funds directly or indirectly with any organization which is not licensed to do business in the state or jurisdiction with authority to regulate such business. However, this exclusion does not apply to any "Claim" arising from or contributed to by the placement of a client's coverage or funds directly or indirectly with any organization which is an eligible surplus lines insurer in the state or jurisdiction with authority to regulate such business;

**P. Formation/Operation of HMOs, PPOs, RRGs, and Self-Insured Programs**

Any "Claim" arising out of the ownership, formation, operation, or administration of a health maintenance organization, preferred provider organization, risk retention group, self-insurance program or purchasing group;

**Q. Fluctuation in Market Value of Any Security**

Any "Claim" based solely upon a loss alleged to have been sustained through fluctuation in market value of any security;



**R. No Known Wrongful Acts Involving Security Sales**

Any "Claim" arising out of a negligent act, error, or omission of an "Insured" in the rendering or failing to render "Professional Services" when the "Professional Services" involve the sale and/or servicing of "Securities" through any "Broker/Dealer", unless prior to the date the registered representative contracted with NYLSEC, the registered representative had no knowledge of any facts or circumstances that could reasonably be expected to give rise to the "Claim";

**S. Promissory Notes and Viatical Settlements**

Any "Claim" arising out of the purchase, sale or giving advice regarding promissory notes, viatical settlements, viaticated insurance benefits, or any security backed by viatical settlements. However, this exclusion does not apply to any "Claim" arising from or contributed to by the referral or failure of referral by a Named Insured Agent on a not-for-fee or non-income basis or persons to whom the Named Insured Agent renders or has rendered "Professional Services" to viatical settlement companies or viatical settlement brokers, provided such viatical settlement companies or viatical settlement brokers are in compliance with any licensing and/or certification requirements effective in the jurisdiction in which such companies or brokers operate.

- Sub-Limit of Liability: \$1,000,000 each Claim/\$1,000,000 Policy Annual Aggregate
- Deductible: \$2,500 each Claim/Each Named Insured  
(Applicable to Defense Costs and Damages)

**T. Known Prior Acts**

If prior to the first effective date of coverage issued to the Insured (person enrolled in the PLP), an Insured or Additional Insured had knowledge of any negligent act, error, or omission, which could reasonably be expected to result in a "Claim".

## IV. Notice of Claims

**The PLP requires notification in writing to Berkshire Hathaway as soon as practicable of any customer's or client's oral or written monetary demand made against you, trading error committed by you, or any circumstances you become aware of which may give rise to a claim. Report the claim to Aon, the PLP Administrator, which will report the claim to Berkshire Hathaway on your behalf.**

REMEMBER: Coverage may be waived in its entirety under the following circumstances: i) failure to report a trading error or customer's oral or written monetary demand to Berkshire Hathaway as soon as practicable; ii) making a payment, an admission of, or the assumption of, liability, or incurrence of expenses without the prior written consent of Berkshire Hathaway; or iii) failure to cooperate with Berkshire Hathaway.

**A. What Are My Obligations Under the Policy for Reporting Claims or Potential Claims?**

Coverage is on a "Claims Made and Reported" basis. This means that claims made against you, the Insured, during the current policy period must be reported in writing to Berkshire Hathaway during the current policy period. Oral notification does not constitute a report of a claim.

**B. What Is Considered a Claim?**

A claim is considered an oral or written demand for monetary damages against you. This includes the service of suit or the institution of arbitration proceedings against you but shall not include a demand for non-monetary or injunctive relief.

If you become aware of any negligent act, error or omission, which may give rise to a claim, you may report the available particulars as soon as possible to Berkshire Hathaway. Should the circumstances develop into a claim at some future date, your reporting of this potential incident will serve as a notice of claim under this current policy period. If you receive a subpoena or request to provide testimony or documents, you are encouraged to report such circumstances to Berkshire Hathaway, even in the absence of a demand for monetary damages.

**C. What Should I Do If I Have a Claim?**

1. Make a copy of the claim report form found at the back of this guide. Promptly complete the claim report form and send it and any correspondence received from the complainant to the address indicated on the form.
2. If the claim is a lawsuit, also send a copy of the complaint with the claim report form by overnight express mail or fax.
3. 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.
4. Be prepared to provide a copy of your file to the Berkshire Hathaway claims adjuster.

**D. What Actions Should I Avoid in the Event of a Claim?**

1. Do not make any payment, admit liability, promise to make a payment, or incur any expense (including retaining a lawyer) without Berkshire Hathaway's prior written consent. Doing so may jeopardize your coverage.
2. Once an incident has been identified or an errors and omissions claim has been made, great care should be exercised to avoid any disclosures or discussion of any facts or information relating to the claim with anyone, unless he or she identifies himself or herself as an employee or Officer of Berkshire Hathaway, Aon, NYL's Office of the General Counsel, Corporate Compliance, or Agency Departments, or a designated representative appointed to handle your claim.

**E. What Should I Do If in Doubt About Whether or How to Report a Claim or If I Have a Coverage Question?**

For advice contact:

Aon Affinity Insurance Services  
New York Life PLP Administration  
1100 Virginia Drive, Suite 250  
Fort Washington, PA 19034  
Attention: Claims  
Phone: (800) 509-6126  
Fax: (215) 293-1248

**F. What Happens After the Claim is Reported?**

- A representative from Berkshire Hathaway will contact you within a few days to acknowledge the receipt of the claim and discuss the particulars of the situation. Additional information or documents may be requested.
- Coverage under the PLP will be determined and you will be advised of any coverage issues.
- If necessary, Berkshire Hathaway will appoint an attorney to represent you. In order to ensure the best possible defense, you should cooperate completely with the lawyer. This means that you should provide full details and be candid. Your lawyer will not be able to provide you with the best possible defense if s/he does not know all the facts.

**G. What Should I Do If I Need Proof of My E&O Coverage?**

Contact:

Aon Affinity Insurance Services  
New York Life PLP Administration  
1100 Virginia Drive, Suite 250  
Fort Washington, PA 19034  
Phone: (800) 509-6126  
Fax: (215) 293-1248

# V. Certificate Requests

**POLICY PERIOD: SEPTEMBER 1, 2020 – SEPTEMBER 1, 2021**

**FOR A FASTER TURN AROUND, EMAIL YOUR REQUEST TO:  
INFO@AGENTS-EO.COM**

Agent/Other Insured Name: \_\_\_\_\_

Code #, if applicable: \_\_\_\_\_

General Office: \_\_\_\_\_

Address: \_\_\_\_\_

Email Address: \_\_\_\_\_

Telephone #: \_\_\_\_\_

Fax #: \_\_\_\_\_

If you prefer to send your request via regular mail, please send this form to:

Aon Affinity Insurance Services, Inc.  
1100 Virginia Drive, Suite 250  
Fort Washington, PA 19034

Phone (800) 509-6126 | Fax: (215) 293-1248  
Email: info@agents-eo.com

**DO NOT MAIL TO NEW YORK LIFE 'S HOME OFFICE**

# VI. Important Contacts

## **TELEPHONE NUMBERS & ADDRESSES FOR THE NEW YORK LIFE AGENTS PURCHASING GROUP'S E&O PROGRAM**

**For information regarding the following:**

- **Certificates of Insurance, Enrollment Questions and Extended Reporting Options**
- **Claims Advice on Reporting a Claim**
- **Coverage or Miscellaneous Questions**

Contact: Aon Affinity Insurances Services, Inc.  
1100 Virginia Drive, Suite 250  
Fort Washington, PA 19034  
Phone: (800) 509-6126  
Email: [info@agents-eo.com](mailto:info@agents-eo.com)  
Fax: (215) 293-1248  
  
Website: <https://nylife.agents-eo.com/>

**For Eligibility or Ledger Deduction Questions:**

Contact: New York Life Agent Compensation Line  
(212) 576-8282

**NEW YORK LIFE AGENTS' PURCHASING GROUP**  
**Professional Liability Plan (PLP) Claim Report Form**  
**Policy # 42-PLA-151408-01 | September 1, 2020 – September 1, 2021**  
**Privileged & Confidential — Prepared in Defense or Anticipation of a Claim**

Date:

Agent/Other Insured Code # (if applicable):

Name:

Address:

Phone:

1. Date you became aware of this claim:

2. If a lawsuit, date you were served with complaint:

3. Name of client/claimant making claim against you:

4. Product/type of business which is the subject of this claim:

5. Do you have any other Errors & Omissions Insurance? YES ☐ NO ☐  
If yes, provide name of Carrier, Policy Number and Limits:

6. Please attach copies of all pertinent correspondence. If you have been served with a lawsuit, a copy of the suit also must be enclosed. You will be expected to provide Berkshire Hathaway with a written description of the circumstances leading to this claim. This writing should be sent directly to Berkshire Hathaway after the claims adjuster is identified.

**Notification of claims or potential claims should be mailed without delay to:**

AON Affinity Insurance Services  
New York Life PLP Administration, Attention: Claims  
1100 Virginia Drive, Suite 250  
Fort Washington, PA 19034  
Phone: (800) 509-6126 | Fax: (215) 293-1248

***All lawsuits must be sent via Overnight Delivery to the above address.***

***Do not discuss this matter with anyone unless the person identifies himself/herself as an employee or Officer of Berkshire Hathaway, Aon, or New York Life's Office of the General Counsel, Corporate Insurance Management, Corporate Compliance, or Agency Departments.***