



NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

REPORT ON EXAMINATION

OF

THE FIRST AMERITAS LIFE INSURANCE CORP. OF NEW YORK

CONDITION:

DECEMBER 31, 2009

DATE OF REPORT:

MAY 12, 2011

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EXAMINER:

FLORA EGBUCHULAM

## TABLE OF CONTENTS

<u>ITEM</u>	<u>PAGE NO.</u>
1. Executive summary	2
2. Scope of examination	3
3. Description of Company	4
A. History	4
B. Holding company	5
C. Management	6
D. Territory and plan of operation	9
E. Reinsurance	10
4. Significant operating results	11
5. Financial statements	15
A. Assets, liabilities, capital and surplus	15
B. Condensed summary of operations	17
C. Capital and surplus account	18
6. Market conduct activities	21
A. Advertising and sales activities	21
B. Underwriting and policy forms	23
C. Treatment of policyholders	25
7. Summary and conclusions	26



NEW YORK STATE  
DEPARTMENT *of*  
FINANCIAL SERVICES

Andrew M. Cuomo  
Governor

Benjamin M. Lawsky  
Superintendent

November 21, 2011

Honorable Benjamin M. Lawsky  
Superintendent of Financial Services  
New York, New York 10004

Sir:

In accordance with instructions contained in Appointment No. 30517, dated April 28, 2010 and annexed hereto, an examination has been made into the condition and affairs of First Ameritas Life Insurance Corp. of New York, hereinafter referred to as “the Company,” at its home office located at 400 Rella Boulevard, Suite 304, Suffern, NY 10901.

On October 3, 2011, the Insurance Department merged with the Banking Department to create the New York State Department of Financial Services. Wherever “Department” appears in this report, it refers to the New York State Department of Financial Services.

The report indicating the results of this examination is respectfully submitted.

## 1. EXECUTIVE SUMMARY

The material violations contained in this report are summarized below.

- The Company violated Sections 51.6(b)(7) and 51.7(a)(1) of Department Regulation No. 60 by accepting applications with inaccurate or deficient disclosure statements without requiring the correction of such inaccuracies and/or deficiencies, or rejecting the applications and by accepting Disclosure Statements that contained potentially deceptive or misleading information from its agents. (See item 6A of this report)
- The Company violated Section 325(a) of the New York Insurance Law by failing to maintain all minutes of meetings of its shareholders, policyholders, board of directors and committees thereof and their books of account at its principal office in New York. (See item 3C of this report)
- The Company violated Section 2611(a) of the New York Insurance Law by failing to request and receive written consent forms from applicants prior to subjecting the applicants to HIV related tests. (See item 6B of this report)
- The Company violated Section 3201(b)(1) of New York Insurance Law by using policy application forms of its affiliate which had not been filed with and approved by the superintendent. (See item 6B of this report)
- The Company violated Sections 2112(a) and 2114(a)(1) of the New York Insurance Law by paying compensation to unappointed agents. (See item 6A of this report)
- The Company violated Section 4228(f)(1)(A) of the New York Insurance Law by paying agent compensation under a general agent bonus plan that was not filed with the Department. (See item 4 of this report)

## 2. SCOPE OF EXAMINATION

The prior examination was conducted as of December 31, 2006. This examination covers the period from January 1, 2007 through December 31, 2009. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 2009 but prior to the date of this report (i.e., the completion date of the examination).

The examination comprised a verification of assets and liabilities as of December 31, 2009 to determine whether the Company's 2009 filed annual statement fairly presents its financial condition. The examiner reviewed the Company's income and disbursements necessary to accomplish such verification and utilized the National Association of Insurance Commissioners' Examiners Handbook or such other examination procedures, as deemed appropriate, in such review and in the review or audit of the following matters:

- Company history
- Management and control
- Corporate records
- Fidelity bond and other insurance
- Territory and plan of operation
- Market conduct activities
- Growth of Company
- Business in force by states
- Mortality and loss experience
- Reinsurance
- Accounts and records
- Financial statements

The examiner reviewed the prior report on examination which did not contain any violations, recommendations or comments.

This report on examination is confined to financial statements and comments on those matters which involve departure from laws, regulations or rules, or which require explanation or description.

### 3. DESCRIPTION OF COMPANY

#### A. History

The Company was incorporated as a stock life insurance company under the laws of New York on April 1, 1993 under the name Great Ameritas Life Insurance Corp. and was authorized to write life insurance, annuities and accident and health insurance as defined in paragraphs 1, 2 and 3 of Section 1113(a) of the New York Insurance Law. The Company changed its name to First Ameritas Life Insurance Corp. of New York by an amendment and restatement of its charter on November 9, 1993. The Company was licensed and commenced business on May 17, 1994. Initial resources of \$6,300,000, consisting of common capital stock of \$2,000,000 and paid in and contributed surplus of \$4,300,000, were provided through the sale of 2,000 shares of common stock (with a par value of \$1,000 each) for \$3,150 per share.

On January 7, 1997 Ameritas Bankers Assurance Company (“ABAC”), a domestic accident and health insurer, merged into the Company, with the Company being the survivor. As a result of the merger, the Company’s gross paid in and contributed surplus increased to \$6,800,000.

On January 1, 2006 Ameritas Acacia Mutual Insurance Holding Company, the ultimate parent of the Company, merged with Union Central Mutual Holding Company, at the holding company level, to form the UNIFI Mutual Holding Company (“UNIFI”). As a result of this merger, The Union Central Life Insurance Company (“Union Central”), an Ohio stock life insurance company, became an affiliate of the Company. Union Central is licensed to do business in the State of New York.

In March 2010 the Company submitted an Amended and Restated Plan of Operations (“ARPO”). It is anticipated that within two years of the approval of the ARPO, Union Central will no longer write direct business in New York. Instead, all new business written in New York will be issued through the Company and Union Central will maintain its current block of business. The ARPO was approved by the Department on June 18, 2010.

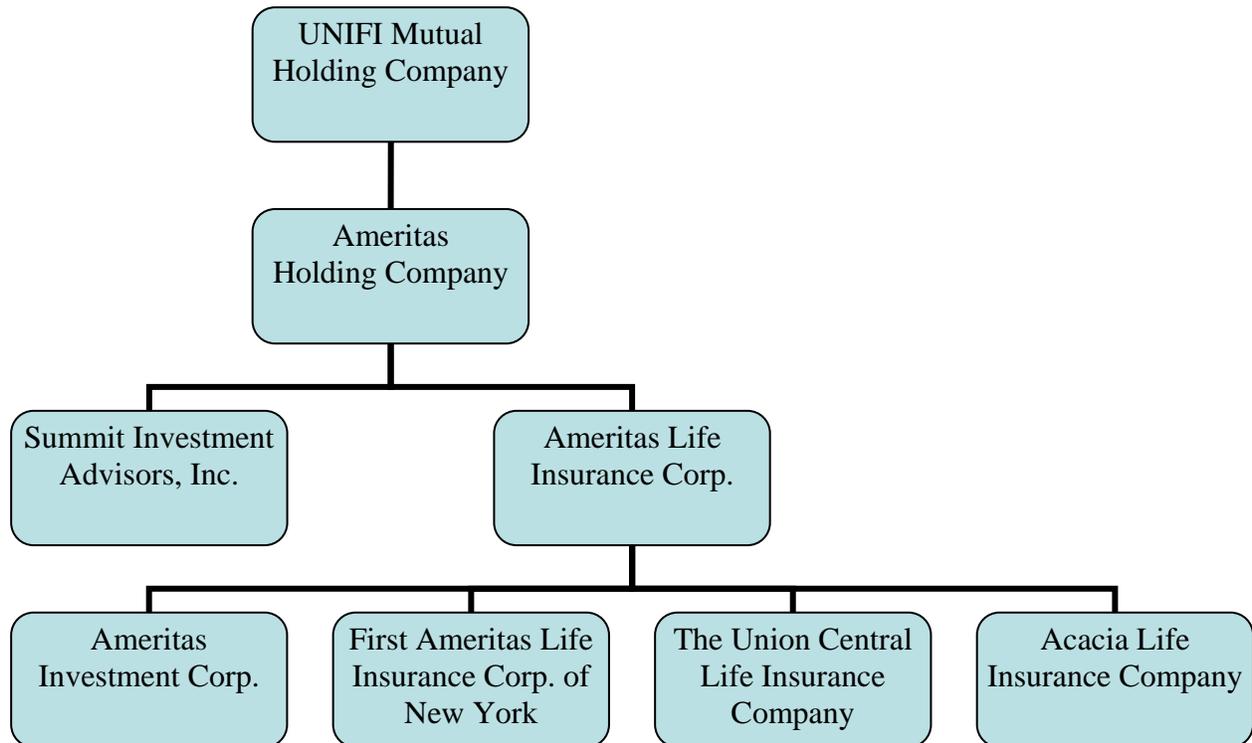
As of December 31, 2009, the Company had total capital and unassigned surplus of \$19,260,653. In connection with the ARPO, Ameritas Life Insurance Corp. (“ALIC”), the immediate parent and sole shareholder of the Company, proposed to contribute an additional \$50

million of capital over a five year period through December 31, 2015. The first contribution of \$30 million was made by ALIC on July 19, 2010.

B. Holding Company

The Company is a wholly owned subsidiary of ALIC, a Nebraska stock life insurance company. ALIC is in turn a wholly owned subsidiary of Ameritas Holding Company (“AHC”), a Nebraska mutual holding company. The ultimate parent of the Company is UNIFI, a Nebraska holding company.

An organization chart reflecting the relationship between the Company and significant entities in its holding company system as of December 31, 2009 follows:



The Company had five service agreements in effect with affiliates during the examination period.

Type of Agreement and Department File Number	Effective Date	Provider(s) of Service(s)	Recipient(s) of Service(s)	Specific Service(s) Covered	Income/ (Expense)* For Each Year of the Examination
Administrative Services Agreement File No. 34778	3/1/2006	Union Central	The Company	Administrative and other operation support services	2007 \$ (191,963) 2008 \$(1,317,267) 2009 \$ (817,117)
Amended and Restated Administrative Services Agreement File No. 29185	8/1/2002	ALIC	The Company	Management, administrative, and advertising	2007 \$(2,028,464) 2008 \$(2,197,490) 2009 \$(2,278,074)
Marketing Services Agreement File No. 34889	3/1/2006	ALIC and Union Central	The Company	Administrative	2007 \$(195,900) 2008 \$(471,675) 2009 \$(756,014)
Investment Advisory Agreement File No. N/A	4/22/1994	Summit Investment Advisors, Inc.	The Company	Investment advisory services	2007 \$(142,295) 2008 \$(142,096) 2009 \$ (85,197)
Shared Personnel Agreement File No. 29057	9/30/2000	The Company	Ameritas Holding Company	President of the Company devotes time to AHC projects and activities	2007 \$535,487 2008 \$393,528 2009 \$200,398

\* Amount of Income or (Expense) Incurred by the Company

The Company participates in a federal income tax allocation agreement with its parent and affiliates.

### C. Management

For the period under review the Company's by-laws provided that the business of the Company shall be conducted and managed by a board of directors consisting of thirteen directors. Directors are elected for a period of one year at the annual meeting of the stockholders held in March of each year. As of December 31, 2009, the board of directors consisted of 13 members. Meetings of the board are held immediately following the annual meeting of the shareholders and as frequently as the dispatch of business shall require and in any event at least four times in each calendar year.

The 13 board members and their principal business affiliation, as of December 31, 2009, were as follows:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>	<u>Year First Elected</u>
John P. Carsten* East Berne, NY	Executive Director NYC Nurses Association (retired)	1993
Robert K. Crandall* Albany, NY	Vice President, Operations Capital Bauer Insurance Agency Inc.	2008
Karen M. Gustin Lincoln, NE	Senior Vice President, Group Marketing, Managed Care and National Accounts First Ameritas Life Insurance Corp. of New York	2009
Arnold D. Henkel Lincoln, NE	Senior Vice President, Individual Distribution First Ameritas Life Insurance Corp. of New York	2005
Robert G. Lange Lincoln, NE	Vice President, Secretary and General Counsel First Ameritas Life Insurance Corp. of New York	2005
Robert J. Lanik* Lincoln, NE	President and Chief Executive Officer St. Elizabeth Regional Medical Center	1993
William W. Lester Lincoln, NE	Senior Vice President and Corporate Treasurer First Ameritas Life Insurance Corp. of New York	2009
JoAnn M. Martin Lincoln, NE	Chairwoman of the Board First Ameritas Life Insurance Corp. of New York	2000
David J. Myers* Lincoln, NE	Assistant to Superintendent for General Administration and Communication Lincoln Public Schools	1993
James E. Rembolt* Lincoln, NE	Attorney Rembolt Ludtke, LLP	1993
Kim M. Robak* Lincoln, NE	Attorney and Lobbyist Ruth Mueller Robak, LLC	2002

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>	<u>Year First Elected</u>
Edmund G. Sullivan* Fayetteville, NY	Retired	1997
Kenneth L. VanCleave Lincoln, NE	President and Chief Executive Officer First Ameritas Life Insurance Corp. of New York	2002

\* Not affiliated with the Company or any other company in the holding company system

Effective March 4, 2010 the Company's by-laws were amended to provide that the board of directors shall be comprised of not less than 7 and not more than 11 directors. Subsequent to the examination date, Kim M. Robak and Edmund G. Sullivan were not re-elected as members of the board of directors.

The examiner's review of the minutes of the meetings of the board of directors and its committees indicated that meetings were well attended and that each director attended a majority of meetings.

Section 325 of New York Insurance Law states, in part:

“(a) Every domestic insurer and every licensed United States branch of an alien insurer entered through this state shall, except as hereinafter provided, keep and maintain at its principal office in this state . . . its books of account . . . and . . . the minutes of any meetings of its shareholders, policyholders, board of directors and committees thereof. . . .”

The examiner found that the Company did not maintain, at its principal office in this state, the minutes of the meetings of its shareholders, policyholders, board of directors and committees thereof which were held from November 2008 through December 2009.

In addition, financial accounting records or data that support the filed annual statements were not maintained in a durable medium (such as CDs, DVDs, Flash drives) at the Company's principal office in New York; the records were available only with access to the Company's computer system, such that if the computer system goes down the records would not be available at the New York office.

The Company violated Section 325(a) of the New York Insurance Law by failing to maintain all minutes of meetings of its shareholders, policyholders, board of directors and committees thereof and their books of account at its principal office in New York.

The Company was ultimately able to provide the minutes for the meetings of its shareholders, policyholders, board of directors and committees thereof.

The following is a listing of the principal officers of the Company as of December 31, 2009:

<u>Name</u>	<u>Title</u>
Kenneth L. VanCleave	President and Chief Executive Officer
Robert C. Barth	Senior Vice President, Contoller and Chief Accounting Officer
Karen M. Gustin	Senior Vice President, Group Marketing, Managed Care and National Accounts
Arnold D. Henkel	Senior Vice President, Individual Distribution
Dale D. Johnson	Senior Vice President and Corporate Actuary
William W. Lester	Senior Vice President and Corporate Treasurer
James Mikus	Senior Vice President and Chief Investment Officer
Robert-John H. Sands	Senior Vice President
Steven J. Valerius	Senior Vice President, Individual Division
Robert G. Lange	Vice President, Secretary and General Counsel
Raymond M. Gilbertson*	Vice President, Corporate Compliance and Consumer Service Officer

\* Designated consumer services officer per Section 216.4(c) of Department Regulation No. 64

In March, 2009, Kenneth L. VanCleave replaced Mitchell F. Politzer as President and Chief Executive Officer. Subsequent to the examination date the Company had several changes in management. Several officers were elected to Senior Vice President and Second Vice President positions. The changes included the election of Christopher T. Lutz to the position of Vice President and Contoller which was assumed from Robert. C. Barth. Also, Mr. Robert-John Sands' title changed from Senior Vice President to Senior Vice President, Associate General Counsel and Assistant Secretary.

#### D. Territory and Plan of Operation

The Company is authorized to write life insurance, annuities and accident and health insurance as defined in paragraphs 1, 2 and 3 of Section 1113(a) of the New York Insurance Law.

The Company is licensed to transact business in New York only. In 2009, 89.6% of life premiums and 89.2% of accident and health premiums were received from New York. Policies are written on a participating and non-participating basis.

The Company's principal lines of business sold during the exam period consisted of whole life, low-load term, universal life, variable universal life, and group dental and vision care.

Pursuant to the ARPO, all new New York business which would have previously been issued through the Company's parent and affiliates will now be issued through the Company.

For group business, the Company utilizes licensed sales representatives who are employees of ALIC and work through independent brokers and agents. The majority of dental and vision care business is sold through independent brokers, general agents, and policyholder representatives. Fifty-four percent of the Company's group dental business was marketed through Business Council of New York State and Health Plan Services.

#### E. Reinsurance

As of December 31, 2009, the Company had 11 reinsurance treaties in effect with 10 companies, of which 3 were with unauthorized insurers. The Company's life and accident and health business are reinsured on a yearly renewable term basis. Reinsurance is provided on an automatic basis. No new treaties were effected during the examination period.

The Company has a maximum retention limit for individual life contracts of \$100,000 for all ages and ratings. The reinsurance agreement covering term products is a 90-10 quota share arrangement.

The total face amount of life insurance ceded as of December 31, 2009 was \$406,990,085, which represents 73% of the total face amount in force. As of December 31, 2009, life business was ceded to Security Life of Denver Insurance Company (67%), Transamerica Financial Life Insurance Company (19%), and Union Central Life (12%).

At December 31, 2009, reserve credit taken for reinsurance ceded to unauthorized companies totaled \$45,868, which was principally supported by letters of credit.

#### 4. SIGNIFICANT OPERATING RESULTS

Indicated below is significant information concerning the operations of the Company during the period under examination as extracted from its filed annual statements. Failure of items to add to the totals shown in any table in this report is due to rounding.

The following table indicates the Company's financial growth (decline) during the period under review:

	December 31, <u>2006</u>	December 31, <u>2009</u>	Increase (Decrease)
Admitted assets	<u>\$35,519,884</u>	<u>\$40,492,963</u>	<u>\$4,973,079</u>
Liabilities	<u>\$15,608,054</u>	<u>\$21,232,310</u>	<u>\$5,624,256</u>
Common capital stock	\$ 2,000,000	\$ 2,000,000	\$ 0
Gross paid in and contributed surplus	6,800,000	6,800,000	0
Unassigned funds (surplus)	<u>11,111,830</u>	<u>10,460,653</u>	<u>(651,177)</u>
Total capital and surplus	<u>\$19,911,830</u>	<u>\$19,260,653</u>	<u>\$ (651,177)</u>
Total liabilities, capital and surplus	<u>\$35,519,884</u>	<u>\$40,492,963</u>	<u>\$4,973,079</u>

The Company's invested assets as of December 31, 2009, exclusive of separate accounts, were mainly comprised of bonds (93.6%), cash and short-term investments (5.5%) and policy loans (0.9%).

The majority (98.6%) of the Company's bond portfolio, as of December 31, 2009, was comprised of investment grade obligations. Net investment income was distributed to major annual statement lines of business in accordance with the segmentation method.

The following table indicates, for each of the years listed below, the amount of life insurance issued and in force by type (in thousands of dollars):

<u>Year</u>	<u>Individual Whole Life</u>		<u>Individual Term</u>	
	<u>Issued</u>	<u>In Force</u>	<u>Issued</u>	<u>In Force</u>
2007	\$ 54,482	\$ 128,387	\$ 3,778	\$ 254,383
2008	\$ 128,955	\$ 226,280	\$ 2,035	\$ 252,840
2009	\$ 176,086	\$ 330,814	\$ 2,732	\$ 227,125

The increase in whole life business was attributed to the introduction of participating whole life products in 2006.

The ordinary lapse ratio for each of the examination years was 4.6% in 2007, 7.7% in 2008 and 16.2% in 2009. The Company attributes the high lapse ratio in 2009 to the downturn in the economy.

The following is the net gain (loss) from operations by line of business after federal income taxes but before realized capital gains (losses) reported for each of the years under examination in the Company's filed annual statements:

	<u>2007</u>	<u>2008</u>	<u>2009</u>
Ordinary:			
Life insurance	\$ (575,260)	\$(1,522,074)	\$(1,519,742)
Individual annuities	(97,361)	(41,652)	(25,595)
Supplementary contracts	<u>4,631</u>	<u>3,390</u>	<u>0</u>
Total ordinary	\$ <u>(667,990)</u>	\$ <u>(1,560,336)</u>	\$ <u>(1,545,337)</u>
Accident and health:			
Group	\$ <u>1,116,934</u>	\$ <u>739,192</u>	\$ <u>767,315</u>
Total accident and health	\$ <u>1,116,934</u>	\$ <u>739,192</u>	\$ <u>767,315</u>
All other lines	\$ <u>257,986</u>	\$ <u>266,347</u>	\$ <u>410,441</u>
Total	\$ <u>706,930</u>	\$ <u>(554,797)</u>	\$ <u>(367,581)</u>

Losses in the ordinary life business were caused by increased acquisition costs associated with increased sales in participating whole life products.

The annuity business is in run-off, losses associated with this line of business were primarily due to administrative expenses on a relatively small block of business.

Section 4228(f)(1) of the New York Insurance Law states, in part:

“Filing requirements for agent and broker compensation plans are as follows:  
 (A) A company shall make annual information filings with respect to any newly-introduced plans or changes under which the company makes payments to agents or brokers if such plans are commission plans for which the commission percentages are, in all policy or contract years, no greater than the commission percentages set forth in paragraphs one, two, three and four of subsection (d) of this section . . .”

A review of the agency compensation plan used by the Company during the examination period revealed that the compensation to general agents under the general agent bonus plan was not included in any Company filing made in accordance with Section 4228 of the New York

Insurance Law. This general agent bonus plan was also not included in any Section 4228 filing Union Central made prior to the January 1, 2006 merger.

The general agent bonus plan provides for payments which are a percent of the first year commissions earned by the agency in the preceding calendar year. This bonus percent increases according to whether the preceding year's earned first year commissions are (i) \$50,000 to \$74,999; (ii) \$75,000 to \$99,999; (iii) \$100,000 to \$149,999; (iv) \$150,000 to \$199,999; or (vi) \$200,000 or greater.

The Company violated Section 4228(f)(1)(A) of the New York Insurance Law by paying agent compensation under a general agent bonus plan that was not filed with the Department.

The Company filed a compensation plan with the Department on December 29, 2010 which was approved on August 15, 2011.

## 5. FINANCIAL STATEMENTS

The following statements show the assets, liabilities, capital and surplus as of December 31, 2009, as contained in the Company's 2009 filed annual statement, a condensed summary of operations and a reconciliation of the capital and surplus account for each of the years under review. The examiner's review of a sample of transactions did not reveal any differences which materially affected the Company's financial condition as presented in its financial statements contained in the December 31, 2009 filed annual statement.

### A. Assets, Liabilities, Capital and Surplus as of December 31, 2009

#### Admitted Assets

Bonds	\$33,636,940
Cash, cash equivalents and short term investments	1,972,895
Contract loans	331,875
Investment income due and accrued	482,125
Premiums and considerations:	
Uncollected premiums and agents' balances in the course of collection	1,912,609
Deferred premiums, agents' balances and installments booked but deferred and not yet due	898,229
Reinsurance:	
Amounts recoverable from reinsurers	2,260
Other amounts receivable under reinsurance contracts	11,073
Amounts receivable relating to uninsured plans	36,178
Current federal and foreign income tax recoverable and interest thereon	28,311
Net deferred tax asset	782,944
Receivables from parent, subsidiaries and affiliates	53
Health care and other amounts receivable	115,239
From separate accounts, segregated accounts and protected cell accounts	<u>282,232</u>
 Total admitted assets	 <u>\$40,492,963</u>

Liabilities, Capital and Surplus

Aggregate reserve for life policies and contracts	\$14,606,911
Aggregate reserve for accident and health contracts	256,360
Liability for deposit-type contracts	10
Contract claims:	
Accident and health	1,491,219
Provision for policyholders' dividends and coupons payable in following calendar year – estimated amounts	
Dividends apportioned for payment	241,000
Premiums and annuity considerations for life and accident and health contracts received in advance	151,696
Contract liabilities not included elsewhere:	
Other amounts payable on reinsurance	6,835
Commissions to agents due or accrued	179,928
General expenses due or accrued	313,354
Transfers to Separate Accounts due or accrued	(253)
Taxes, licenses and fees due or accrued, excluding federal income taxes	133,200
Amounts withheld or retained by company as agent or trustee	56,471
Amounts held for agents' account	28,294
Remittances and items not allocated	95,125
Liability for benefits for employees and agents if not included above	1,573,732
Miscellaneous liabilities:	
Asset valuation reserve	109,289
Reinsurance in unauthorized companies	28,381
Payable to parent, subsidiaries and affiliates	1,678,526
From Separate Accounts statement	<u>282,232</u>
 Total liabilities	 <u>\$21,232,310</u>
 Common capital stock	 \$ 2,000,000
Gross paid in and contributed surplus	6,800,000
Unassigned funds (surplus)	<u>10,460,653</u>
Surplus	<u>\$17,260,653</u>
Total capital and surplus	<u>\$19,260,653</u>
 Total liabilities, capital and surplus	 <u>\$40,492,963</u>

B. Condensed Summary of Operations

	<u>2007</u>	<u>2008</u>	<u>2009</u>
Premiums and considerations	\$26,398,070	\$27,356,895	\$30,192,746
Investment income	1,504,159	1,591,254	1,651,689
Commissions and reserve adjustments on reinsurance ceded	54,273	58,581	83,445
Miscellaneous income	<u>16,632</u>	<u>17,773</u>	<u>16,749</u>
 Total income	 <u>\$27,973,134</u>	 <u>\$29,024,503</u>	 <u>\$31,944,629</u>
Benefit payments	\$18,422,889	\$20,171,684	\$18,510,624
Increase in reserves	1,170,665	163,791	2,725,896
Commissions	1,716,856	2,107,352	2,949,542
General expenses and taxes	5,041,569	6,581,549	7,380,515
Increase in loading on deferred and uncollected premium	262,077	89,056	679,500
Net transfers to (from) Separate Accounts	(71,202)	(20,638)	(39,112)
Miscellaneous deductions	<u>42,155</u>	<u>22,391</u>	<u>4,309</u>
 Total deductions	 <u>\$26,585,009</u>	 <u>\$29,115,185</u>	 <u>\$32,211,274</u>
Net gain (loss)	\$ 1,388,125	\$ (90,682)	\$ (266,645)
Dividends	34,620	109,074	188,641
Federal and foreign income taxes incurred	<u>646,575</u>	<u>355,041</u>	<u>(87,705)</u>
Net gain (loss) from operations before net realized capital gains	\$ 706,930	\$ (554,797)	\$ (367,581)
Net realized capital gains (losses)	<u>16,110</u>	<u>0</u>	<u>(56,961)</u>
 Net income	 <u>\$ 723,040</u>	 <u>\$ (554,797)</u>	 <u>\$ (424,542)</u>

C. Capital and Surplus Account

	<u>2007</u>	<u>2008</u>	<u>2009</u>
Capital and surplus, December 31, prior year	<u>\$19,911,831</u>	<u>\$20,679,118</u>	<u>\$19,831,667</u>
Net income	\$ 723,040	\$ (554,797)	\$ (424,542)
Change in net deferred income tax	73,787	457,497	308,220
Change in non-admitted assets and related items	(210,238)	(755,367)	(458,214)
Change in liability for reinsurance in unauthorized companies	(35,761)	8,407	(1,027)
Change in asset valuation reserve	(18,861)	(3,191)	4,549
Correction of error, net of taxes	<u>235,319</u>	<u>0</u>	<u>0</u>
Net change in capital and surplus for the year	<u>\$ 767,287</u>	<u>\$ (847,451)</u>	<u>\$ (571,014)</u>
Capital and surplus, December 31, current year	<u>\$20,679,118</u>	<u>\$19,831,667</u>	<u>\$19,260,653</u>

Section 4231(a)(3) of the New York Insurance Law states, in part:

“ . . . every such company shall . . . apportion . . . earnings, if any, derived from participating policies and contracts, equitably to all policies or contracts entitled to share therein . . . ”

In order to demonstrate compliance with Section 4231(a)(3) of the New York Insurance Law, a company must be able to show how each component of its dividend formula was derived. The Company was able to show how the mortality and interest components of its three-factor dividend formula were derived, but was able to provide only the numerical result of the third factor (expense component) and could not provide the derivation of that factor.

The examiner recommends that the Company develop and maintain supporting details for all components of its dividend formula, including the expense component.

Section 4231(a)(4) of the New York Insurance Law states, in part:

“No dividend shall be apportioned or distributed for the first policy or contract year unless, upon reasonable assumptions as to expenses, mortality, policy and contract claims, investment income and lapses, it was actually earned for such year . . . ”

To demonstrate compliance with Section 4231(a)(4), the Company referred to the experience of its parent company. The Company apportions dividends to its policies as early as the first policy year. Section 4231(a)(4) of the New York Insurance Law requires such dividends actually be earned.

The examiner recommends that the Company demonstrate first year dividends are actually earned on the basis of its own experience, or, alternatively, demonstrate that its parent's experience is representative of its own experience.

Section 4233(b)(6) of the New York Insurance Law states, in part:

“ . . . Any life insurance company which is authorized or permitted to issue in this state participating policies or contracts, and which issues in the United States both participating and non-participating policies or contracts, shall make a separate statement showing gains and losses, with respect to each of such classes of business, and also showing the manner in which any general gains and outlays of the company have been apportioned to each of such classes of business . . . ”

One of the purposes of Section 4233(b)(6) of the New York Insurance Law is to permit the Department to ascertain compliance with Section 4219 of the New York Insurance Law wherein the limitation on accumulation of surplus in participating lines of business is set forth.

The Surplus Fund Accounts Exhibit of Schedule NP as filed by the Company showed large variations in some lines of business for the years under examination. In particular, the participating lines went from an increasingly negative surplus position to a significant positive surplus position. That variation in surplus levels was due mainly to the significant amounts reported on Line 9 of Schedule NP's Surplus Fund Accounts Exhibit, "Aggregate transfers to other funds." The Company stated that, by some means, it knew what the ending surplus amount of each line should be, and was using Line 9 as a balancing item.

In order to comply with the provision of Section 4233(b)(6) of the New York Insurance Law, and to demonstrate compliance with Section 4219 of the New York Insurance Law, the current year's surplus of each business line must be derived by adding specific revenue items to, and subtracting specific disbursement items from, the previous year's surplus. Establishing the surplus of a line of business a priori, and then using an intermediate line in Schedule NP as a balancing item, as the Company appears to have done, does not comply with Section 4233(b)(6) of the New York Insurance Law.

The Company violated Section 4233(b)(6) of the New York Insurance Law by using an intermediate line on Schedule NP as a balancing item when determining the surplus of each line of business.

The examiner recommends that the Company determine the surplus of each line of business in accordance with Section 4233(b)(6) of the New York Insurance Law and as set forth in Schedule NP, without using any intermediate line as a balancing item.

## 6. MARKET CONDUCT ACTIVITIES

The examiner reviewed various elements of the Company's market conduct activities affecting policyholders, claimants, and beneficiaries to determine compliance with applicable statutes and regulations and the operating rules of the Company.

### A. Advertising and Sales Activities

The examiner reviewed a sample of the Company's advertising files and the sales activities of the agency force including trade practices, solicitation and the replacement of insurance policies.

#### 1. Producer licensing and appointments

Section 2112(a) of the New York Insurance Law states, in part:

“Every insurer . . . doing business in this state shall file a certificate of appointment in such form as the superintendent may prescribe in order to appoint insurance agents to represent such insurer . . .”

Section 2114(a)(1) of the New York Insurance Law states, in part:

“No insurer . . . doing business in this state shall pay any commission or other compensation to any person, firm or corporation, for any services in obtaining in this state any new contract of life insurance . . . except to a licensed life insurance agent of such insurer . . .”

A review of licensing and appointment files revealed that two producers sold insurance business and were compensated for such business before they were appointed by the Company.

The Company violated Sections 2112(a) and 2114(a)(1) of the New York Insurance Law by paying compensation to unappointed agents.

#### 2. Advertisements

Section 215.17(a) of Department Regulation No. 34 states, in part:

“Advertising file. Each insurer shall maintain at its home or principal office a complete file containing every printed, published or prepared

advertisement of its individual policies and typical printed, published or prepared advertisements of its blanket, franchise and group policies hereafter disseminated in this or any other state whether or not licensed in such other state, with a notation attached to each such advertisement which shall indicate the manner and extent of distribution . . .”

Section 219.5(a) of Department Regulation No. 34-A states, in part:

“Each insurer shall maintain at its home office a complete file containing a specimen copy of every printed, published or prepared advertisement hereafter disseminated in this state, with a notation indicating the manner and extent of distribution and the form number of any policy advertised. In order to be complete, the file must contain all advertisements whether used by the Company, its agents or its solicitors or other persons. . . .”

A review of the Company’s electronic advertising database revealed that the database was not complete in that the Company did not maintain copies of certain individual life and group health insurance advertisements at the Company’s New York office. Going forward, the Company has agreed that copies of all individual life and group health insurance advertisements would be sent to the Company’s New York office to ensure the advertising file is complete.

In addition, the database did not indicate the manner and extent of distribution of those advertisements that are in the database.

The Company violated Section 215.17(a) of Department Regulation No. 34 and Section 219.5(a) of Department Regulation No. 34-A by not maintaining at its home office a complete advertisement file, and by not indicating the manner and extent of distribution of its advertisements.

### 3. Department Regulation No. 60

Section 51.6 of Department Regulation No. 60 states, in part:

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

(7) Where the required forms are not received with the application, or if the forms do not meet the requirements of this Part or are not accurate, within ten days from the date of receipt of the application either have any deficiencies corrected or reject the application and so notify the applicant of such rejection and the reason therefore. In such cases, the insurer shall

maintain any material used in the proposed sale, in accordance with the guidelines of Section 51.6(b)(6) herein . . . ”

Section 51.7(a) of Department Regulation No. 60 states, in part:

“ No insurer, agent or broker shall:

(1) make or give any deceptive or misleading information in the "Disclosure Statement" or in any proposal, including the sales material used in the sale of the proposed life insurance policy or annuity contract . . . ”

The Company issued 53 (1 internal and 52 external) life replacement policies during the examination period, all of which were reviewed. The review revealed that in 16 cases the agent omitted financial information concerning the policy to be issued from the disclosure statement. In each instance the disclosure statement did not inform the insured that the cash value of the policy to be replaced was being used to acquire a single premium paid up addition. The omission of this information was potentially deceptive and/or misleading to the prospective insured or contractholder. The Company accepted the Disclosure Statements as conforming to the requirements of New York Regulation No. 60 and did not correct the deficiencies nor reject the applications.

In addition, in 16 cases the disclosure statement did not indicate whether sales materials were used.

The Company violated Section 51.6(b)(7) of Department Regulation No. 60 by accepting applications with inaccurate or deficient disclosure statements without requiring the correction of such inaccuracies and/or deficiencies, or rejecting the applications.

The Company violated Section 51.7(a)(1) of Department Regulation No. 60 by accepting Disclosure Statements that contained potentially deceptive or misleading information from its agents.

#### B. Underwriting and Policy Forms

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

Section 2611(a) of New York Insurance Law states:

“No insurer or its designee shall request or require an individual proposed for insurance coverage to be the subject of an HIV related test without receiving the written informed consent of such individual prior to such testing and without providing general information about AIDS and the transmission of HIV infection.”

The examiner reviewed a sample of 53 individual life underwriting files. The review indicated that 17 of the prospective insured required blood work. Of the 17 cases that required blood work, the examiner found five instances where the Company did not request and receive a written informed consent from the applicant before subjecting the applicant to HIV related tests.

The Company violated Section 2611(a) of the New York Insurance Law by failing to request and receive written consent forms from applicants prior to subjecting the applicants to HIV related tests.

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

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

During the review of underwriting, the examiner found that the Company used certain policy forms of its affiliate, Union Central. In 13 instances the Company used Union Central’s Form No. UC 2598B NY, WI Part II – Medical, and in 2 other instances they used discontinued FA 2550 series application forms. The FA 2550 forms were discontinued and replaced with application forms UN 2550 series2.

The Company violated Section 3201(b)(1) of New York Insurance Law by using policy application forms of its affiliate which had not been filed with and approved by the superintendent.

Section 3207(b) of New York Insurance Law states, in part:

“An insurer may deliver or issue for delivery in this state a policy or policies of life insurance upon the life of a minor under the age of fourteen years and six months, provided that such policy or policies are effectuated by a person or persons having an insurable interest in the life of such minor or by a person or persons upon whom such minor is dependent for

support and maintenance and provided further that an insurer shall not knowingly issue such a policy or policies for an amount which, together with the amount of life insurance under any other policy or policies then in force upon the life of such minor, is in excess of the limit of fifty thousand dollars or the limit of fifty per centum or the limit of twenty-five per centum in the case of a minor under the age of four years and six months of the amount of life insurance in force upon the life of the person effectuating the insurance at the date of issue of the policy on the life of such minor, whichever limit is the greater, and any amount of life insurance on the life of such minor not in excess of such limit ...”

The examiner reviewed 25 underwriting files for insurance policies issued on juveniles during the exam period. The review revealed that nine of the policies (36%) were issued in excess of the amounts allowed under Section 3207(b).

The Company violated Section 3207(b) of the New York Insurance Law by issuing policies on juveniles that exceeded the maximum face value permitted.

#### C. Treatment of Policyholders

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

Based upon the sample reviewed, no significant findings were noted.

## 7. SUMMARY AND CONCLUSIONS

Following are the violations and recommendations contained in this report:

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
A	The Company violated Section 325(a) of the New York Insurance Law by failing to maintain all minutes of meetings of its shareholders, policyholders, board of directors and committees thereof and their books of account at its principal office in New York.	9
B	The Company violated Section 4228(f)(1)(A) of the New York Insurance Law by paying agent compensation under a general agent bonus plan that was not filed with the Department.	14
C	The examiner recommends that the Company develop and maintain supporting details for all components of its dividend formula, including the expense component.	18
D	The examiner recommends that the Company demonstrate first year dividends are actually earned on the basis of its own experience, or, alternatively, demonstrate that its parent's experience is representative of its own experience.	19
E	The Company violated Section 4233(b)(6) of the New York Insurance Law by using an intermediate line on Schedule NP as a balancing item when determining the surplus of each line of business.	20
F	The examiner recommends that the Company determine the surplus of each line of business in accordance with Section 4233(b)(6) of the New York Insurance Law and as set forth in Schedule NP, without using any intermediate line as a balancing item.	20
G	The Company violated Sections 2112(a) and 2114(a)(1) of the New York Insurance Law by paying compensation to unappointed agents.	21
H	The Company violated Section 215.17(a) of Department Regulation No. 34 and Section 219.5(a) of Department Regulation No. 34-A by not maintaining at its home office a complete advertisement file, and by not indicating the manner and extent of distribution of its advertisements.	22
I	The Company violated Section 51.6(b)(7) of Department Regulation No. 60 by accepting applications with inaccurate or deficient disclosure statements without requiring the correction of such inaccuracies and/or deficiencies, or rejecting the applications.	23

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
J	The Company violated Section 51.7(a)(1) of Department Regulation No. 60 by accepting Disclosure Statements that contained potentially deceptive or misleading information from its agents.	23
K	The Company violated Section 2611(a) of the New York Insurance Law by failing to request and receive written consent forms from applicants prior to subjecting the applicants to HIV related tests.	24
L	The Company violated Section 3201(b)(1) of New York Insurance Law by using policy application forms of its affiliate which had not been filed with and approved by the superintendent.	24
M	The Company violated Section 3207(b) of the New York Insurance Law by issuing policies on juveniles that exceeded the maximum face value permitted.	25

Respectfully submitted,

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

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

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

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

Subscribed and sworn to before me

this \_\_\_\_\_ day of \_\_\_\_\_

APPOINTMENT NO. 30517

**STATE OF NEW YORK**  
**INSURANCE DEPARTMENT**

I, JAMES J. WRYNN, Superintendent of Insurance of the State of New York,  
pursuant to the provisions of the Insurance Law, do hereby appoint:

**FLORA EGBUCHULAM**

as a proper person to examine into the affairs of the

**FIRST AMERITAS LIFE INSURANCE CORP. OF NEW YORK**

and to make a report to me in writing of the condition of the said

**COMPANY**

with such other information as she shall deem requisite.

In Witness Whereof, I have hereunto subscribed by name  
and affixed the official Seal of the Department  
at the City of New York

this 28<sup>th</sup> day of April, 2010

JAMES J. WRYNN  
Superintendent of Insurance

\_\_\_\_\_  
Superintendent

