



NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES  
REPORT ON MARKET CONDUCT EXAMINATION  
OF THE  
AMERICAN FAMILY LIFE ASSURANCE COMPANY OF NEW YORK

CONDITION:

DECEMBER 31, 2011

DATE OF REPORT:

FEBRUARY 15, 2013

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EXAMINER:

EDEN M. SUNDERMAN

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NEW YORK STATE  
DEPARTMENT *of*  
FINANCIAL SERVICES

Andrew M. Cuomo  
Governor

Maria T. Vullo  
Superintendent

November 2, 2016

Honorable Maria T. Vullo  
Superintendent of Financial Services  
New York, New York 10004

Madam:

In accordance with instructions contained in Appointment No. 30854, dated September 12, 2012 and annexed hereto, an examination has been made into the condition and affairs of American Family Life Assurance Company of New York, hereinafter referred to as “the Company,” at its home office located at 22 Corporate Woods Boulevard, Albany, New York 12211.

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 and recommendations contained in this report are summarized below.

- The Company violated various Sections of Department Regulation No. 60. (See item 4A of this report)
- The examiner recommends that the Company implement a remediation plan acceptable to the Department to mitigate the deficiencies and provide relief to all policyholders that did not receive a complete, accurate and timely disclosure prior to completing an application to replace their existing life insurance policy and/or annuity contract. The remediation plan should include all affected policyholders. (See item 4A of this report)
- The examiner recommends that the Company develop and implement an audit plan designed to review, test and monitor compliance with Department Regulation No. 60. Such plan should be approved by the Company's board of directors or its audit committee and the results of audits performed should also be reviewed by the board of directors or its audit committee. (See item 4A of this report)
- The Company violated Section 219.5(a) of Department Regulation No. 34-A and Section 215.17(a) of Department Regulation No. 34 by failing to maintain at its home office in New York, a complete advertising file for life and accident and health insurance advertisements, including a notation indicating the manner and extent of distribution. (See item 4A of this report)
- The Company violated Section 41.3(a) of Department Regulation No. 143 by failing to include a statement in advertisements for policies with accelerated death benefit provisions that receipt of accelerated death benefits may affect eligibility for public assistance programs. (See item 4A of this report)
- The Company violated Section 41.3(b) of Department Regulation No. 143 by failing to include a statement in advertisements for policies with accelerated death benefit provisions that receipt of accelerated death benefits may be taxable. (See item 4A of this report)
- The Company violated Section 243.2(b)(1)(iv) of Department Regulation No. 152 by failing to maintain all of the information necessary for reconstructing the rating and underwriting of a contract or policy. (See item 4B of this report)

- The Company violated Section 53-1.4 of Department Regulation No. 74 by failing to maintain at its home office, a complete file containing a specimen copy for each of the preliminary information forms and policy summary forms authorized by the insurer for each policy form sold in New York. (See item 4C of this report)
- The Company violated Section 3209(b)(1)(A) of the New York Insurance Law by failing to provide the preliminary information at or prior to the time that the application was taken. (See item 4C of this report)
- The Company violated Section 3204(d) of the New York Insurance Law by adding the automatic policy loan provision to a policy, without prior written consent from the applicant (or policy owner), in cases where the automatic policy loan provision was not affirmatively selected on the application. (See item 4C of this report)
- The Company violated Section 3211(b)(2) of the New York Insurance Law by failing to include disclosure language on premium notices provided to whole life insurance policyholders informing such policyholders that unless payment is made on or before the date when due or within the specified grace period thereafter, the policy shall terminate or lapse except as to the right to any cash surrender value or nonforfeiture benefit. (See item 4C of this report)
- The Company violated Section 3211(g) of the New York Insurance Law by failing to notify whole life insurance policyholders that their policy contains a cash surrender value and that further information, including the amount thereof, is available from the insurer upon written request from the policyowner. (See item 4C of this report)

## 2. SCOPE OF EXAMINATION

This examination covers the period from January 1, 2009 through December 31, 2011. As necessary, the examiner reviewed matters occurring subsequent to December 31, 2011 but prior to the date of this report (i.e., the completion date of the examination).

The examination comprised a review of market conduct activities and utilized the National Association of Insurance Commissioners' Market Regulations Handbook or such other examination procedures, as deemed appropriate, in such review.

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

This report on examination is confined to comments on 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 under the laws of New York on March 31, 1964. It was licensed and commenced business on December 31, 1964, as the American Health and Life Insurance Company of New York, a wholly-owned subsidiary of American Health and Life Insurance Company, which in turn was owned by Commercial Credit Company.

On April 2, 1984, American Health and Life Insurance Company of New York was acquired and became a wholly-owned subsidiary of American Family Life Assurance Company of Columbus. On December 11, 1984, the Company changed its name to its present name.

#### B. 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 six states, namely Connecticut, Massachusetts, New Jersey, New York, North Dakota, and Vermont. The Company markets its products principally in New York. In 2011, all life premiums and annuity considerations, and 95.78% of accident and health premiums were received from New York. Policies are written on a non-participating basis.

The Company's primary business is supplemental health insurance. The majority of policies sold in 2010 and 2011 were accident/short-term disability and specified disease insurance plans. The Company also has runoff blocks of annuity and Medicare Supplement business. The Company started selling a group hospital indemnity product in 2012 in an effort to broaden their product portfolio and reach a new line of customers; it is being administered by the Company's affiliate, Continental American Insurance Company.

The Company's agency operations are conducted on a general agency/branch office basis. Most of the Company's policies are individually underwritten and marketed through independent agents and brokers.

#### 4. 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. 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 . . ."

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

". . . 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 and the form number of any policy advertised . . ."

During the examination period, the advertising files for life and health insurance products distributed by the Company in New York were maintained at the Company's corporate headquarters in Columbus, Georgia, not at the Company's home office in New York. In addition, neither the advertising files selected for review nor the advertising index included information relating to the manner and extent of distribution in New York. In most instances, while not maintained as part of the advertising file, the Company was able to produce the number of advertisements printed or used in New York upon request.

The Company violated Section 219.5(a) of Department Regulation No. 34-A by failing to maintain at its home office in New York, a complete advertising file for life insurance advertisements including a notation indicating the manner and extent of distribution.

The Company violated Section 215.17(a) of Department Regulation No. 34 by failing to maintain at its home office in New York, a complete advertising file for accident and health insurance advertisements including a notation indicating the manner and extent of distribution.

2. Section 215.5(c) of Department Regulation No. 34 states, in part:

“An advertisement of a policy shall contain in a prominent place and style the appropriate statement for the coverage provided, as determined by the definitions in 11 NYCRR 52.5-52.11 (Regulation 62), as follows . . .

(4) This policy provides limited benefits health insurance only. It does NOT provide basic hospital, basic medical or major medical insurance as defined by the New York State Insurance Department. The expected benefit ratio for this policy is \_\_\_\_\_%. This ratio is the portion of future premiums which the company expects to return as benefits, when averaged over all people with this policy.

(5) This policy provides disability income insurance only. It does NOT provide basic hospital, basic medical or major medical insurance as defined by the New York State Insurance Department. The expected benefit ratio for this policy is \_\_\_\_\_%. This ratio is the portion of future premiums which the company expects to return as benefits, when averaged over all people with this policy.

(6) This policy provides ACCIDENT insurance only. It does NOT provide basic hospital, basic medical or major medical insurance as defined by the New York State Insurance Department. The expected benefit ratio for this policy is \_\_\_\_\_%. This ratio is the portion of future premiums which the company expects to return as benefits, when averaged over all people with this policy.

**IMPORTANT NOTICE — THIS POLICY DOES NOT PROVIDE COVERAGE FOR SICKNESS . . .”**

The examiner’s review of 72 accident and health insurance advertisements revealed that 11 advertisements (15.2%) did not include the expected benefit ratio of the policy being advertised.

The Company violated Section 215.5(c) of Department Regulation No. 34 by failing to place in a prominent place and style in its advertisements, the appropriate statement regarding the expected benefit ratio for the coverage provided.

3. Section 41.3 of Department Regulation No. 143 states, in part:

“In addition to complying with the provisions of Part 219 of this Title (Regulation No. 34-A), any advertisements for accelerated death benefits shall be subject to the following:

- (a) all advertising material shall include a statement that receipt of the accelerated death benefits may affect eligibility for public assistance programs;
- (b) except as otherwise provided in section 41.8 of this Part of policies that accelerate the death benefit pursuant to sections 1113(a)(1)(C) or (D) of the Insurance Law, all advertising material shall include a statement that receipt of the accelerated death benefits may be taxable . . . ”

All 12 life insurance advertisements utilized during the examination period for products with accelerated death benefit provisions failed to contain: 1) a statement that receipt of accelerated death benefits may affect eligibility for public assistance programs; and 2) a statement that receipt of the accelerated death benefits may be taxable.

The Company violated Section 41.3(a) of Department Regulation No. 143 by failing to include a statement in advertisements for policies with accelerated death benefit provisions that receipt of accelerated death benefits may affect eligibility for public assistance programs.

The Company violated Section 41.3(b) of Department Regulation No. 143 by failing to include a statement in advertisements for policies with accelerated death benefit provisions that receipt of accelerated death benefits may be taxable.

4. Section 51.6(a) of Department Regulation No. 60 states:

“Each insurer shall:

- (1) Inform and train its agents and brokers with respect to the requirements of this Part.”

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

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

- (2) Require with or as part of each application a copy of any proposal, including the sales material used in the sale of the proposed life insurance policy or annuity contract, and proof of receipt by the applicant of the *“IMPORTANT Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts”* and the completed *“Disclosure Statement . . .*

- (3) Examine any proposal used, including the sales material used in the sale of the proposed life insurance policy or annuity contract, and the ‘Disclosure Statement’, and ascertain that they are accurate and meet the requirements of the Insurance Law and this Part . . .

(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 therefor. 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 51.6(e) of Department Regulation No. 60 states:

“Both the insurer whose life insurance policy or annuity contract is being replaced and the insurer replacing the life insurance policy or annuity contract shall establish and implement procedures to ensure compliance with the requirements of this Part. These procedures shall include a requirement that all material be dated upon receipt. Such insurers shall also designate a principal officer specifically responsible for the monitoring and enforcement of these procedures. All insurers covered under this Part shall furnish the Superintendent of Insurance with these procedures and the name and title of the designated principal officer by the effective date of this Part. Any changes in these procedures or the designated principal officer shall be furnished to the Superintendent of Insurance within thirty days of such change.”

The Company filed replacement procedures with the Department in 2006. The procedures on file were for transactions where another insurer was replacing the Company’s policy. At the time of the filing, the Company did not sell life insurance or annuity contracts.

The Company began writing life insurance in 2007. Replacement procedures were updated and distributed to the agency force as each life product was introduced in New York. However, the updated procedures were not filed with the Department.

In addition, the principal officer originally designated by the Company in 2006 to monitor and enforce Department Regulation No. 60 procedures was subsequently replaced. The Company did not notify the Department within 30 days of the change.

The Company violated Section 51.6(e) of Department Regulation No. 60 by failing to furnish the Superintendent of Insurance with revised Department Regulation No. 60 procedures and by failing to notify the Department of the change in the designated principal officer responsible for monitoring and enforcing such procedures, within thirty days of these changes.

The Company did not have an effective control system in place during the examination period to monitor and review transactions involving the internal and external replacement of existing life insurance to ensure compliance with the requirements of Section 51.6 of Department Regulation 60.

During the period covered by the examination, the Company did not require its agents to provide the applicant with the Important Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts and did not require its agents to complete a Disclosure Statement for internal replacements. In addition, the Company did not track and record applications where the replacement of an existing Company policy was contemplated and the transaction met the definition of a replacement under Section 51.2 (a) of Department Regulation No. 60. The Company started tracking internal replacement transactions during the third quarter of 2012.

The Company identified 202 cases where an existing Company life insurance policy was exchanged for a new internal policy during the examination period. In all 202 life internal replacements, the agent failed to complete a Disclosure Statement and failed to provide the applicant with the "IMPORTANT Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts".

The examiner recommends that the Company implement a remediation plan acceptable to the Department to mitigate the deficiencies and provide relief to all policyholders that did not receive a complete, accurate and timely disclosure prior to completing an application to replace their existing life insurance policy and/or annuity contract. The remediation plan should include all affected policyholders.

The examiner reviewed 14 applications received during the third quarter of 2012 where an internal replacement was identified. The Company issued a new policy in two instances. For the remaining 12 applications, the application was rejected in accordance with Section 51.6(b)(7) of Department Regulation No. 60 because the agent failed to submit the required replacement paperwork with the application.

In addition to the internal replacements discussed above, the examiners reviewed 18 external replacement transactions consisting of 12 life replacements that were processed during the examination period and six life replacements that were processed during 2012. Of the 18 transactions, the Company issued 10 policies. In 100% of the replacement transactions reviewed, including those where a policy was not issued, the agent did not follow Department Regulation No. 60 procedures. In all instances, the agent submitted more than one application for the same individual because the Definition of Replacement form accompanying the initial application indicated that a replacement of existing insurance was involved. However, the agent failed to

submit at least one, and in some cases all, of the following requirements with the application: 1) an accurate and complete Disclosure Statement dated and signed by the applicant; 2) an agent authorization form signed by the applicant; 3) an Important Notice dated and signed by the applicant; and 4) information to support the information shown in the Disclosure Statement for the existing policy where estimates were used. In 100% of the replacement transactions reviewed where the agent submitted multiple applications for the same individual, the Company did not reject the application within ten days of receipt where the agent failed to follow Regulation 60 procedures, as required by Section 51.6(b)(7) of Department Regulation No. 60.

The examiner's review of internal and external replacements processed by the Company during the examination period indicated inadequate, or a lack of, agent training with respect to complying with the requirements of Department Regulation No. 60. The review also demonstrated the need for the Company to establish and implement more effective controls designed to allow senior management to monitor and detect replacement transactions that fail to comply with the requirements of the Insurance Law and Department Regulation No. 60.

The Company violated Section 51.6(a)(1) of Department Regulation No. 60 by failing to adequately train its agents to comply with the requirements of Department Regulation No. 60.

The Company violated Section 51.6(b)(2) of Department Regulation No. 60 by failing to require with or as part of each application a copy of any proposal, including the sales material used in the sale of the proposed life insurance policy and proof of receipt by the applicant of the *IMPORTANT* Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts and the completed Disclosure Statement.

The Company violated Section 51.6(b)(7) of Department Regulation No. 60 by failing to reject the application where the required forms were not received or the forms did not meet the requirements of Department Regulation No. 60.

The Company violated Section 51.6(e) of Department Regulation No. 60 by failing to establish and implement procedures to ensure compliance with the requirements of Department Regulation No. 60.

The examiner recommends that the Company develop and implement an audit plan designed to review, test and monitor compliance with Department Regulation No. 60. Such plan should be approved by the Company's board of directors or its audit committee and the results of audits performed should also be reviewed by the board of directors or its audit committee.

## B. Underwriting and Policy Forms

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

Section 243.2(b) of Department Regulation No. 152 states, in part:

“Except as otherwise required by law or regulation, an insurer shall maintain:

(1) A policy record for each insurance contract or policy for six calendar years after the date the policy is no longer in force or until after the filing of the report on examination in which the record was subject to review, whichever is longer. Policy records need not be segregated from the policy records of other states as long as they are maintained in accordance with the provisions of this Part. A separate copy need not be maintained in an individual policy record, provided that any data relating to a specific contract or policy can be retrieved pursuant to Section 243.3(a) of this Part. A policy record shall include . . .

(iv) Other information necessary for reconstructing the solicitation, rating, and underwriting of the contract or policy.”

In 10 out of 20 (50%) life and disability income applications reviewed, where the Company declined coverage, the examiner was not able to reconstruct the underwriting of the policy based upon the information maintained in the policy administration system, new business system and imaging system. The Company did not clearly document in the policy record the reason(s) for declining the application for insurance.

The Company violated Section 243.2(b)(1)(iv) of Department Regulation No. 152 by failing to maintain all of the information necessary for reconstructing the rating and underwriting of a contract or policy.

The examiner recommends that the Company implement procedures to clearly document and maintain the basis for the Company’s decision to decline or postpone an application for insurance.

## 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.

1. Section 53-1.4(a) of Department Regulation No. 74 states:

"In addition to the requirements imposed by Section 53-3.5(e) of Subpart 53-3, each insurer shall maintain at its home or principal office, a complete file containing one specimen copy each of the preliminary information form, policy summary form, and sales illustrations authorized by the insurer for each policy form subject to this Part. Such files shall be subject to regular and periodic inspection by the Department. All such forms shall be maintained in said file for a period of either six years or until the filing of the next regular report on examination of the insurer, whichever is the longer period of time. Nothing herein shall be construed as affecting any retention period required by a statute other than the Insurance Law or preventing any insurer from retaining records for a longer period of time."

The Company did not maintain a complete file containing a specimen copy for any of the preliminary information and policy summary forms authorized by the insurer for each policy form sold in New York during the examination period.

The Company violated Section 53-1.4 of Department Regulation No. 74 by failing to maintain at its home office, a complete file containing a specimen copy for each of the preliminary information forms and policy summary forms authorized by the insurer for each policy form sold in New York.

2. Section 3209 of the New York Insurance Law states, in part:

“(b)(1) No policy of life insurance shall be delivered or issued for delivery in this state after the applicable effective date, as set forth in subsection (n) of this section, unless the prospective purchaser has been provided with the following:

(A) a copy of the most recent buyer's guide and the preliminary information required by subsection (d) of this section, at or prior to the time an application is taken . . . and (B) a policy summary upon delivery of the policy. . .

(d) The preliminary information shall be in writing and include, to the extent applicable, the following:

(1) the name and address of the insurance agent or broker or, if no agent or broker is involved, a statement of the procedure to be followed in order to receive responses to inquiries concerning the preliminary information;

(2) the full name and home office, administrative office or branch or agency office address of the company in whose name the life insurance policy is to be written;

(3) the date of the preliminary information and the generic name, the initial amount of insurance and the initial annual premium for the basic policy;

(4) the total guaranteed cash surrender values for the basic policy, at the end of the tenth and twentieth policy years or at the end of the premium-paying period if earlier. These values may be shown on a per thousand or per unit basis;

- (5) the effective policy loan annual percentage interest rate, if the policy would contain this provision, and whether this rate is applied in advance or in arrears, adjustable or fixed;
- (6) for the life insurance policies described in paragraph one of subsection (n) of this section, life insurance cost indexes and the equivalent level annual dividend for the basic policy for ten and twenty years, but in no case beyond the premium-paying period;
- (7) in addition, the applicant shall be advised that, when the policy is issued, a complete policy summary, including cost data, based on the benefits, premiums and dividends of the policy as issued, will be furnished; and that, following the receipt of the policy and policy summary, there will be a period of not less than ten days within which the applicant may return the policy for an unconditional refund of the premiums paid; and
- (8) notwithstanding the foregoing, no applicant for life insurance shall be prevented or delayed in effecting or applying for coverage by the requirements of this section. In such cases where prior to application it is impractical to provide any items prescribed by this section, such items may be estimated in good faith or furnished as soon thereafter as practical prior to delivery of policy. . .”

During the examination period, the Company did not provide the preliminary information required by Section 3209(d) of the New York Insurance Law to any applicant at the point of sale.

The Company violated Section 3209(b)(1)(A) of the New York Insurance Law by failing to provide the preliminary information at or prior to the time that the application was taken.

3. Section 3204 of the New York Insurance Law states, in part:

“(a)(1) Every policy of life, accident or health insurance, or contract of annuity, delivered or issued for delivery in this state, shall contain the entire contract between the parties, and nothing shall be incorporated therein by reference to any writing, unless a copy thereof is endorsed upon or attached to the policy or contract when issued . . .

(3) Such policy or contract cannot be modified, nor can any rights or requirements be waived, except in writing signed by a person specified by the insurer in such policy or contract. . . .

(d) No insertion in or other alteration of any written application for any such policy or contract shall be made by any person other than the applicant without his written consent, except that insertions may be made by the insurer for administrative purposes only in such manner as to indicate clearly that the insertions are not to be ascribed to the applicant.”

The examiner selected a sample of 30 whole life policies for which the non-forfeiture provision was established on the Company’s policy administration system as an automatic

premium loan. In four out of the 30 (13.3%) whole life applications reviewed, the applicant did not elect the automatic premium loan provision.

The Company violated Section 3204(d) of the New York Insurance Law by adding the automatic policy loan provision to a policy, without prior written consent from the applicant (or policy owner), in cases where the automatic policy loan provision was not affirmatively selected on the application.

The Company conducted an analysis of all whole life policies in force that had an automatic premium loan non-forfeiture option indicated on the Company's policy administration system to determine whether the applicant or policyowner elected the automatic premium loan provision. The Company reviewed 8,621 life policies to determine that the correct non-forfeiture option was coded in the system. Of the 8,621 policies reviewed, 285 (3.31%) were coded incorrectly. There were 9 of the 285 identified policies where the policyholder did not affirmatively select the APL option on the application, but the premiums were being paid during the exam period using automatic premium loans.

4. Section 3211 of the New York Insurance Law states, in part:

“(a)(1) No policy of life insurance or non-cancellable disability insurance delivered or issued for delivery in this state . . . shall terminate or lapse by reason of default in payment of any premium, installment, or interest on any policy loan in less than one year after such default, unless, for scheduled premium policies, a notice shall have been duly mailed at least fifteen and not more than forty-five days prior to the day when such payment becomes due . . .

(b) The notice required by paragraph one of subsection (a) hereof shall . . .

(2) state the amount of such payment, the date when due, the place where and the person to whom it is payable; and shall also state that unless such payment is made on or before the date when due or within the specified grace period thereafter, the policy shall terminate or lapse except as to the right to any cash surrender value or nonforfeiture benefit. . . .”

The examiner reviewed specimen copies of the premium notices utilized by the Company during the examination period. The premium notices provided to whole life policyholders during the examination period did not contain a disclosure stating that unless payment is made on or before the date when due or within the specified grace period thereafter, the policy shall terminate or lapse except as to the right to any cash surrender value or non-forfeiture benefit.

The Company violated Section 3211(b)(2) of the New York Insurance Law by failing to include disclosure language on premium notices provided to whole life insurance policyholders informing such policyholders that unless payment is made on or before the date when due or within the specified grace period thereafter, the policy shall terminate or lapse except as to the right to any cash surrender value or nonforfeiture benefit.

The Company conducted a study to identify any insureds that died within one year of the lapse of their policy. The Company's research included a search through the social security death master index as well as a search through the Company's own policy administration systems. The Company identified 49 deceased insureds. The 49 insureds were covered under 55 insurance policies. In 40 instances, benefits under the policy were paid to the appropriate beneficiary(ies) and for the other 15 policies, benefits were denied.

5. Section 3211(g) of the New York Insurance Law states, in part:

“In the case of life insurance policies to which this section is applicable and which contain a cash surrender value, the insurer must provide an annual notification that the policy contains a cash surrender value and that further information, including the amount thereof, is available from the insurer upon written request from the policyowner. Such notification shall include a statement that the insured has the right to request an updated policy illustration . . . The notification pertaining to the cash surrender value shall be set out in a conspicuous manner and shall include the address to which the policyowner may make a written inquiry. Any notice or statement which informs a policyowner of the policy's cash surrender value at least annually shall be deemed to comply with the requirements of this subsection.”

During the examination period, the Company did not have procedures in place to notify whole life insurance policyholders, at least annually, that their policy contained a cash value and that further information, including the amount thereof, was available upon request from the insurer.

The Company violated Section 3211(g) of the New York Insurance Law by failing to notify whole life insurance policyholders that their policy contains a cash surrender value and that further information, including the amount thereof, is available from the insurer upon written request from the policyowner.

## 5. SUMMARY AND CONCLUSIONS

Following are the violations and recommendations contained in this report:

<u>Item</u>	<u>Description</u>	<u>Page No.</u>
A	The Company violated Section 219.5(a) of Department Regulation No. 34-A by failing to maintain at its home office in New York, a complete advertising file for life insurance advertisements including a notation indicating the manner and extent of distribution.	6
B	The Company violated Section 215.17(a) of Department Regulation No. 34 by failing to maintain at its home office in New York, a complete advertising file for accident and health insurance advertisements including a notation indicating the manner and extent of distribution.	7
C	The Company violated Section 215.5(c) of Department Regulation No. 34 by failing to place in a prominent place and style in its advertisements, the appropriate statement regarding the expected benefit ratio for the coverage provided.	7
D	The Company violated Section 41.3(a) of Department Regulation No. 143 by failing to include a statement in advertisements for policies with accelerated death benefit provisions that receipt of accelerated death benefits may affect eligibility for public assistance programs.	8
E	The Company violated Section 41.3(b) of Department Regulation No. 143 by failing to include a statement in advertisements for policies with accelerated death benefit provisions that receipt of accelerated death benefits may be taxable.	8
F	The Company violated Section 51.6(e) of Department Regulation No. 60 by failing to furnish the Superintendent of Insurance with revised Department Regulation No. 60 procedures and by failing to notify the Department of the change in the designated principal officer responsible for monitoring and enforcing such procedures, within thirty days of these changes.	9
G	The examiner recommends that the Company implement a remediation plan acceptable to the Department to mitigate the deficiencies and provide relief to all policyholders that did not receive a complete, accurate and timely disclosure prior to completing an application to replace their existing life insurance policy and/or annuity contract. The remediation plan should include all affected policyholders.	10

<u>Item</u>	<u>Description</u>	<u>Page No.</u>
H	The Company violated Section 51.6(a)(1) of Department Regulation No. 60 by failing to adequately train its agents to comply with the requirements of Department Regulation No. 60.	11
I	The Company violated Section 51.6(b)(2) of Department Regulation No. 60 by failing to require with or as part of each application a copy of any proposal, including the sales material used in the sale of the proposed life insurance policy and proof of receipt by the applicant of the <i>IMPORTANT</i> Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts and the completed Disclosure Statement.	11
J	The Company violated Section 51.6(b)(7) of Department Regulation No. 60 by failing to reject the application where the required forms were not received or the forms did not meet the requirements of Department Regulation No. 60.	11
K	The Company violated Section 51.6(e) of Department Regulation No. 60 by failing to establish and implement procedures to ensure compliance with the requirements of Department Regulation No. 60.	11
L	The examiner recommends that the Company develop and implement an audit plan designed to review, test and monitor compliance with Department Regulation No. 60. Such plan should be approved by the Company's board of directors or its audit committee and the results of audits performed should also be reviewed by the board of directors or its audit committee.	11
M	The Company violated Section 243.2(b)(1)(iv) of Department Regulation No. 152 by failing to maintain all of the information necessary for reconstructing the rating and underwriting of a contract or policy.	12
N	The examiner recommends that the Company implement procedures to clearly document and maintain the basis for the Company's decision to decline or postpone an application for insurance.	12
O	The Company violated Section 53-1.4 of Department Regulation No. 74 by failing to maintain at its home office, a complete file containing a specimen copy for each of the preliminary information forms and policy summary forms authorized by the insurer for each policy form sold in New York.	13

<u>Item</u>	<u>Description</u>	<u>Page No.</u>
P	The Company violated Section 3209(b)(1)(A) of the New York Insurance Law by failing to provide the preliminary information at or prior to the time that the application was taken.	14
Q	The Company violated Section 3204(d) of the New York Insurance Law by adding the automatic policy loan provision to a policy, without prior written consent from the applicant (or policy owner), in cases where the automatic policy loan provision was not affirmatively selected on the application.	15
R	The Company violated Section 3211(b)(2) of the New York Insurance Law by failing to include disclosure language on premium notices provided to whole life insurance policyholders informing such policyholders that unless payment is made on or before the date when due or within the specified grace period thereafter, the policy shall terminate or lapse except as to the right to any cash surrender value or nonforfeiture benefit.	16
S	The Company violated Section 3211(g) of the New York Insurance Law by failing to notify whole life insurance policyholders that their policy contains a cash surrender value and that further information, including the amount thereof, is available from the insurer upon written request from the policyowner.	16

Respectfully submitted,

\_\_\_\_\_/s/\_\_\_\_\_  
Eden M. Sunderman  
Associate Insurance Examiner

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

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

\_\_\_\_\_/s/\_\_\_\_\_  
Eden M. Sunderman

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_

APPOINTMENT NO. 30854

NEW YORK STATE

**DEPARTMENT OF FINANCIAL SERVICES**

I, BENJAMIN M. LAWSKY, Superintendent of Financial Services of the State of New York, pursuant to the provisions of the Financial Services Law and the Insurance Law, do hereby appoint:

**EDEN SUNDERMAN**

as a proper person to examine the affairs of the

**AMERICAN FAMILY LIFE ASSURANCE COMPANY OF NEW YORK**

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

**COMPANY**

with such other information as she shall deem requisite.

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

this 12th day of September, 2012

BENJAMIN M. LAWSKY  
Superintendent of Financial Services

By:



MICHAEL MAFFEI  
ASSISTANT DEPUTY SUPERINTENDENT  
AND CHIEF OF THE LIFE BUREAU

