

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES
REPORT ON EXAMINATION
OF THE
FIRST GREAT-WEST LIFE & ANNUITY INSURANCE COMPANY

CONDITION:

DECEMBER 31, 2011

DATE OF REPORT:

MARCH 29, 2013

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EXAMINER:

ELKIN WOODS

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NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Anthony J. Albanese
Acting Superintendent

September 29, 2015

Honorable Anthony J. Albanese
Acting Superintendent of Financial Services
New York, New York 10004

Sir:

In accordance with instructions contained in Appointment No. 30809, dated September 12, 2012, and annexed hereto, an examination has been made into the condition and affairs of First Great-West Life & Annuity Insurance Company, hereinafter referred to as “the Company,” at its home office located at 50 Main Street, White Plains, NY 10606.

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 comment and violations contained in this report are summarized below.

- On August 12, 2012, the Company's name was changed to Great-West Life & Annuity Insurance Company of New York.
- The Company violated Section 1505(d)(3) of the New York Insurance Law by receiving services from its affiliate, FASCore, prior to submitting such agreement to the Superintendent for review and approval. (See item 3D of this report)
- The Company violated Section 1313(f) of the New York Insurance Law by using advertisements containing statements of the separate financial condition of the holding company system, but failing to include statements of the separate financial condition of the Company. A similar violation was contained in the prior report on examination. (See item 7A of this report)
- The Company violated Section 51.6(b)(3) of Department Regulation No. 60 by failing to examine the Disclosure Statements completed by its agents and submitted with applications during the examination period, and ascertain that they were accurate and met the requirements of the Insurance Law and the Regulation. (See item 7A of this report)
- The Company violated Section 51.6(b)(7) of Department Regulation No. 60 by failing to correct the deficiencies or reject the application when the replacement forms did not meet the requirements of the Regulation. (See item 7A of this report)
- The Company violated Section 53-2.2(a)(2) of Department Regulation No. 74 by failing to include the agent's business address on the illustrated policies. (See item 7B of this report)
- The Company violated Section 53-3.5(a) of Department Regulation No. 74 when the agents failed to submit a copy of the signed illustration to the Company at the time of policy application. (See item 7B of this report)
- The Company violated Section 3204(a) of the New York Insurance Law by applying the APL provision, instead of the non-forfeiture provision stated in the contract, for policyholders who did not affirmatively select the APL option on the application. (See item 7C of this report)

2. SCOPE OF EXAMINATION

The examination of the Company was a full scope examination as defined in the *NAIC Financial Condition Examiners Handbook, 2012 Edition* (the “Handbook”). The examination covers the three-year period from January 1, 2009 to December 31, 2011. The examination was conducted observing the guidelines and procedures in the Handbook and, where deemed appropriate by the examiner, transactions occurring subsequent to December 31, 2011, but prior to the date of this report (i.e., the completion date of the examination) were also reviewed.

In the course of the examination, a review was also made of the manner in which the Company conducts its business and fulfills its contractual obligations to policyholders and claimants. The results of this review are contained in item 7 of this report.

The examination was conducted on a risk focused basis in accordance with the provisions of the Handbook published by the National Association of Insurance Commissioners (“NAIC”). The Handbook guidance provides for the establishment of an examination plan based on the examiner’s assessment of risk in the insurer’s operations and utilizing that evaluation in formulating the nature and extent of the examination. The examiner planned and performed the examination to evaluate the current financial condition as well as identify prospective risks that may threaten the future solvency of the insurer. The examiner identified key processes, assessed the risks within those processes, and evaluated the internal control systems and procedures used to mitigate those risks. The examination also included assessing the principles used and significant estimates made by management, evaluating the overall financial statement presentation, and determining management’s compliance with New York statutes and Department guidelines, Statutory Accounting Principles as adopted by the Department and annual statement instructions.

The examination was leveraged from the examination of the Company’s parent, Great-West Life and Annuity Insurance Company (“GWLA”) which was performed by the State of Colorado (“Colorado”). Since the insurer and its parent share common controls and management, and Colorado is accredited by the NAIC, the examiner deemed it appropriate to rely on the work performed by Colorado.

Information about the Company's organizational structure, business approach and control environment were utilized to develop the examination approach. The Company's risks and management activities were evaluated incorporating the NAIC's nine branded risk categories. These categories are as follows:

- Pricing/Underwriting
- Reserving
- Operational
- Strategic
- Credit
- Market
- Liquidity
- Legal
- Reputational

The Company was audited annually, for the years 2009 through 2011, by the accounting firm of Deloitte & Touche. The Company received an unqualified opinion in all three years. Certain audit workpapers of the accounting firm were reviewed and relied upon in conjunction with this examination. The Company's parent, GWLA, has an internal audit department and a separate internal control department which was given the task of assessing the internal control structure and compliance with the Sarbanes-Oxley Act of 2002 ("SOX"). Where applicable, SOX workpapers and reports were reviewed and portions were relied upon for this examination.

The examiner reviewed the corrective actions taken by the Company with respect to the violations, recommendations and comments contained in the prior report on examination. The results of the examiner's review are contained in item 8 of this report.

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 June 7, 1971, under the name of Canada Life Insurance Company of New York (“CLINY”), was licensed on December 14, 1971, and commenced business on January 1, 1972. Initial resources of \$3,000,000, consisting of common capital stock of \$1,000,000 and paid in and contributed surplus of \$2,000,000, were provided through the sale of 100,000 shares of common stock (with a par value of \$10 each) for \$30 per share by Canada Life Assurance Company (“CLACO”), a Canadian mutual insurance company.

In 1999, Canada Life Financial Corporation (“CLFC”) acquired control of CLACO and its subsidiaries. CLFC was established to convert CLACO from a mutual life insurance company to a stock life insurance company.

On July 10, 2003, Great-West Lifeco Inc. (“Lifeco”), a Canadian holding company, completed its acquisition of CLFC. Immediately thereafter, Lifeco transferred all of the common shares of CLFC to its Canadian subsidiary, The Great-West Life Assurance Company (“GWL”). On December 31, 2003, all of the outstanding common shares of CLINY were transferred to Great-West Life & Annuity Insurance Company (“GWL&A”), a stock life insurer domiciled in the State of Colorado.

Effective December 31, 2005, CLINY merged with First Great-West Life & Annuity Insurance Company (“FGWLA”). Prior to the merger both insurers were wholly-owned U.S. subsidiaries of GWL&A. Upon completion of the merger CLINY, the surviving company, adopted the First Great-West Life & Annuity Insurance Company name.

On August 12, 2012, the Company’s name was changed to Great-West Life & Annuity Insurance Company of New York

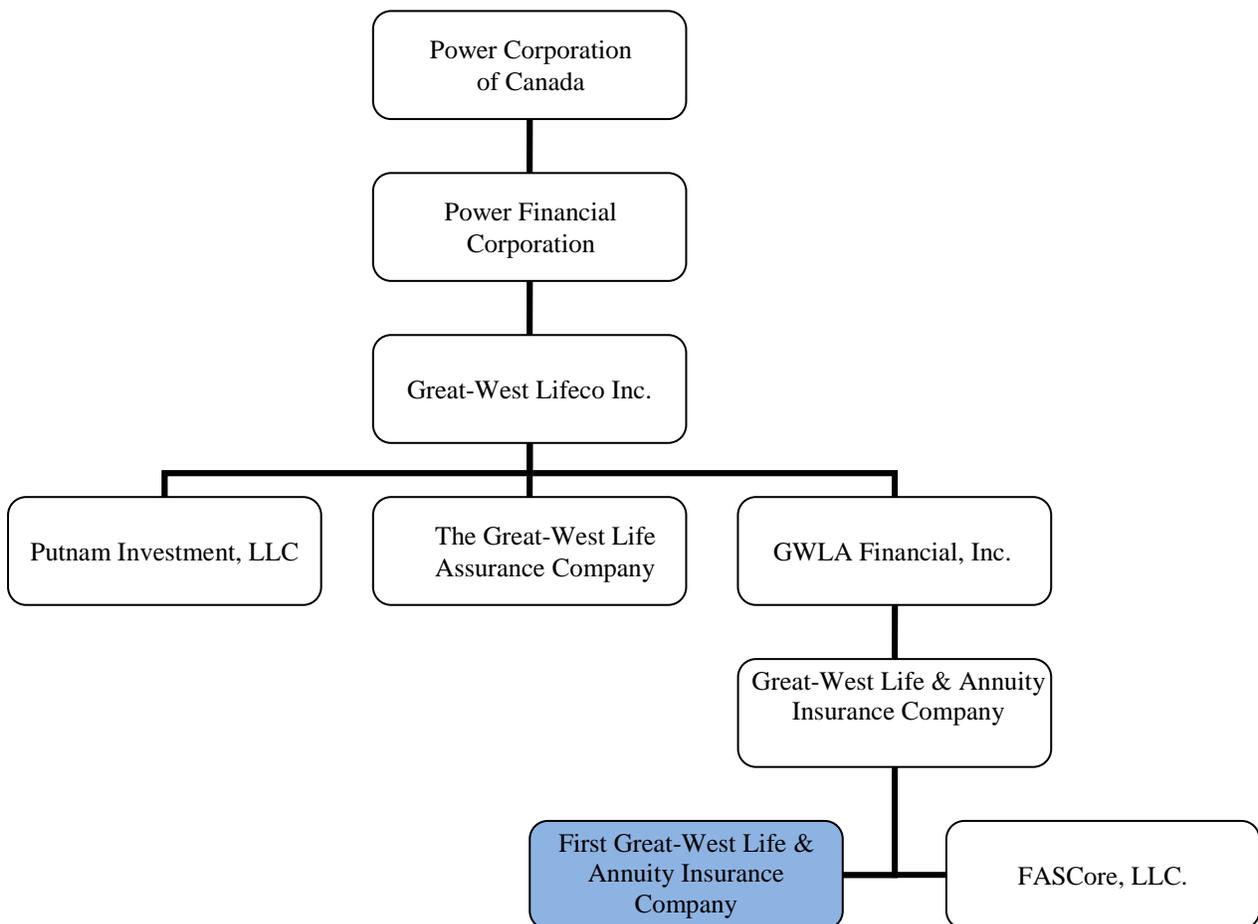
As of December 31, 2011, the Company had capital stock in the amount of \$2,500,000, which consisted of 2,500 shares of common stock with a par value of \$1,000 each, and paid in and contributed surplus of \$32,450,000.

B. Holding Company

The Company is a wholly owned subsidiary of GWL&A, a stock life insurer domiciled in the State of Colorado. GWL&A is a wholly owned subsidiary of GWLA Financial Inc., a Delaware holding company, which in turn is an indirect wholly owned subsidiary of Lifeco, a Canadian holding company. Lifeco is a member of the Power Financial Corporation group of companies, a diversified management and holding company based in Montreal, Canada, which currently holds 68.7% of Lifeco. The ultimate controlling company is Power Corporation of Canada.

C. Organizational Chart

An organization chart reflecting the relationship between the Company and significant entities in its holding company system as of December 31, 2011 follows:



D. Service Agreements

The Company had one service agreement in effect with an affiliate during the examination period.

Type of Agreement and Dept. File Number	Effective Date	Provider(s) of Service	Recipient of Service	Specific Service(s) Covered	Expense* For Each Year of the Examination
Administrative Services File No. 30772	August 1, 2003 (Amended October 5, 2005)	GWL&A (and certain affiliates)	The Company	Underwriting, policy owner services, claims, marketing, accounting, corporate support, functional support, and investment services	2009 \$ (4,567,056) 2010 \$ (9,031,146) 2011 \$(11,935,975)

* Amount of Expense Incurred by the Company

Section 1505(d)(3) of the New York Insurance Law states, in part:

“The following transactions between a domestic controlled insurer and any person in its holding company system may not be entered into unless the insurer has notified the superintendent in writing of its intention to enter into any such transaction at least thirty days prior thereto, or such shorter period as he may permit, and he has not disapproved it within such period...

(3) rendering of services on a regular or systematic basis...”

FASCore, LLC (FASCore), an affiliate of the Company, provided the following services to the Company’s group retirement business:

- Participant account recordkeeping services for individual retirement accounts and defined contribution and defined benefit plans.
- Internet based Plan management tools for plan sponsors, advisors and administrators.
- Plan administrative materials, including administrative forms, enrollment materials, and ERISA/IRC required notices and documents.

The services were provided during the entire examination period, and the Company reimbursed FASCore for the services during the entire examination period. The Company acknowledged in writing that the arrangement between the Company and FASCore should be

documented in a written agreement, consistent with the New York Insurance Law and Great-West Financial's Intercompany Agreements Policy. There is no formal written agreement between the Company and FASCore listing the services that FASCore performs on behalf of the Company.

The Company violated Section 1505(d)(3) of the New York Insurance Law by receiving services from its affiliate, FASCore, prior to submitting such agreement to the Superintendent for review and approval.

E. Management

The Company's by-laws provide that the board of directors shall be comprised of not less than seven and not more than 21 directors. Directors are elected for a period of one year at the annual meeting of the stockholders held in June of each year. As of December 31, 2011, the board of directors consisted of 11 members. Meetings of the board are held quarterly.

The 11 board members and their principal business affiliation, as of December 31, 2011, were as follows:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>	<u>Year First Elected</u>
Marcia D. Alazraki* New York, NY	Attorney Manatt, Phelps & Philips, LLP	1997
James Balog* Vero Beach, FL	Retired, Former Senior Executive Vice President Drexel Burnham Lambert	1997
John L. Bernbach* New York, NY	President and Founder Not Traditional Media, Inc.	2007
André R. Desmarais Montréal, Québec	President and Co-Chief Executive Officer Power Corporation of Canada	2004
Paul G. Desmarais, Jr. Montréal, Québec	Chairman and Co-Chief Executive Officer Power Corporation of Canada	1997
Mitchell T.G. Graye Castle Rock, CO	President and Chief Executive Officer Great-West Life & Annuity Insurance Company of New York	2009
Stuart Z. Katz* New York, NY	Attorney Fried, Frank, Harris, Shriver & Jacobson	1997

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>	<u>Year First Elected</u>
Raymond L. McFeetors Winnipeg, Manitoba	Chairman of the Board Great-West Life & Annuity Insurance Company of New York	2007
Robert J. Orr Westmount, Québec	President and Chief Executive Officer Power Financial Corporation	2008
T. Timothy Ryan, Jr.* New York, NY	President and Chief Executive Officer Securities Industry & Financial Markets Association	2009
Brian E. Walsh* Rye, NY	Managing Partner Saguenay Capital, LLC	1997

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

In June, 2012, James A. Balog retired from the board and Jerome J. Selitto was appointed to the board.

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.

The following is a listing of the principal officers of the Company as of December 31, 2011:

<u>Name</u>	<u>Title</u>
Mitchell T.G. Graye	President and Chief Executive Officer
Seguard M. Corbett	Executive Vice President and Chief Investment Officer
Glen R. Derback	Senior Vice President and Treasurer
Charles P. Nelson	President – Great-West Retirement Services
Beverly Byrne*	Chief Compliance Officer, and Chief Legal Counsel, Financial Services

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

In February, 2012, Glen R. Derback retired as Senior Vice President and Treasurer and in April, 2012, James V. Harmelen was appointed as Senior Vice President and Treasurer.

4. TERRITORY AND PLAN OF OPERATIONS

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 2011, 87.97% of life premiums, 99.92% of accident and health premiums and 99.96% of annuity considerations were received from New York. Policies are written on a non-participating basis.

The Company's agency operations are conducted on a general agency basis.

A. Statutory and Special Deposits

As of December 31, 2011, the Company had \$276,303 of United States Treasury Bonds on deposit with the State of New York, its domiciliary state, for the benefit of all policyholders, claimants and creditors of the Company.

B. Direct Operations

The Company's principal lines of business during the examination period were group variable annuity, individual variable annuity, variable universal life, universal life and term life.

Currently, the Company does not sell group accident and health insurance, although it has a closed block of business with fewer than 10 dental insurance policies and fewer than 10 long term disability insurance policies in force. There is also a small block of medical conversion policies. Excess loss policies are sold to employers who sponsor self-funded accident and health plans.

The group variable annuity products are sold through broker/dealers and registered brokers. The individual annuity products are sold through Charles Schwab. The general account universal life insurance products are sold to banks and are used to finance employee benefit plans (BOLI). The variable universal life insurance products are sold to corporations and are used to finance executive benefit plans (COLI). The individual term life products are sold by agents through branch offices.

Pursuant to an indemnity reinsurance agreement effective March 31, 2008, the Company ceded on a 100% quota share basis its issued and assumed liabilities under health, life, disability and stop-loss insurance policies to Connecticut General Life Insurance Company (“CGLIC”). The indemnity reinsurance agreement applied to all of the Company’s existing policies and to new policies issued by CGLIC on behalf of the Company during a limited transitional period that ended in the fourth quarter of 2010. The Company entered into an Administrative Services Agreement with CGLIC, whereby CGLIC administers both the existing healthcare business and new policies issued on behalf of the Company during the transition period. The Company retained the ultimate authority to direct the administration of its healthcare business.

C. Reinsurance

As of December 31, 2011, the Company had reinsurance treaties in effect with 19 companies, of which 17 were authorized or accredited. The Company’s life and accident and health business is reinsured on a coinsurance, and/or yearly renewable term basis. Reinsurance is provided on an automatic and/or facultative basis.

The maximum retention limit for individual life contracts is \$250,000. The total face amount of life insurance ceded as of December 31, 2011, was \$2,290,386,654, which represents 57.70% of the total face amount of life insurance in force. Reserve credit taken for reinsurance ceded to unauthorized companies, totaling \$359,758, was supported by letters of credit.

5. 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 during the period under review:

	December 31, <u>2008</u>	December 31, <u>2011</u>	<u>Increase</u>
Admitted assets	<u>\$656,304,116</u>	<u>\$1,010,566,024</u>	<u>\$354,261,908</u>
Liabilities	<u>\$602,893,659</u>	<u>\$ 933,193,934</u>	<u>\$330,300,275</u>
Common capital stock	\$ 2,500,000	\$ 2,500,000	\$ 0
Gross paid in and contributed surplus	32,450,000	32,450,000	0
Change in surplus resulting from application of SSAP10R	0	2,951,981	2,951,981
Unassigned funds (surplus)	<u>18,460,457</u>	<u>39,470,109</u>	<u>21,009,652</u>
Total capital and surplus	<u>\$ 53,410,457</u>	<u>\$ 77,372,090</u>	<u>\$ 23,961,633</u>
Total liabilities, capital and surplus	<u>\$656,304,116</u>	<u>\$1,010,566,024</u>	<u>\$354,261,908</u>

The Company's invested assets as of December 31, 2011, exclusive of separate accounts, were mainly comprised of bonds (82.1%) and mortgage loans (13.1%).

The majority (97.4%) of the Company's bond portfolio, as of December 31, 2011, was comprised of investment grade obligations.

The following 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>Group Life</u>	
	<u>Issued</u>	<u>In Force</u>	<u>Issued</u>	<u>In Force</u>	<u>Issued & Increases</u>	<u>In Force</u>
2009	\$ 8,412	\$1,161,786	\$129,275	\$3,573,326	\$ 0	\$266,138
2010	\$47,705	\$1,147,466	\$ 51,675	\$3,181,027	\$ 0	\$ 30
2011	\$15,055	\$1,110,475	\$ 32,450	\$2,858,646	\$ 0	\$ 30

The increase in individual whole life issued in 2010 was due primarily to a spike in BOLI sales in 2010 compared to no BOLI sales in 2009 & 2011.

The decrease in individual term life insurance in 2010 was due primarily to the decrease in sales activities following the Company's decision to focus its sales efforts on the retirement market where the results were expected to be more favorable.

The decrease in group life in force in 2010 was due primarily to the sale of the group life business to CGLIC in 2010.

The following has been extracted from the Exhibits of Annuities in the filed annual statements for each of the years under review:

	<u>Ordinary Annuities</u>		
	<u>2009</u>	<u>2010</u>	<u>2011</u>
Outstanding, end of previous year	1,970	1,738	1,685
Issued during the year	72	103	0
Other net changes during the year	<u>(304)</u>	<u>(156)</u>	<u>(136)</u>
Outstanding, end of current year	<u>1,738</u>	<u>1,685</u>	<u>1,549</u>

The Company ceased selling ordinary annuities in 2011.

	<u>Group Annuities</u>		
	<u>2009</u>	<u>2010</u>	<u>2011</u>
Outstanding, end of previous year	177	177	379
Issued during the year*	0	245	138
Other net changes during the year*	<u>(0)</u>	<u>(43)</u>	<u>(21)</u>
Outstanding, end of current year	<u>177</u>	<u>379</u>	<u>496</u>

*During 2009, the Company did not report the “Issued during the year” of 129 and “Other net changes during the year” of 9. In 2010, the Company reported both the net amount of the 2009 numbers, along with the 2010 “Issued during the year” of 125. The net effect of these reporting errors was the “Issues during the year” for 2010 of 245. The reserves were reported correctly in all years.

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>2009</u>	<u>2010</u>	<u>2011</u>
Ordinary:			
Life insurance	\$6,528,795	\$5,765,257	\$7,141,040
Individual annuities	1,291,700	(186,587)	103,838
Supplementary contracts	<u>75,961</u>	<u>125,591</u>	<u>122,729</u>
Total ordinary	<u>\$7,896,456</u>	<u>\$5,704,261</u>	<u>\$7,367,607</u>
Group:			
Life	\$ 73,530	\$ 0	\$ 0
Annuities	<u>69,478</u>	<u>1,964,734</u>	<u>1,038,789</u>
Total group	<u>\$ 143,008</u>	<u>\$1,964,734</u>	<u>\$1,038,789</u>
Accident and health:			
Group	\$ 922,780	\$ 847,391	\$ 27,279
Other	<u>(22,214)</u>	<u>(15,340)</u>	<u>347</u>
Total accident and health	<u>\$ 900,566</u>	<u>\$ 832,051</u>	<u>\$ 27,626</u>
Total	<u>\$8,940,030</u>	<u>\$8,501,046</u>	<u>\$8,434,022</u>

The decrease for individual annuities in 2010 is due primarily to the decreased overall profitability due to low interest rates and adverse mortality experience in 2010.

The zeros for group life in 2010 and 2011 is the result of the sale of its group life business to CGLIC pursuant to an indemnity reinsurance agreement in 2010.

6. FINANCIAL STATEMENTS

The following statements show the assets, liabilities, capital and surplus as of December 31, 2011, as contained in the Company's 2011 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, 2011, filed annual statement.

A. Independent Accountants

The firm of Deloitte & Touche was retained by the Company to audit the Company's combined statutory basis statements of financial position of the Company as of December 31st of each year in the examination period, and the related statutory-basis statements of operations, capital and surplus, and cash flows for the year then ended.

Deloitte & Touche concluded that the statutory financial statements presented fairly, in all material respects, the financial position of the Company at the respective audit dates. Balances reported in these audited financial statements were reconciled to the corresponding years' annual statements with no discrepancies noted.

B. Net Admitted Assets

Bonds	\$ 571,920,315
Mortgage loans on real estate:	
First liens	90,965,319
Cash, cash equivalents and short term investments	16,669,596
Contract loans	14,814,064
Other invested assets	2,072,375
Receivable for securities	147,033
Investment income due and accrued	5,636,901
Premiums and considerations:	
Uncollected premiums and agents' balances in the course of collection	339,012
Deferred premiums, agents' balances and installments booked but deferred and not yet due	1,827,075
Reinsurance:	
Amounts recoverable from reinsurers	65,308
Funds held by or deposited with reinsured companies	5,143
Other amounts receivable under reinsurance contracts	21,314
Current federal and foreign income tax recoverable and interest thereon	1,388,390
Net deferred tax asset	5,172,072
Receivables from parent, subsidiaries and affiliates	853,322
Other assets	2,300
Premium tax refund	380,550
State income tax recoverable	156,734
From separate accounts, segregated accounts and protected cell accounts	<u>298,129,201</u>
 Total admitted assets	 <u>\$1,010,566,024</u>

C. Liabilities, Capital and Surplus

Aggregate reserve for life policies and contracts	\$ 602,709,511
Aggregate reserve for accident and health contracts	233,571
Liability for deposit-type contracts	3,781,863
Contract claims:	
Life	2,427,520
Provision for policyholders' dividends and coupons payable in following calendar year – estimated amounts	
Dividends apportioned for payment	1,600,000
Contract liabilities not included elsewhere:	
Other amounts payable on reinsurance	1,463,984
Interest maintenance reserve	12,075,749
Commissions to agents due or accrued	589,476
General expenses due or accrued	849,660
Transfers to separate accounts due or accrued	(13,771)
Taxes, licenses and fees due or accrued, excluding federal income taxes	2,450,053
Amounts withheld or retained by company as agent or trustee	14,324
Remittances and items not allocated	5,430
Miscellaneous liabilities:	
Asset valuation reserve	5,863,697
Reinsurance in unauthorized companies	189
Payable to parent, subsidiaries and affiliates	583,152
Payable for Securities	5,122
Accrued interest on outstanding claims	37,810
Miscellaneous liabilities	115,808
Annuity surrenders in process	271,585
From Separate Accounts statement	<u>298,129,201</u>
 Total liabilities	 \$ <u>933,193,934</u>
 Common capital stock	 \$ 2,500,000
Gross paid in and contributed surplus	32,450,000
Change in surplus resulting from application of SSAP10R	2,951,981
Unassigned funds (surplus)	<u>39,470,109</u>
 Surplus	 \$ <u>74,872,090</u>
 Total capital and surplus	 \$ <u>77,372,090</u>
 Total liabilities, capital and surplus	 \$ <u>1,010,566,024</u>

D. Condensed Summary of Operations

	<u>2009</u>	<u>2010</u>	<u>2011</u>
Premiums and considerations	\$117,178,926	\$135,506,341	\$203,414,503
Investment income	32,832,660	34,027,550	34,144,259
Commissions and reserve adjustments on reinsurance ceded	3,281,129	2,029,104	391,477
Miscellaneous income	<u>4,362,084</u>	<u>4,675,117</u>	<u>5,547,468</u>
Total income	<u>\$157,654,799</u>	<u>\$176,238,112</u>	<u>\$243,497,707</u>
Benefit payments	\$ 67,524,796	\$113,970,100	\$ 83,926,600
Increase in reserves	59,758,571	27,925,029	54,246,259
Commissions	4,947,251	4,681,892	4,633,915
General expenses and taxes	8,543,657	7,644,500	10,600,453
Increase in loading on deferred and uncollected premiums	(226,271)	(897,227)	3,512
Net transfers to (from) Separate Accounts	4,302,757	8,437,901	78,472,606
Miscellaneous deductions	<u>30,068</u>	<u>22,683</u>	<u>7,151</u>
Total deductions	<u>\$144,880,829</u>	<u>\$161,784,878</u>	<u>\$231,890,496</u>
Net gain (loss) from operations	\$ 12,773,970	\$ 14,453,234	\$ 11,607,211
Dividends	1,461,998	1,542,084	1,552,514
Federal and foreign income taxes incurred	<u>2,371,942</u>	<u>4,410,104</u>	<u>1,620,675</u>
Net gain (loss) from operations before net realized capital gains	\$ 8,940,030	\$ 8,501,046	\$ 8,434,022
Net realized capital gains (losses)	<u>(3)</u>	<u>(14,491)</u>	<u>(1,497,245)</u>
Net income	<u>\$ 8,940,027</u>	<u>\$ 8,486,555</u>	<u>\$ 6,936,777</u>

The decrease in commissions and reserve adjustments on reinsurance ceded is due primarily to the ceding commissions to CGLIC.

The increase in benefit payments is due primarily to a large plan termination and a higher number of transfers to variable plans.

The increase in net transfers to separate accounts is due primarily to increased sales of group annuity contracts and the transfers between general and separate accounts on these contracts.

E. Capital and Surplus Account

	<u>2009</u>	<u>2010</u>	<u>2011</u>
Capital and surplus, December 31, prior year	<u>\$53,410,457</u>	<u>\$65,871,347</u>	<u>\$70,991,534</u>
Net income	\$ 8,940,027	\$ 8,486,555	\$ 6,936,777
Change in net unrealized capital gains (losses)	2,471,644	(1,126,530)	188,038
Change in net deferred income tax	(6,001,451)	935,062	(1,222,904)
Change in non-admitted assets and related Items	10,443,692	(1,771,595)	982,037
Change in liability for reinsurance in unauthorized companies	(4,430)	(9,863)	18,805
Change in asset valuation reserve	(3,903,598)	(537,807)	(560,568)
Change in surplus as a result of reinsurance	(2,093,517)	(1,160,722)	0
Change in surplus resulting from application of SSAP10R	<u>2,608,523</u>	<u>305,087</u>	<u>38,371</u>
Net change in capital and surplus for the year	<u>\$12,460,890</u>	<u>\$ 5,120,187</u>	<u>\$ 6,380,556</u>
Capital and surplus, December 31, current year	<u>\$65,871,347</u>	<u>\$70,991,534</u>	<u>\$77,372,090</u>

7. 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 1313(f) of the New York Insurance Law states:

“Advertisements and other public announcements directed primarily at calling the attention of policyholders or prospective policyholders to an insurer and containing a statement of the separate financial condition of the holding company system shall also contain a statement of the separate financial condition of the insurer which shall comply with this section.”

The examiner's reviewed a sample of 40 advertisements that were used during the examination period. Two of the 40 (5%) advertisements used by the Company contained statements of the separate financial condition of the holding company system, but did not contain a statement of the separate financial condition of the Company.

The Company violated Section 1313(f) of the New York Insurance Law by using advertisements containing statements of the separate financial condition of the holding company system, but failing to include statements of the separate financial condition of the Company. A similar violation was contained in the prior report on examination.

2. 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...”

The examiner obtained and reviewed the Company's advertising log for the examination period that included every advertisement that was disseminated in New York. The advertising log did not indicate the extent of distribution of each advertisement.

The Company violated Section 219.5(a) of Department Regulation No. 34-A by failing to indicate the extent of distribution of each advertisement disseminated in New York during the examination period.

3. 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. . .

(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;...

(6) Where the required forms are received with the application and found to be in compliance with this Part, maintain copies of: any proposal, including the sales material used in the sale of the proposed life insurance policy or annuity contract; proof of receipt by the applicant of the "*IMPORTANT* Notice Regarding Replacement or Change of Life Insurance Policies or Annuity Contracts;" the signed and completed "Disclosure Statement;" and the notification of replacement to the insurer whose life insurance policy or annuity contract is to be replaced indexed by agent and broker, for six calendar years or until after the filing of the report on examination in which the transaction was subject to review by the appropriate insurance official of its state of domicile, whichever is later;

(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. . . ”

The examiner's review of a sample of 21 external variable annuity replacement files revealed that the agents did not complete the Disclosure Statement according to the instructions contained in Appendix 10B of Department Regulation No. 60, and the Disclosure Statement contained inaccuracies for either the proposed contracts and/or the existing contract(s) as follows:

- (a) In 19 of the 21 (90%) replacement files reviewed, the agents failed to indicate the sum total of the surrender values of the existing contracts for the proposed annuity.
- (b) In 4 of the 21 (19%) replacement files reviewed, the agent failed to complete the summary result comparisons section in part two of the Disclosure Statement which requires the value of the proposed annuity surrender value.
- (c) In 5 of the 21 (24%) replacement files reviewed, the agent failed to disclose the surrender charge on the Disclosure Statement.
- (d) In 7 of 21 (33%) replacement files reviewed, the agent failed to indicate, on the Disclosure Statement, if a proposal or sales material was used in the sale.

The Company violated Section 51.6(b)(3) of Department Regulation No. 60 by failing to examine the Disclosure Statements completed by its agent and submitted with applications to ascertain that they were accurate and met the requirements of the Insurance Law and the Regulation.

The Company also violated Section 51.6(b)(7) of Department Regulation No. 60 by failing to correct the deficiencies or reject the application when the replacement forms did not meet the requirements of Department Regulation No. 60.

B. Underwriting and Policy Forms

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

1. Section 53-2.2(a) of Department Regulation No. 74 states, in part:

“(a) A policy summary shall include the following:

(2) 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 regarding the policy summary;”

The examiner reviewed the illustrated policies for the master policies issued to three banks during the examination period and noted that illustrated policies for two of the banks did not include the agent’s business address.

The Company violated Section 53-2.2(a)(2) of Department Regulation No. 74 by failing to include the agent's business address on the illustrated policies.

2. Section 53-3.5(a) of Department Regulation No. 74 states:

“If a basic illustration is used by an insurance producer or other authorized representative of the insurer in the sale of a life insurance policy and the policy is applied for as illustrated, a copy of that illustration, signed in accordance with this Subpart, shall be submitted to the insurer at the time of policy application. A copy also shall be provided to the applicant”

The examiner reviewed the illustrations for the master policies issued to three banks and noted that the policy owners signed the illustrations after the policies had been issued and that the agents submitted the illustrations also after the policies had been issued.

The Company violated Section 53-3.5(a) of Department Regulation No. 74 when the agents failed to submit a copy of the signed illustration to the Company at the time of policy application.

3. 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...”

As part of the review of the underwriting files the examiner reviewed the licensing and appointment records of the agents who wrote the business for the Company. The examiner noted that an agent wrote business on behalf of the Company during the examination period but there was no record of an appointment by the Company. The examiner requested nine agent's licensing records (or files) for review. The information provided by the Company revealed that the agent was not appointed at the time he wrote business on behalf of the Company.

The Company violated Section 2112(a) of the New York Insurance Law when it permitted an agent to write business on its behalf prior to appointing such agent with the superintendent.

4. A review of the Company's agents data file revealed that 12 of the Company's agents were active according to the Company's data file but the same agents were reported as terminated on the NAIC agents data file. The Company stated in its response that the appointments were correctly terminated on the NAIC listing, but was not updated on Company records.

Additionally, the examiner noted eight instances where the Company's agents were reported as terminated according to its data file but the same agents were reported as active on the NAIC agents data file. The Company stated in its response that it inadvertently terminated the agents on Company records.

The examiner recommends that the Company implement procedures to ensure the integrity of its agent data file.

C. Treatment of Policyholders

Section 3204(a) of the New York Insurance Law states, in part:

“(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.”

The examiner selected a sample of nine policy loans for review. During the review, the examiner noted, in the case of one policy, that the premium was being paid under the automatic premium loan (“APL”) provision. A review of the policy application file indicated that the policyholder did not affirmatively select the APL option on the application. As a result, the policy should have continued under the default option, which is extended term. The Company indicated that at the time of issue, the policy was incorrectly set up with the non-forfeiture option of APL instead of extended term insurance, the default option when the APL box is not checked. Letters were sent to the policy owner each time an APL took place with no response from the policy owner.

During discussions on the matter, the Company acknowledged that there were 17 of 432 (4%) policies where the policyholder did not affirmatively select the APL option on the application, but the premiums were being paid under the APL provision during the exam period.

The Company violated Section 3204(a) of the New York Insurance Law by applying the APL provision, instead of the non-forfeiture provision stated in the contract, for policyholders who did not affirmatively select the APL option on the application.

The Company further stated that it contacted the policy owners of the 17 policies, and offered them the option of selecting APL or receiving the non-forfeiture option to which they were initially entitled. Of the 17 policies, eight of the policyholders were in force at the time the Company informed them of this option. Five of these policyholders opted to retain the APL option while the other three opted to the default non-forfeiture option on the original application. For the remaining nine policies that were no longer in force, the Company maintained the APL option for those policies because the policyholder would receive longer periods of insurance coverage.

8. PRIOR REPORT SUMMARY AND CONCLUSIONS

Following are the violations, recommendation, and comments contained in the prior report on examination and the subsequent actions taken by the Company in response to each citation:

<u>Item</u>	<u>Description</u>
A	<p>The Company violated Section 1313(f) of the New York Insurance Law by using advertisements containing statements of the separate financial condition of the holding company system but failing to include statements of the separate financial condition of the Company.</p> <p>The Company failed to take corrective action in response to this prior report violation. (See item 7A of this report)</p>
B	<p>The Company violated Section 219.4(m) of Department Regulation No. 34-A by failing to disclose in its advertisement that issuance of the policy or payment of benefits may depend upon the answers given in the application and the truthfulness thereof.</p> <p>A review of advertisements disseminated during the examination period revealed that the advertisements disclosed that issuance of policies or payment of benefits depends upon the answers given in the application.</p>
C	<p>The Company violated Section 219.5(a) of Department Regulation No. 34-A by failing to maintain the extent of distribution of its advertisements.</p> <p>The Company failed to take corrective action in response to this prior report violation. (See item 7A of this report)</p>
D	<p>The Company subsequently revised its advertising file to include a notation indicating the manner and extent of distribution of its advertisements.</p> <p>The examiner ascertained that the advertising file included a notation indicating the manner and extent of distribution of its advertisements.</p>
E	<p>The Company violated Section 51.6(b)(3) of Department Regulation No. 60 by failing to examine the Disclosure Statements completed by its agent and submitted with applications during the examination period, and ascertain that they were accurate and met the requirements of the Insurance Law and this Regulation.</p> <p>The Company failed to take corrective action in response to this prior report violation. (See item 7A of this report).</p>

<u>Item</u>	<u>Description</u>
F	<p>The Company violated Section 51.6(b)(7) of Department Regulation No. 60 by failing to correct the deficiencies or reject the application when the replacement forms did not meet the requirements of this Regulation.</p> <p>The Company failed to take corrective action in response to this prior report violation. (See item 7A of this report).</p>
G	<p>The examiner recommends that the Company immediately enhance its audit procedures to ensure compliance with Department Regulation No. 60. Further, within 1 year of implementing such enhancements the Company's internal auditors should test the entire replacement process to evaluate whether the changes made are working effectively and, if determined that there are continued deficiencies, make further enhancements.</p> <p>The Company has enhanced its audit procedures to ensure compliance with Department Regulation 60 and has also tested the entire replacement process with the intention of making further enhancements.</p>
H	<p>The Company violated Section 3214(c) of the New York Insurance Law by failing to pay interest on a death claim from the date of death to the date of payment.</p> <p>The examiner's sample of death claims did not reveal any claims in which interest was not paid from the date of death to the date of payment.</p>
I	<p>The Company has identified all foreign beneficiaries that were similarly adversely affected during 2006, 2007 and 2008, and has implemented a plan to pay any overdue interest.</p> <p>Even though the Company has identified the foreign beneficiaries that did not receive interest from the date of death to the date of payment, the Company was unable to locate them and as a result has agreed to escheat the money to New York State.</p>

9. 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 1505(d)(3) of the New York Insurance Law by failing to submit the agreement between the Company and affiliate, FASCore, LLC, to the superintendent for his prior review and approval, before receiving services from FASCore.	8
B	The Company violated Section 1313(f) of the New York Insurance Law by using advertisements containing statements of the separate financial condition of the holding company system but failing to include statements of the separate financial condition of the Company.	20
C	The Company violated Section 219.5(a) of Department Regulation No. 34-A by failing to indicate the extent of distribution of each advertisement disseminated in New York during the examination period.	21
D	The Company violated Section 51.6(b)(3) of Department Regulation No. 60 by failing to examine the Disclosure Statements completed by its agent and submitted with applications during the examination period, and ascertain that they were accurate and met the requirements of the Insurance Law and this Regulation.	22
E	The Company violated Section 51.6(b)(7) of Department Regulation No. 60 by failing to correct the deficiencies or reject the application when the replacement forms did not meet the requirements of this Regulation.	22
F	The Company violated Section 53-2.2(a)(2) of Department Regulation No. 74 by failing to include the agent's business address on the illustrated policies.	23
G	The Company violated Section 53-3.5(a) of Department Regulation No. 74 when the agents failed to submit a copy of the signed illustration to the Company at the time of policy application.	23
H	The Company violated Section 2112(a) of the New York Insurance Law when it permitted an agent to write business on its behalf prior to appointing such agent with the superintendent.	23
I	The examiner recommends that the Company implement procedures to ensure the integrity of its agent data file.	24

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
J	The Company violated Section 3204(a) of the New York Insurance Law by applying the APL provision, instead of the non-forfeiture provision stated in the contract, for policyholders who did not affirmatively select the APL option on the application.	25

Respectfully submitted,

/s/

Elkin Woods
Senior Insurance Examiner

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

Elkin Woods, being duly sworn, deposes and says that the foregoing report, subscribed by him, is true to the best of his knowledge and belief.

/s/

Elkin Woods

Subscribed and sworn to before me

this _____ day of _____

APPOINTMENT NO. 30809

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:

ELKIN WOODS

as a proper person to examine the affairs of the

FIRST GREAT-WEST LIFE & ANNUITY INSURANCE COMPANY

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

COMPANY

with such other information as he 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

