



NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES  
REPORT ON EXAMINATION  
OF THE  
AMERITAS LIFE INSURANCE CORP. OF NEW YORK

CONDITION:

DECEMBER 31, 2012

DATE OF REPORT:

MAY 14, 2014

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## TABLE OF CONTENTS

| <u>ITEM</u>                             | <u>PAGE NO.</u> |
|---|-----------------|
| 1. Executive summary                    | 2               |
| 2. Scope of examination                 | 3               |
| 3. Description of Company               | 5               |
| A. History                              | 5               |
| B. Holding company                      | 6               |
| C. Organizational chart                 | 6               |
| D. Service agreements                   | 7               |
| E. Management                           | 9               |
| 4. Territory and plan of operations     | 13              |
| A. Statutory and special deposits       | 13              |
| B. Direct operations                    | 13              |
| C. Reinsurance                          | 13              |
| 5. Significant operating results        | 14              |
| 6. Financial statements                 | 16              |
| A. Independent accountants              | 16              |
| B. Net admitted assets                  | 17              |
| C. Liabilities, capital and surplus     | 18              |
| D. Condensed summary of operations      | 19              |
| E. Capital and surplus account          | 20              |
| 7. Market conduct activities            | 21              |
| A. Advertising and sales activities     | 21              |
| B. Underwriting and policy forms        | 25              |
| C. Treatment of policyholders           | 27              |
| D. Record retention                     | 30              |
| 8. Annual statement reporting           | 31              |
| 9. Prior report summary and conclusions | 32              |
| 10. Summary and conclusions             | 35              |



NEW YORK STATE  
DEPARTMENT *of*  
FINANCIAL SERVICES

Andrew M. Cuomo  
Governor

Maria T. Vullo  
Superintendent

March 13, 2018

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

Madam:

In accordance with instructions contained in Appointment No. 30967, dated June 12, 2013, and annexed hereto, an examination has been made into the condition and affairs of Ameritas Life Insurance Corp. of New York, hereinafter referred to as “the Company,” at its home office located at 1350 Broadway, New York, NY 10018.

Wherever “Department” appears in this report, it refers to the New York State Department of Financial Services.

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

## 1. EXECUTIVE SUMMARY

The material violations contained in this report are summarized below.

- The Company violated Section 4211(a) of the New York Insurance Law by failing to file a copy of the notice of election with the Superintendent at least 10 days before the day of such election. (See item 3E of this report)
- The Company violated Section 325(a) of the New York Insurance Law by failing to maintain its books of account at its principal office in New York. A similar violation was included in the prior report on examination. (See item 3E of this report)
- The Company violated Insurance Regulation No. 34, 11 NYCRR Section 215.17(a) by not maintaining at its home office a complete advertisement file containing a specimen copy of its health insurance advertisements, and by not indicating the manner and extent of distribution. (See item 7A of this report)
- With respect to replacements, the Company violated various Sections of Insurance Regulation No. 60. (See item 7A of this report)
- The Company violated Section 2112(a) of the New York Insurance Law by failing to file a certificate of appointment with the superintendent. A similar violation was included in the prior report on examination. (See item 7A of this report)
- The Company violated Section 2114(a)(1) of the New York Insurance Law by paying compensation to agents prior to their appointments to act on its behalf. A similar violation was included in the prior report on examination. (See item 7A of this report)
- The Company violated Section 3201(b)(1) of the New York Insurance Law by using a policy form that was not filed with and approved by the superintendent. The Company violated Section 3211(b)(2) of the New York Insurance Law by failing to fully disclose to whole life and term life 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 policyholder's right to any cash surrender value or nonforfeiture benefit. (See item 7C of this report)
- The Company violated Section 4223(k)(1) of the New York Insurance Law by failing to disclose the death benefit on the annual statements sent to the annuity contract holders. (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, 2013 Edition* (the “Handbook”). The examination covers the three-year period from January 1, 2010, through December 31, 2012. 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, 2012, 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 of Ameritas Life Insurance Corporation (“Ameritas Life”), a Nebraska domestic insurer, was called by the Nebraska Department of Insurance (“NEDOI”) in accordance with the Handbook’s guidelines, through the NAIC’s Financial Examination Electronic Tracking System. The NEDOI served as the lead state on the examination examining Ameritas Life, with participation from the District of Columbia examining its domestic company, Acacia Life Insurance Company, and New York examining its domestic company, Ameritas Life Insurance Corp. of New York. Since all states are accredited by the NAIC, they all deemed it appropriate to rely on each other’s work.

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 2010 through 2012, by the accounting firm of Deloitte and Touche LLP. The Company received an unqualified opinion in all years. Certain audit workpapers of the accounting firm were reviewed and relied upon in conjunction with this examination. Ameritas Life 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 NAIC Model Audit Rule ("MAR") for the affiliated companies being examined. Where applicable, MAR work papers 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 and recommendations contained in the prior report on examination. The results of the examiner's review are contained in item 9 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 April 1, 1993, under the name Great Ameritas Life Insurance Corp. The Company filed an amendment and restatement of its charter on November 9, 1993, to change its name to First Ameritas Life Insurance Corp. of New York (“FALICNY”). The Company was licensed and commenced business on May 17, 1994. Initial resources of \$6,300,000, consisting of common capital stock of \$2,000,000 and paid in and contributed surplus of \$4,300,000, were provided through the sale of 2,000 shares of common stock (with a par value of \$1,000 each) for \$3,150 per share.

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

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

In March 2010, the FALICNY submitted an Amended and Restated Plan of Operations (“ARPO”). Pursuant to the ARPO, Union Central would no longer write direct business in New York within two years after the approval. All new business written in New York would be issued through the FALICNY, but Union Central would maintain its current block of business. The ARPO was approved by the Department on June 18, 2010. In connection with the ARPO, Ameritas Life Insurance Corp. (“ALIC”), the immediate parent and sole shareholder of the Company contributed \$30 million to the Company on July 19, 2010.

Effective February 1, 2012, the FALICNY’s name was changed to Ameritas Life Insurance Corp. of New York. Effective May 3, 2012, UNIFI’s name was changed to Ameritas Mutual Holding Company (“AMHC”).

On February 28, 2013, the Company's board of directors approved another Amended Plan of Operation which was filed with the Department. This new Plan of Operation outlines an enterprise strategy, and the impact of such strategy on the Company as the sole insurer operating in New York within the AMHC group.

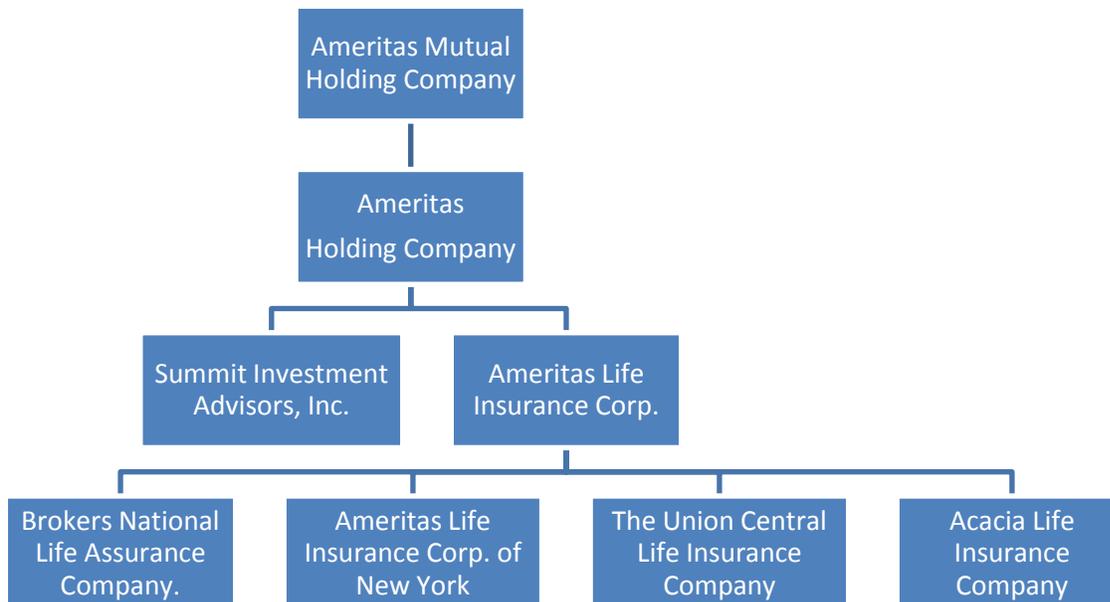
As of December 31, 2012, the Company had total capital and surplus of \$33,514,966.

#### B. Holding Company

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

#### C. Organizational Chart

An organizational chart reflecting the relationship between the Company and significant entities in its holding company system as of December 31, 2012, follows:



D. Service Agreements

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

| Type of Agreement and Department File Number                               | Effective Date | Provider of Services | Recipient of Services | Specific Service(s) Covered   | Expense* For Each Year of the Examination  |
|--|----------------|----------------------|-----------------------|---|--|
| Amended and Restated Administrative Services Agreement**<br>File No. 29185 | 08/01/2002     | ALIC                 | The Company           | Management, Advertising, Policy Administration, Claims Administration, Premium Processing, Underwriting, Product filing, Reinsurance Processing, Policy Issue, Customer Service, Agent Licensing  | 2010 \$(4,047,248)                         |
| Administrative Services Agreement<br>File No. 42817                        | 01/01/2011     | ALIC.                | The Company           | Policy Administration, Accounting and Actuarial Services, Information Technology Services, Legal, Human Resources, Marketing and Distribution, Risk Management                                    | 2011 \$( 9,503,456)<br>2012 \$(10,375,018) |
| Administrative Services Agreement<br>File No. 42817                        | 01/01/2011     | AHC                  | The Company           | Services and expenses performed for and incurred on behalf of the Company attributable to the UNIFI and Board of Directors, annual independent audits, and annual proxy mailings to UNIFI members | Included in expenses listed above          |

| Type of Agreement and Department File Number                           | Effective Date | Provider of Services            | Recipient of Services | Specific Service(s) Covered  | Expense* For Each Year of the Examination             |
|--|----------------|---------------------------------|-----------------------|--|---|
| Administrative Services Agreement***<br><br>File No. 34778             | 03/01/2006     | Union Central                   | The Company           | Policy Administration, Underwriting, Policy Issue, Illustration Software, Policy Change, Premium Processing, Customer Service, Claims, Agent Licensing and Compensation and Information Management Support | 2010 \$(1,424,654)                                    |
| Marketing Services Agreement***<br><br>File No. 34889                  | 03/01/2006     | Union Central                   | The Company           | Marketing  | 2010 \$(309,722)                                      |
| Amended and Restated Administrative Services Agreement File No. 34778A | 06/01/2010     | Union Central                   | The Company           | Policy Administration, Marketing Distribution, Management, Legal, Information Technology, Underwriting, Policy Change, Premium Processing, Claims Administration, Product Development                      |   |
| Investment Advisory Agreement<br><br>File No. 43137                    | 07/01/2010     | Summit Investors Advisors, Inc. | The Company           | Investment Advisory Services   | 2010 \$(63,849)<br>2011 \$(56,518)<br>2012 \$(77,831) |
| Service Agreement File No. 43897                                       | 04/01/2011     | Summit Investors Advisors, Inc. | The Company           | Investment Advisory Services   | 2011 \$0<br>2012 \$0                                  |

| Type of Agreement and Department File Number      | Effective Date | Provider of Services | Recipient of Services | Specific Service(s) Covered | Expense* For Each Year of the Examination |
|---|----------------|----------------------|-----------------------|-----------------------------|---|
| Revolving Line of Credit Agreement File No. 44790 | 10/03/2011     | AHC                  | The Company           | Revolving Line of Credit    | 2011 \$0<br>2012 \$0                      |

\* Amount of Expense Incurred by the Company

\*\* This Agreement was replaced by Department File No. 42817, effective January 1, 2011

\*\*\* This Agreement was superseded by Department File No. 34778A

#### E. Management

The Company's by-laws provide that the board of directors shall be comprised of not less than 7 and not more than 11 directors. Directors are elected for a period of one year at the annual meeting of the stockholders held in March of each year. As of December 31, 2012, the board of directors consisted of 11 members. Meetings of the board are held immediately following the annual meeting of the shareholders and as frequently as the dispatch of business requires, but at least four times in each calendar year.

The 11 board members and their principal business affiliation, as of December 31, 2012, were as follows:

| <u>Name and Residence</u>          | <u>Principal Business Affiliation</u>  | <u>Year First Elected</u> |
|------------------------------------|--|---------------------------|
| John P. Carsten*<br>East Berne, NY | Principle<br>John P. Carsten   | 1993                      |
| Robert K. Crandall*<br>Albany, NY  | Vice President, Operations<br>Capital Bauer Insurance Agency, Inc  | 2008                      |
| Karen M. Gustin<br>Lincoln, NE     | Senior Vice President, Group Field Sales<br>National Accounts and Broker Blocks<br>Ameritas Life Insurance Corp. of NY | 2009                      |
| Robert G. Lange<br>Lincoln, NE     | Vice President, General Counsel and Secretary<br>Ameritas Life Insurance Corp. of NY                                   | 2005                      |
| Robert J. Lanik*<br>Lincoln, NE    | Chief Executive Officer<br>CHI, Nebraska   | 1993                      |
| William W. Lester<br>Lincoln, NE   | Executive Vice President, and Corporate Treasurer<br>Ameritas Life Insurance Corp. of NY                               | 2009                      |

| <u>Name and Residence</u>           | <u>Principal Business Affiliation</u>   | <u>Year First Elected</u> |
|-------------------------------------|---|---------------------------|
| JoAnn M. Martin<br>Lincoln, NE      | Chairwoman of the Board<br>Ameritas Life Insurance Corp. of NY  | 1999                      |
| David J. Myers*<br>Lincoln, NE      | Assistant to Superintendent for General<br>Administration and Communication<br>Lincoln Public Schools | 1993                      |
| James E. Rembolt*<br>Lincoln, NE    | Counsel<br>Rembolt Ludtke, LLP  | 1993                      |
| Timmy L. Stonehocker<br>Lincoln, NE | Executive Vice President<br>Ameritas Life Insurance Corporation of NY                                 | 2011                      |
| Kenneth L. VanCleave<br>Lincoln, NE | President and Chief Executive Officer<br>Ameritas Life Insurance Corporation of NY                    | 2002                      |

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

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.

1. Section 4211(a) of the New York Insurance Law states:

“No election of directors of a domestic stock life insurance company shall be valid unless a copy of the notice of election shall have been filed in the office of the superintendent at least ten days before the day of such election in addition to the service thereof, as required by section six hundred five of the business corporation law.”

The examiner reviewed the Department's record of filings made in accordance with Section 4211(a) of the New York Insurance Law, and noted that there were no notices of elections filed with the Department at any time during the examination period (2010-2012). However, directors were elected at the annual meeting held in March of each year.

The Company violated Section 4211(a) of the New York Insurance Law by failing to file a copy of the notice of election with the Superintendent at least 10 days before the day of such election.

2. Section 4211(b) of the New York Insurance Law states:

“Whenever any directors of such a company shall have resigned and successors shall have been chosen pursuant to the provisions of the by-laws, such successors shall not take office nor exercise their duties until ten days after written notice of their election shall have been filed in the office of the superintendent.”

The Company elected a successor to one of its directors at the board meeting on March 1, 2011. The Company also did not notify the superintendent of such election.

The Company violated Section 4211(b) of the New York Insurance Law by electing a successor to the board without filing a written notice of election with the Superintendent.

The following is a listing of the principal officers of the Company as of December 31, 2012:

| <u>Name</u>          | <u>Title</u>  |
|----------------------|---|
| Kenneth L. VanCleave | President and Chief Executive Officer                                     |
| William W. Lester    | Executive Vice President and Corporate Treasurer                          |
| Timmy L. Stonehocker | Executive Vice President  |
| Robert C. Barth      | Senior Vice President and Chief Financial Officer                         |
| John T. Burkhard     | Senior Vice President, Chief Distribution Officer                         |
| Dale D. Johnson      | Senior Vice President and Corporate Actuary                               |
| James D. Schulz      | Senior Vice President, Retirement Plans                                   |
| Steven J. Valerius   | Senior Vice President, Individual Division                                |
| Susan K. Wilkinson   | Senior Vice President, Planning and Risk Management                       |
| James Mikus          | Senior Vice President and Chief Investment Officer                        |
| Paul G. Wesling      | Senior Vice President, Individual Disability Income<br>Product Management |
| Robert G. Lange      | Vice President, General Counsel and Secretary                             |
| Mike Weckenbrock*    | 2 <sup>nd</sup> Vice President, Chief Compliance Officer                  |

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

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

“Every domestic insurer . . . shall, except as hereinafter provided, keep and maintain at its principal office in this state . . . its books of account . . .”

The examiner noted that the Company did not maintain financial accounting records or data that support the filed annual statements in a durable medium (such as CDs, DVDs, Flash drives, etc.) at the Company’s principal office in New York. As a result, the examiner was unable to access the Company’s records in a timely manner. The Company subsequently provided the

examiner with a token to access the records. However, the examiner continued to encounter problems accessing the data during the first five weeks after the start date of the examination.

The Company violated Section 325(a) of the New York Insurance Law by failing to maintain its books of account at its principal office in New York. A similar violation was included in the prior report on examination.

#### 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 2012, all of life premiums, annuity considerations and accident and health premiums were received from New York. Policies are written on a participating and non-participating basis.

##### A. Statutory and Special Deposits

As of December 31, 2012, the Company had \$500,000 (par value) of United States Treasury Notes 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 insurance product offerings consist of individual life, individual annuities and group dental and vision products.

The Company's agency operations are conducted on a general agency and branch office basis. Fifty-five percent of the Company's group business is sold by captive sales representatives of First Ameritas through independent brokers. The life and annuity business is sold through general agency, brokerage general agents, company branches, and disability income branches.

##### C. Reinsurance

As of December 31, 2012, the Company had 14 reinsurance treaties in effect with nine companies, of which eight were authorized or accredited. The Company's life and accident and health business is reinsured on a yearly renewable term basis. Reinsurance is provided on an automatic basis.

The maximum retention limit for individual life contracts is \$100,000. The total face amount of life insurance ceded as of December 31, 2012, was \$1,427,455,546 which represents 58% of the total face amount of life insurance in force. Reserve credit taken for reinsurance ceded to unauthorized companies, totaling \$105,857, was supported by letters of credit and miscellaneous balances.

## 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 (decline) during the period under review:

|  | <u>December 31,</u><br><u>2009</u> | <u>December 31,</u><br><u>2012</u> | <u>Increase</u><br><u>(Decrease)</u> |
|--|------------------------------------|------------------------------------|--------------------------------------|
| Admitted assets                        | \$ <u>40,492,963</u>               | \$ <u>122,311,421</u>              | \$ <u>81,818,458</u>                 |
| Liabilities                            | \$ <u>21,232,310</u>               | \$ <u>88,796,454</u>               | \$ <u>67,564,144</u>                 |
| Common capital stock                   | \$ 2,000,000                       | \$ 2,000,000                       | \$ 0                                 |
| Gross paid in and contributed surplus  | 6,800,000                          | 38,285,149                         | 31,485,149                           |
| Unassigned funds (surplus)             | <u>10,460,653</u>                  | <u>(6,770,183)</u>                 | <u>(17,230,836)</u>                  |
| Total capital and surplus              | \$ <u>19,260,653</u>               | \$ <u>33,514,966</u>               | \$ <u>14,254,313</u>                 |
| Total liabilities, capital and surplus | \$ <u>40,492,963</u>               | \$ <u>122,311,421</u>              | \$ <u>81,818,458</u>                 |

The Company's invested assets as of December 31, 2012, exclusive of separate accounts, were mainly comprised of bonds (86.8%), mortgage loans (8.2%), cash and short-term investments (2.9%), and policy loans (2.1%).

The majority (99.6%) of the Company's bond portfolio, as of December 31, 2012, 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</u><br><u>Whole Life</u> |                 | <u>Individual</u><br><u>Term</u> |                 |
|-------------|--|-----------------|----------------------------------|-----------------|
|             | <u>Issued</u>                          | <u>In Force</u> | <u>Issued</u>                    | <u>In Force</u> |
| 2010        | \$130,296                              | \$348,844       | \$ 19,319                        | \$ 224,217      |
| 2011        | \$481,148                              | \$723,201       | \$626,723                        | \$ 850,141      |
| 2012        | \$355,153                              | \$994,559       | \$730,757                        | \$1,465,338     |

As part of the two paper strategy to only market products on Ameritas Life Insurance Corp. and Ameritas Life Insurance Corp. of New York paper, the Company shifted New York sales from an affiliated Company, Union Central, to Ameritas Life Insurance Corp. of New York which is the cause of the fluctuations.

The ordinary lapse ratio for each of the examination years was 18.5% in 2010, 8.2% in 2011, and 7.9% in 2012.

The high lapse ratio in 2010 was due to an agent with poor early lapse experience.

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>2010</u>          | <u>2011</u>          | <u>2012</u>          |
|---------------------------|----------------------|----------------------|----------------------|
| Ordinary:                 |                      |                      |                      |
| Life insurance            | \$(2,497,855)        | \$(7,470,389)        | \$(3,325,453)        |
| Individual annuities      | <u>(67,715)</u>      | <u>(990,920)</u>     | <u>342,921</u>       |
| Total ordinary            | <u>\$(2,565,570)</u> | <u>\$(8,461,309)</u> | <u>\$(2,982,532)</u> |
| Group:                    |                      |                      |                      |
| Annuities                 | <u>(124,440)</u>     | <u>(454,402)</u>     | <u>(514,088)</u>     |
| Total group               | <u>\$ (124,440)</u>  | <u>\$ (454,402)</u>  | <u>\$ (514,088)</u>  |
| Accident and health:      |                      |                      |                      |
| Group                     | \$ 817,152           | \$ 824,793           | \$ 708,545           |
| Other                     | <u>(135,648)</u>     | <u>(379,386)</u>     | <u>(710,268)</u>     |
| Total accident and health | <u>\$ 681,504</u>    | <u>\$ 445,407</u>    | <u>\$ (1,723)</u>    |
| All other lines           | <u>\$ 324,396</u>    | <u>\$(1,319,064)</u> | <u>\$ (687,859)</u>  |
| Total                     | <u>\$(1,684,109)</u> | <u>\$(9,789,367)</u> | <u>\$(4,186,202)</u> |

Losses in the ordinary life business were primarily due to strain from new sales. The fluctuation in income for the annuity business is attributed to the variable annuity business due to higher reserves established in 2011. Changes in assumptions around the levels of cash and initial reserve factors made in 2011 increased the reserves. The new assumptions resulted in favorable changes for year-end 2012, and created a positive impact on income in 2012.

Losses in the disability income business were primarily due to product development and acquisition costs.

## 6. FINANCIAL STATEMENTS

The following statements show the assets, liabilities, capital and surplus as of December 31, 2012, as contained in the Company's 2012 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, 2012, filed annual statement.

### A. Independent Accountants

The firm of Deloitte and Touche was retained by the Company to audit the Company's combined statutory basis statements of financial position of the Company as of December 31<sup>st</sup> 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 and 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  | \$ 87,059,380        |
| Mortgage loans on real estate:   |                      |
| First liens  | 8,231,082            |
| Cash, cash equivalents and short term investments  | 2,931,807            |
| Contract loans   | 2,069,995            |
| Investment income due and accrued  | 1,224,398            |
| Premiums and considerations:   |                      |
| Uncollected premiums and agents' balances in the course of collection                    | 1,647,364            |
| Deferred premiums, agents' balances and installments booked but deferred and not yet due | 1,577,580            |
| Reinsurance:   |                      |
| Amounts recoverable from reinsurers  | 106,058              |
| Other amounts receivable under reinsurance contracts                                     | 1,218,839            |
| Amounts receivable relating to uninsured plans   | 85,593               |
| Current federal and foreign income tax recoverable and interest thereon                  | 128,824              |
| Receivables from parent, subsidiaries and affiliates                                     | 16,261               |
| Health care and other amounts receivable   | 45,963               |
| NY Regulation 172 reinsurance premium refund   | 680,350              |
| From separate accounts, segregated accounts and protected cell accounts                  | <u>15,287,927</u>    |
| Total admitted assets  | <u>\$122,311,421</u> |

C. Liabilities, Capital and Surplus

|   |                           |
|---|---------------------------|
| Aggregate reserve for life policies and contracts   | \$ 62,845,046             |
| Aggregate reserve for accident and health contracts   | 369,799                   |
| Liability for deposit-type contracts  | 469,410                   |
| Contract claims:  |                           |
| Life  | 248,220                   |
| Accident and health   | 1,220,312                 |
| Provision for policyholders' dividends and coupons payable in following calendar year – estimated amounts |                           |
| Dividends apportioned for payment   | 470,000                   |
| Premiums and annuity considerations for life and accident and health contracts received in advance        | 122,701                   |
| Contract liabilities not included elsewhere:  |                           |
| Provision for experience rating refunds   | 365,496                   |
| Other amounts payable on reinsurance  | 2,031,399                 |
| Interest maintenance reserve  | 16,432                    |
| Commissions to agents due or accrued  | 335,869                   |
| General expenses due or accrued   | 241,569                   |
| Transfers to separate accounts due or accrued   | (3,300)                   |
| Taxes, licenses and fees due or accrued, excluding federal income taxes                                   | 285,000                   |
| Amounts withheld or retained by company as agent or trustee   | (2,260)                   |
| Amounts held for agents' account  | 39,815                    |
| Remittances and items not allocated   | 495,799                   |
| Liability for benefits for employees and agents if not included above                                     | 1,232,589                 |
| Miscellaneous liabilities:  |                           |
| Asset valuation reserve   | 374,663                   |
| Reinsurance in unauthorized companies   | 47,534                    |
| Payable to parent, subsidiaries and affiliates  | 2,140,566                 |
| Liability for amounts held under uninsured accident and health plans                                      | 4,333                     |
| Deferred rent liability   | 84,560                    |
| Unclaimed checks  | 72,976                    |
| From Separate Accounts statement  | <u>15,287,927</u>         |
| <br>Total liabilities   | <br>\$ <u>88,796,454</u>  |
| <br>Common capital stock  | <br>\$ 2,000,000          |
| <br>Gross paid in and contributed surplus   | <br>\$ 38,285,149         |
| Unassigned funds (surplus)  | <u>(6,770,183)</u>        |
| <br>Surplus   | <br>\$ <u>31,514,966</u>  |
| <br>Total capital and surplus   | <br>\$ <u>33,514,966</u>  |
| <br>Total liabilities, capital and surplus  | <br>\$ <u>122,311,421</u> |

D. Condensed Summary of Operations

|   | <u>2010</u>               | <u>2011</u>               | <u>2012</u>               |
|---|---------------------------|---------------------------|---------------------------|
| Premiums and considerations   | \$29,931,401              | \$71,562,075              | \$71,387,494              |
| Investment income   | 1,892,670                 | 2,988,739                 | 4,187,961                 |
| Commissions and reserve adjustments<br>on reinsurance ceded         | 59,253                    | 323,381                   | 1,852,153                 |
| Miscellaneous income  | <u>22,431</u>             | <u>120,301</u>            | <u>305,770</u>            |
| <br>Total income  | <br><u>\$31,905,755</u>   | <br><u>\$74,994,496</u>   | <br><u>\$77,733,378</u>   |
| <br>Benefit payments  | <br>\$19,100,634          | <br>\$20,310,849          | <br>\$41,551,994          |
| Increase in reserves  | 3,454,198                 | 34,615,730                | 10,612,195                |
| Commissions   | 2,099,987                 | 5,044,566                 | 6,193,789                 |
| General expenses and taxes  | 9,846,159                 | 15,796,411                | 18,028,852                |
| Increase in loading on deferred and<br>uncollected premium          | (698,125)                 | 361,781                   | (213,337)                 |
| Net transfers to (from) Separate Accounts                           | (3,110)                   | 8,702,714                 | 5,317,757                 |
| Miscellaneous deductions  | <u>2,576</u>              | <u>7,360</u>              | <u>5,506</u>              |
| <br>Total deductions  | <br><u>\$33,802,318</u>   | <br><u>\$84,839,411</u>   | <br><u>\$81,496,757</u>   |
| <br>Net (loss)  | <br>\$ (1,896,561)        | <br>\$ (9,844,916)        | <br>\$ (3,763,380)        |
| Dividends   | 137,444                   | 79,121                    | 505,310                   |
| Federal and foreign income taxes incurred                           | <u>(349,897)</u>          | <u>(134,669)</u>          | <u>(82,488)</u>           |
| <br>Net (loss) from operations<br>before net realized capital gains | <br>\$ (1,684,109)        | <br>\$ (9,789,367)        | <br>\$ (4,186,202)        |
| Net realized capital (losses)                                       | <u>(1,901)</u>            | <u>(23,355)</u>           | <u>(45,026)</u>           |
| <br>Net loss  | <br><u>\$ (1,686,010)</u> | <br><u>\$ (9,812,722)</u> | <br><u>\$ (4,231,228)</u> |

E. Capital and Surplus Account

|  | <u>2010</u>          | <u>2011</u>             | <u>2012</u>            |
|--|----------------------|-------------------------|------------------------|
| Capital and surplus,<br>December 31, prior year                  | \$ <u>19,260,653</u> | \$ <u>46,877,495</u>    | \$ <u>36,594,796</u>   |
| Net loss   | \$ (1,686,010)       | \$ (9,812,722)          | \$ (4,231,228)         |
| Change in net deferred income tax                                | 344,179              | 3,099,984               | 445,320                |
| Change in non-admitted assets<br>and related items               | (1,020,947)          | (3,954,989)             | (94,951)               |
| Change in liability for reinsurance in<br>unauthorized companies | 28,381               | (39,820)                | (7,714)                |
| Change in asset valuation reserve                                | (48,761)             | (98,987)                | (117,625)              |
| Surplus adjustments:   |                      |                         |                        |
| Paid in  | 30,000,000           | 558,780                 | 926,369                |
| Prior year reserve adjustment                                    | <u>0</u>             | <u>(34,946)</u>         | <u>0</u>               |
| Net change in capital and surplus for the year                   | \$ <u>27,616,842</u> | \$( <u>10,282,700</u> ) | \$( <u>3,079,830</u> ) |
| Capital and surplus,<br>December 31, current year                | \$ <u>46,877,495</u> | \$ <u>36,594,796</u>    | \$ <u>33,514,966</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. Insurance Regulation No. 34, 11 NYCRR Section 215.17(a) 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 . . .”

2. Insurance Regulation No. 34-A, 11 NYCRR Section 219.5(a) states in part:

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

The Company provided the examiner with a list of the life insurance advertising files that were used during the examination period. However, the examiner could not locate any physical or electronic evidence of any of the advertisements at the Company's home office. The examiner was unable to access the electronic database containing the group health insurance advertisement files.

Both Insurance Regulations No. 34 and No. 34-A, which apply to advertisements of health insurance products and life insurance products, respectively, require that the Company maintain a complete file containing specimen copies of its advertisements at its home office, with a notation that indicates the manner and extent of distribution.

The Company violated Insurance Regulation No. 34, 11 NYCRR Section 215.17(a) by not maintaining at its home office a complete advertisement file containing a specimen copy of its health insurance advertisements, and by not indicating the manner and extent of distribution. A similar violation was included in the prior report on examination.

The Company also violated Insurance Regulation No. 34-A, 11 NYCRR Section 219.5(a) by not maintaining at its home office a complete advertisement file containing a specimen copy of its life insurance advertisements, and by not indicating the manner and extent of distribution. A similar violation was included in the prior report on examination.

3. Insurance Regulation No. 60, 11 NYCRR 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;

(4) Within 10 days of receipt of the application furnish to the insurer whose coverage is being replaced a copy of any proposal, including the sales material used in the sale of the proposed life insurance policy or annuity contract, and the completed "Disclosure Statement" . . .

(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; . . .

(9) In the event the life insurance policy or annuity contract issued differs from the life insurance policy or annuity contract applied for, ensure that the requirements of this Part are met with respect to the information relating to the life insurance policy or annuity contract as issued, including but not limited to the revised 'Disclosure Statement', any revised or additional sales material used and acknowledgment by the applicant of receipt of such revised material.

Insurance Regulation No. 60, 11 NYCRR Section 51.7(b) states, in part

“No insurer, agent, representative, officer, or employee of an insurer or any other licensee of this Department shall fail to comply with or engage in other practices that would prevent the orderly working of this part in accomplishing its intended purpose in the protection of policyholders....”

The examiner reviewed a sample of 15 individual life insurance policy replacement files. The examiner's review revealed that 12 out of the 15 (80%) policy files that were replaced contained material errors.

In one of the 15 instances reviewed (6.7%), the Company did not complete the Summary Result Comparison page of the Disclosure Statement. In addition, the agent and the applicant signed the application before the Important Notice and the Disclosure Statement were presented to the applicant.

In two of the 15 (13.3%) replacements reviewed, the Company failed to notify the insurer whose policy was being replaced of the proposed replacement. The Company also failed to submit to the insurer whose policy was being replaced, a list of all life insurance policies proposed to be replaced along with the proper authorization from the applicant so that the information necessary to complete the disclosure statement could be requested from the existing carrier with respect to the insurance policy contract proposed to be replaced and the completed Disclosure Statement.

The Company violated Insurance Regulation No. 60, 11 NYCRR Section 51.6(b)(3) by failing to examine the Disclosure Statement and ascertain that it was accurate and met the requirements of the Regulation.

The Company violated Insurance Regulation No. 60, 11 NYCRR Section 51.6(b)(7) by failing to reject the application when the required forms were not received or the forms did not meet the requirements of Insurance Regulation No. 60.

The Company violated Insurance Regulation No. 60, 11 NYCRR Section 51.6(b)(6) by failing to maintain copies of the signed and completed disclosure statements and the notification

of replacement to the insurer whose life insurance contract is to be replaced, for six calendar years or until after the filing of the report in which the transaction was subject to review by the Department, whichever is later.

In five of the 15 (33.3%) replacements reviewed, the Company did not provide a revised Disclosure Statement when the policy issued was different from the policy that was applied for.

The Company violated Insurance Regulation No. 60, 11 NYCRR Section 51.6(b)(9) by failing to provide the applicant with a revised Disclosure Statement where the insurance policy issued was different from the life insurance policy applied for.

As a result of the numerous violations noted above, the Company violated Insurance Regulation No. 60, 11 NYCRR Section 51.7(b) by failing to fully comply with the orderly working of the Regulation in accomplishing its intended purpose in the protection of policyholders.

The examiner recommends that the Company implement a training program to inform and train its employees, agents and brokers with respect to the requirements of Insurance Regulation No. 60.

The examiner also recommends that the Company develop and implement an audit program designed to review, test and monitor compliance with Insurance Regulation No. 60.

4. Section 2112 of the New York Insurance Law states, in part:

“(a) 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, fraternal benefit society or health maintenance organization...”

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

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

The examiner reviewed a sample of policies produced by 11 agents and noted that one of the 11 (9.1%) agents sold insurance business and were compensated for such business before they were appointed by the Company.

The Company violated Section 2112(a) of the New York Insurance Law by failing to file a certificate of appointment with the superintendent. A similar violation was included in the prior report on examination.

The Company violated Section 2114(a)(1) of the New York Insurance Law by paying compensation to agents prior to their appointments to act on its behalf. A similar violation was included in the prior report on examination.

5. Section 2112(d) of the New York Insurance Law states, in part:

“Every insurer . . . doing business in this state shall, upon termination of the certificate of appointment . . . of any insurance agent licensed in this state, or upon termination for cause . . . file with the superintendent within thirty days a statement, in such form as the superintendent may prescribe, of the facts relative to such termination for cause. The insurer . . . shall provide, within fifteen days after notification has been sent to the superintendent, a copy of the statement filed with the superintendent to the insurance producer at his, or her or its last known address by certified mail, return receipt requested, postage prepaid or by overnight delivery using a nationally recognized carrier.”

The Company terminated a producer for cause. The Company provided letters and correspondence that were mailed to the producer but failed to provide the copy of the form that was filed with the Superintendent showing facts relative to the termination for cause.

The Company violated Section 2112(d) of the New York Insurance Law by failing to file with the superintendent, within thirty days, a statement in such form as the superintendent may prescribe of the facts relative to such termination for cause.

#### B. Underwriting and Policy Forms

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

1. Section 3201 of the New York Insurance Law states, in part:

“(a) In this article, "policy form" means any policy, contract, certificate, or evidence of insurance and any application therefor, or rider or endorsement thereto . . .

(b)(1) No policy form shall be delivered or issued for delivery in this state unless it has been filed with and approved by the superintendent as conforming to the requirements of this chapter and not inconsistent with law. . . .”

The examiner reviewed a sample of 15 individual annuities and in two of the 15 (13.3%) instances, the examiner noted the use of a form “Amendment of Application Form” included in the two contracts. The “Amendment of Application Form” was not filed with and approved by the superintendent.

The Company violated Section 3201(b)(1) of the New York Insurance Law by using a policy form that was not filed with and approved by the superintendent.

2. Section 3209(g) of the New York Insurance Law states:

“Every insurer shall maintain, at its home office or principal office, a complete file containing one copy of each policy summary form authorized by the insurer for use pursuant to this section.”

The Company did not maintain at its home office, a complete file containing one copy of each policy summary form authorized for its use.

The Company violated Section 3209(g) of the New York Insurance Law by failing to maintain, at its home office, a complete file containing one copy of each policy summary form authorized for its use.

### 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. Insurance Regulation No. 64, 11 NYCRR Section 216.5(a) states, in part:

“(1) Every insurer shall commence an investigation of any claim filed by a claimant, or by a claimant's authorized representative, within 15 business days of receiving notice of claim. An insurer shall furnish to every claimant, or claimant's authorized representative, a notification of all items, statements and forms, if any, which the insurer reasonably believes will be required of the claimant, within 15 business days of receiving notice of the claim...”

The examiner reviewed all seven (100%) of the death claims processed by the Company during the examination period. In one out of seven (14.3%) death claim files, the Company failed to notify the claimant of all items, statements and forms required of the claimant within 15 business days of receiving notice of the claim.

The Company violated Insurance Regulation No. 64, 11 NYCRR Section 216.5(a)(1) by failing to furnish to the claimant a notification of all items, statements and forms which were required of the claimant, within 15 business days of receiving notice of the claim.

2. Insurance Regulation No. 64, 11 NYCRR Section 216.6(c) states, in part:

“(1) Within 15 business days after receipt by the insurer of a properly executed proof of loss and receipt of all items, statements and forms which the insurer requested from the claimant, the claimant, or the claimant's authorized representative, shall be advised in writing of the acceptance or rejection of the claim by the insurer . . . ”

The review of one out of seven (14.3%) death claim files revealed that the Company did not advise the claimant of the acceptance of the claim within 15 business days after receipt by the Company of all properly executed proof of loss, statements and forms.

The Company violated Insurance Regulation No. 64, 11 NYCRR Section 216.6(c) by failing to advise the claimant of the acceptance of the claim within 15 business days after receipt by the Company of all properly executed proof of loss, statements and forms.

4. Insurance Regulation No. 64, 11 NYCRR Section 216.11 states, in part:

“ . . . To enable department personnel to reconstruct an insurer's activities, all insurers subject to the provisions of this Part must maintain within each claim file all communications, transactions, notes and work papers relating to the claim. All communications and transactions, whether written or oral, emanating from or received by the insurer shall be dated by the insurer. Claim files must be so maintained that all events relating to a claim can be reconstructed by the Department of Financial Services examiners. Insurers shall either make a notation in the file or retain a copy of all forms mailed to claimants.”

The examiner selected a sample of 25 surrender claim files for review. In three out of 25 (12%) surrender claim files reviewed, the file did not contain the necessary information needed to review the files.

The examiner could not determine the contract value at the inception of the contract, the contract value at the time of the surrender, and whether surrender penalties were applicable. Furthermore, the examiner was unable to determine the date that all the necessary information to process the surrender was received by the Company or the surrender payment date.

The Company violated Insurance Regulation No. 64, 11 NYCRR Section 216.11 by failing to maintain complete claim files so that events relating to a claim could be reconstructed by the examiner.

5. Section 4223(k)(1) of the New York Insurance Law states, in part:

“At least once in each contract year, the company shall mail to each holder of a contract subject to this section under which benefit payments have not yet commenced a statement as of a date during such year as to any paid-up annuity benefit or the amount available under each account to provide a paid-up annuity benefit, any cash surrender benefit and any death benefit, under the contract . . . ”

The examiner reviewed a sample of 10 annual statements mailed to policyholders during the period under examination. Of the 10, five statements were mailed to annuity contract holders. The Company did not disclose the death benefit on any of the five (100%) annual statements sent to the annuity contract holders for each year under examination.

The Company violated Section 4223(k)(1) of the New York Insurance Law by failing to disclose the death benefit on the annual statements sent to the annuity contract holders.

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

“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 non-forfeiture benefit.”

a. The examiner reviewed the payment due notices mailed to whole life and term life policyowners at least 15, but not more than forty-five days prior to the date when the premium was due. The notice provided by the Company to demonstrate compliance with Section 3211(a) of the New York Insurance Law is two-sided (front and back). The following language is printed on the back side of the notice:

**“Non-Payment of Premium**

Premium Due – Fixed premium contracts, such as Whole Life and Term policies.  
Non-payment of the Premium Due will result in termination of this policy, subject to the general provisions of the policy.”

In addition to the Company’s failure to prominently display this important disclosure on the front side of the premium due notice, the disclosure that appears on the back side of the notice does not comply with Section 3211(b)(2) of the New York Insurance Law because it does not include the required language, “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 non-forfeiture benefit”.

The Company violated Section 3211(b)(2) of the New York Insurance Law by failing to fully disclose to whole life and term life 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 policyholder’s right to any cash surrender value or nonforfeiture benefit.

The examiner recommends that the Company revise the premium due notice for its whole life and term life policies to prominently show the disclosure language, in entirety, as required by Section 3211(b)(2) of the New York Insurance Law on the front side of the notice.

b. The examiner's review of a sample universal life insufficiency notices revealed that in all instances the notices omitted the language, "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 utilizing insufficiency notices that did not include the required language for its universal life policies.

The examiner recommends that the Company conduct a study to identify insureds who have died within one year of the lapse of their policy and who received premium notice that failed to comply with Section 3211 of the New York Insurance Law. The study should include a cross-check through the social security death master file.

The examiner also recommends that the Company pay the appropriate beneficiary or beneficiaries the total death benefit due under the policies where death occurred within one year of policy lapse processing.

#### D. Record Retention

Insurance Regulation No. 152, 11 NYCRR Section 243.2(b) states, in part:

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

(4) A claim file for six calendar years after all elements of the claim are resolved and the file is closed or until after the filing of the report on examination in which the claim file was subject to review, whichever is longer. A claim file shall show clearly the inception, handling and disposition of the claim, including the dates that forms and other documents were received."

The examiner's review of two out of seven (28.6%) death claim files referenced earlier revealed that the claim files did not show clearly the inception, handling and disposition of the claims, including the dates that forms and other documents were received.

The Company violated Insurance Regulation No. 152, 11 NYCRR Section 243.2(b)(4) by failing to maintain claim files that show clearly the inception, handling and disposition of the claim, including the dates that forms and other documents were received.

## 8. ANNUAL STATEMENT REPORTING

The Company's 2012 filed annual statement, as filed with the Department during the examination period, was found to contain numerous reporting errors and misclassifications of accounts. The following reporting errors were among those identified during the review:

The Company reported \$22,628,769 as surrenders in 2012. The examiner noted that the data files, which tied to the reported amount, contained lapses, conversions, reinstatements and death claims thereby overstating the amount reported as surrenders on the Summary of Operations page of the annual statement.

The Company also incorrectly reported lapses as surrenders, terminations and cancellations on the Exhibit of Life Insurance. This error has resulted in an overstatement of the number and amount of lapses on the Exhibit of Life Insurance and an understatement in the number and amount of surrenders in the Exhibit of Life Insurance.

The examiner recommends that the Company exercise greater care in the compilation of its data for reporting purposes and comply with the annual statement instructions when preparing its filings with the Department.

## 9. PRIOR REPORT SUMMARY AND CONCLUSIONS

Following are the violations and recommendations 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 325(a) of the New York Insurance Law by failing to maintain all minutes of meetings of its shareholders, policyholders, board of directors and committees thereof and their books of account at its principal office in New York.</p> <p>The Company again failed to comply with Section 325(a) of the New York Insurance Law. See item 3E of this report.</p> |
| B           | <p>The Company violated Section 4228(f)(1)(A) of the New York Insurance Law by paying agent compensation under a general agent bonus plan that was not filed with the Department.</p> <p>The Company subsequently filed its agent compensation plan with the Department.</p>   |
| C           | <p>The examiner recommends that the Company develop and maintain supporting details for all components of its dividend formula, including the expense component.</p> <p>The Company has developed a process to identify and monitor details underlying the expense factors in the dividend formula</p>   |
| D           | <p>The examiner recommends that the Company demonstrate first year dividends are actually earned on the basis of its own experience, or, alternatively, demonstrate that its parent's experience is representative of its own experience.</p> <p>The Company has updated its illustration systems to show zero dividends in its first year.</p>  |
| E           | <p>The Company violated Section 4233(b)(6) of the New York Insurance Law by using an intermediate line on Schedule NP as a balancing item when determining the surplus of each line of business.</p> <p>The Company has established a process where surplus is reviewed for Schedule NP annually</p>   |

| <u>Item</u> | <u>Description</u>   |
|-------------|--|
| F           | <p>The examiner recommends that the Company determine the surplus of each line of business in accordance with Section 4233(b)(6) of the New York Insurance Law and as set forth in Schedule NP, without using any intermediate line as a balancing item.</p> <p>The Company has established a process where surplus is reviewed for Schedule NP annually</p>   |
| G           | <p>The Company violated Sections 2112(a) and 2114(a)(1) of the New York Insurance Law by paying compensation to unappointed agents.</p> <p>The Company again violated Section 2112(a) and 2114(a)(1) of the New York Insurance Law. See item 7A of this report.</p>  |
| H           | <p>The Company violated Section 215.17(a) of Department Regulation No. 34 and Section 219.5(a) of Department Regulation No. 34-A by not maintaining at its home office a complete advertisement file, and by not indicating the manner and extent of distribution of its advertisements.</p> <p>The Company again violated Section 215.17(a) of Department Regulation No. 34 and Section 219.5(a) of Department Regulation No. 34-A. See item 7A of this report.</p> |
| I           | <p>The Company violated Section 51.6(b)(7) of Department Regulation No. 60 by accepting applications with inaccurate or deficient disclosure statements without requiring the correction of such inaccuracies and/or deficiencies, or rejecting the applications.</p> <p>The review of a sample of replacements did not reveal any instance where the disclosure statement did not inform the insured of the use of the cash value to pay down the premium.</p>      |
| J           | <p>The Company violated Section 51.7(a)(1) of Department Regulation No. 60 by accepting Disclosure Statements that contained potentially deceptive or misleading information from its agents.</p> <p>The review of a sample of replaced files did not reveal any instance where the Company accepted Disclosure Statements that contained potentially deceptive or misleading information from its agents.</p>   |

| <u>Item</u> | <u>Description</u>   |
|-------------|--|
| K           | <p>The Company violated Section 2611(a) of the New York Insurance Law by failing to request and receive written consent forms from applicants prior to subjecting the applicants to HIV related tests.</p> <p>The examiner noted that the Company now requests and receives written consent forms from applicants prior to subjecting applicants to HIV related tests.</p> |
| L           | <p>The Company violated Section 3201(b)(1) of New York Insurance Law by using policy application forms of its affiliate which had not been filed with and approved by the superintendent.</p> <p>The review of the underwriting files during the current examination did not reveal any instance where the Company used the application forms of its affiliates.</p>       |
| M           | <p>The Company violated Section 3207(b) of the New York Insurance Law by issuing policies on juveniles that exceeded the maximum face value permitted.</p> <p>The review of a sample of the underwriting files did not reveal any instance where the Company issued policies on juveniles that exceeded the permitted maximum face value.</p>                              |

## 10. 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 4211(a) of the New York Insurance Law by failing to file a copy of the notice of election with the Superintendent at least 10 days before the day of such election.  | 10                 |
| B           | The Company violated Section 4211(b) of the New York Insurance Law by electing a successor to the board without filing a written notice of election with the Superintendent.  | 11                 |
| C           | The Company violated Section 325(a) of the New York Insurance Law by failing to maintain its books of account at its principal office in New York. A similar violation was included in the prior report on examination.   | 12                 |
| D           | The Company violated Insurance Regulation No. 34, 11 NYCRR Section 215.17(a) by not maintaining at its home office a complete advertisement file containing a specimen copy of its health insurance advertisements, and by not indicating the manner and extent of distribution. A similar violation was included in the prior report on examination.     | 22                 |
| E           | The Company also violated Insurance Regulation No. 34-A, 11 NYCRR Section 219.5(a) by not maintaining at its home office a complete advertisement file containing a specimen copy of its life insurance advertisements, and by not indicating the manner and extent of distribution. A similar violation was included in the prior report on examination. | 22                 |
| F           | The Company violated Insurance Regulation No. 60, 11 NYCRR Section 51.6(b)(3) by failing to examine the disclosure statement to ascertain that it was accurate and met the requirements of the Regulation.  | 23                 |

| <u>Item</u> | <u>Description</u>   | <u>Page No(s).</u> |
|-------------|--|--------------------|
| G           | The Company violated Insurance Regulation No. 60, 11 NYCRR Section 51.6(b)(7) by failing to reject the application when the required forms were not received or the forms did not meet the requirements of Insurance Regulation No. 60.  | 23                 |
| H           | The Company violated Insurance Regulation No. 60, 11 NYCRR Section 51.6(b)(6) by failing to maintain copies of the signed and completed disclosure statements and the notification of replacement to the insurer whose life insurance contract is to be replaced, for six calendar years or until after the filing of the report in which the transaction was subject to review by the Department, whichever is later. | 23                 |
| I           | The Company violated Insurance Regulation No. 60, 11 NYCRR Section 51.6(b)(9) by failing to provide the applicant with a revised Disclosure Statement where the insurance policy issued was different from the life insurance policy applied for.  | 24                 |
| J           | The Company violated Insurance Regulation No. 60, 11 NYCRR Section 51.7(b) by failing to fully comply with the orderly working of the Regulation in accomplishing its intended purpose in the protection of policyholders.   | 24                 |
| K           | The examiner recommends that the Company implement a training program to inform and train its employees, agents and brokers with respect to the requirements of Insurance Regulation No. 60.   | 24                 |
| L           | The examiner also recommends that the Company develop and implement an audit program designed to review, test and monitor compliance with Insurance Regulation No. 60.   | 24                 |
| M           | The Company violated Section 2112(a) of the New York Insurance Law by failing to file a certificate of appointment with the superintendent. A similar violation was included in the prior report on examination.   | 25                 |
| N           | The Company violated Section 2114(a)(1) of the New York Insurance Law by paying compensation to agents prior to their appointments to act on its behalf. A similar violation was included in the prior report on examination.  | 25                 |

| <u>Item</u> | <u>Description</u>   | <u>Page No(s).</u> |
|-------------|--|--------------------|
| O           | The Company violated Section 2112(d) of the New York Insurance Law by failing to file with the superintendent, within thirty days, a statement in such form as the superintendent may prescribe of the facts relative to such termination for cause.   | 25                 |
| P           | The Company violated Section 3201(b)(1) of the New York Insurance Law by using a policy form that was not filed with and approved by the superintendent.   | 26                 |
| Q           | The Company violated Section 3209(g) of the New York Insurance Law by failing to maintain, at its home office, a complete file containing one copy of each policy summary form authorized for its use.   | 26                 |
| R           | The Company violated Insurance Regulation No. 64, 11 NYCRR Section 216.5(a)(1) by failing to furnish to the claimant a notification of all items, statements and forms which were required of the claimant, within 15 business days of receiving notice of the claim.  | 27                 |
| S           | The Company violated Insurance Regulation No. 64, 11 NYCRR Section 216.6(c) by failing to advise the claimant of the acceptance of the claim within 15 business days after receipt by the Company of all properly executed proof of loss, statements and forms.  | 27                 |
| T           | The Company violated Insurance Regulation No. 64, 11 NYCRR Section 216.11 by failing to maintain complete claim files so that events relating to a claim could be reconstructed by the Department of Financial Services examiner.  | 28                 |
| U           | The Company violated Section 4223(k)(1) of the New York Insurance Law by failing to disclose the death benefit on the annual statements sent to the annuity contract holders.  | 28                 |
| V           | The Company violated Section 3211(b)(2) of the New York Insurance Law by failing to fully disclose to whole life and term life 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 policyholder's right to any cash surrender value or nonforfeiture benefit. | 29                 |

| <u>Item</u> | <u>Description</u>  | <u>Page No(s).</u> |
|-------------|---|--------------------|
| W           | The examiner recommends that the Company revise the premium due notice for its whole life and term life policies to prominently show the disclosure language, in entirety, as required by Section 3211(b)(2) of the New York Insurance Law on the front side of the notice.   | 29                 |
| X           | The Company violated Section 3211(b)(2) of the New York Insurance Law by utilizing insufficiency notices that did not include the required language for its universal life policies.  | 29                 |
| Y           | The examiner recommends that the Company conduct a study to identify insureds who have died within one year of the lapse of their policy and who received premium notice that failed to comply with Section 3211 of the New York Insurance Law. The study should include a cross-check through the social security death master file. | 30                 |
| Z           | The examiner also recommends that the Company pay the appropriate beneficiary or beneficiaries the total death benefit due under the policies where death occurred within one year of policy lapse processing.  | 30                 |
| AA          | The Company violated Insurance Regulation No. 152, 11 NYCRR Section 243.2(b)(4) by failing to maintain claim files that show clearly the inception, handling and disposition of the claim, including the dates that forms and other documents were received.  | 30                 |
| AB          | The examiner recommends that the Company exercise greater care in the compilation of its data for reporting purposes and comply with the annual statement instructions when preparing its filings with the Department.  | 31                 |

Respectfully submitted,

\_\_\_\_\_  
/s/

Ijeoma Ndika  
Senior Insurance Examiner

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

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

\_\_\_\_\_  
/s/

Ijeoma Ndika

Subscribed and sworn to before me

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

APPOINTMENT NO. 30967

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:

**IJEOMA NDIKA**

as a proper person to examine the affairs of the

**AMERITAS LIFE INSURANCE CORP. 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 June, 2013

BENJAMIN M. LAWSKY  
Superintendent of Financial Services

By:



MICHAEL MAFFEI  
ASSISTANT DEPUTY SUPERINTENDENT  
AND CHIEF OF THE LIFE BUREAU

