

NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES  
REPORT ON EXAMINATION  
OF THE  
FIDELITY SECURITY LIFE INSURANCE COMPANY OF NEW YORK

CONDITION:

DECEMBER 31, 2011

DATE OF REPORT:

JUNE 18, 2013

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EXAMINER:

S'ELREY N. DAVID

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NEW YORK STATE  
DEPARTMENT *of*  
FINANCIAL SERVICES

Andrew M. Cuomo  
Governor

Benjamin M. Lawsky  
Superintendent

June 18, 2013

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

Sir:

In accordance with instructions contained in Appointment No. 30644, dated April 20, 2012 and annexed hereto, an examination has been made into the condition and affairs of Fidelity Security Life Insurance Company of New York, hereinafter referred to as “the Company,” at its home office located at 162 Prospect Hill, Suite 101A, Brewster, New York 10509.

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 findings, violations and recommendations contained in this report are summarized below.

- The Company violated Section 1202(b)(2) of the New York Insurance Law by failing to establish a committee comprised solely of directors who are not officers or employees of the company to recommend the selection of independent certified public accountants, nominate candidates for director for election by shareholders or policyholders, evaluate the performance of officers deemed by such committee to be principal officers of the company and recommend to the board of directors the selection and compensation of such principal officers. The examiner recommends that the board establish an independent committee with the requisite authority to ensure compliance with Section 1202(b)(2) of the New York Insurance Law. (See item 3E of this report)
- The Company violated various sections Department Regulation No. 152 by failing to provide complete records for 38 of the 89 records requested; by failing to maintain claim files that clearly showed the inception, handling and disposition of the claim; and by failing to maintain a duplicate or back-up system sufficient to permit reconstruction of the record at a separate location in those instances where the insurer did not retain the original paper record. (See item 8 of this report)
- The examiner recommends that the Company implement procedures to maintain its claims, rating, underwriting, marketing and such other records subject to examination by the superintendent, in accordance with the provisions of Department Regulation No. 152. The examiner also recommends that the Company implement controls to ensure that such procedures are followed. (See item 8 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, 2011 Edition* (the “Handbook”). The examination covers the five-year period from January 1, 2007 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 Company was acquired by Fidelity Security Life Insurance Company (“FSLIC”) on December 30, 2011. However, this examination was coordinated in conjunction with the examination of the insurance subsidiaries of Great American Financial Resources, Inc. (“GAFRI”), the affiliated companies of the former parent. The coordinated examination was led by the State of Ohio with participation from the states of California, Delaware, Illinois, New York and Texas. All insurance subsidiaries of GAFRI shared common controls and management during the examination period, and since the lead and participating states are accredited by the NAIC, all states deemed it appropriate to rely on each other’s work when evaluating

retrospective risks. New York reviewed prospective risk independently since the Company is a member of a new holding group going forward.

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 2007 through 2011, by the accounting firm of Ernst & Young, LLP. The Company received an unqualified opinion in all years.

The audit workpapers of the accounting firm were reviewed and relied upon by the State of Ohio Insurance Department in conjunction with its examination of Great American Life Insurance Company ("GALIC"), the Company's former parent. GALIC had an internal audit department that 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 by the State of Ohio Insurance Department for its examination.

The examiner reviewed the corrective actions taken by the Company with respect to the violations and recommendation 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 December 23, 1963 under the name of Old Republic Life Insurance Company of New York. The Company was licensed and commenced business on April 30, 1964. Initial resources of \$750,000, consisting of common capital stock of \$500,000 and paid in and contributed surplus of \$250,000, were provided through the sale of 100,000 shares of common stock (with a par value of \$5 each) for \$7.50 per share.

In 1971 the Company increased its capital from \$500,000 to \$600,000 through the issuance of a stock dividend of 20,000 shares with a par value of \$5 per share. In 1993, the Company increased its capital from \$600,000 to \$2,000,000 through the issuance of a stock dividend of 280,000 shares with a par value of \$5 per share.

The Company was acquired by Great American Life Insurance Company in February 1999 and the Company's name was changed to Great American Life Insurance Company of New York on April 2, 1999.

The Company's capital and surplus decreased \$3.9 million to \$7.1 million in 2008 from \$10.9 million in 2007, mainly due to a \$4.0 million dividend payment to GALIC during 2008. The dividend was submitted to and approved by the Department pursuant to Section 4207(a) of the New York Insurance Law.

The Company was acquired by Fidelity Security Life Insurance Company on December 30, 2011 in a 100% stock purchase transaction. The current name, Fidelity Security Life Insurance Company of New York, was adopted on December 30, 2011.

As of December 31, 2011, the capital stock of the Company was \$2,000,000 and the paid in surplus was \$5,350,000.

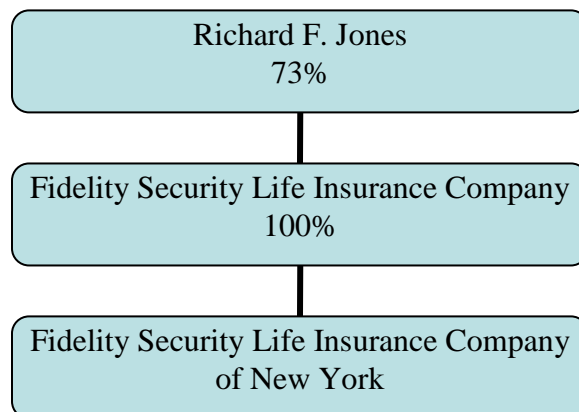
#### B. Holding Company

The Company is a wholly owned subsidiary of Fidelity Security Life Insurance Company ("FSL"), a Missouri life insurance company. The majority owner of FSL is Richard F. Jones, an individual.



### 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 three service agreements in effect with affiliates during the examination period.

Type of Agreement and Department File Number	Effective Date	Provider(s) of Service(s)	Recipient(s) of Service(s)	Specific Service(s) Covered	(Expense)* For Each Year of the Examination
Investment Services Agreement	04/03/00	American Money Management Corporation**	The Company	Investment of assets	2007 - (25,375) 2008 - (37,727) 2009 - (37,727) 2010 - ( 7,937) 2011 - (19,778)
Administrative Services Agreement	04/03/00	Great American Life Insurance Company**	The Company	Make use of certain property, equipment and facilities	2007 - (51,637) 2008 - (80,000) 2009 - (93,257) 2010 - (93,257) 2011 - (93,257)
Leasing Agreement	05/11/05	FCIA Management Company, Inc.**	The Company	Subleasing Agreement	2007 - ( 9,255) 2008 - ( 9,623) 2009 - ( 9,625) 2010 - ( 9,625) 2011 - ( 9,625)

\* Amount of (Expense) Incurred by the Company

\*\* Affiliate prior to acquisition

Prior to its acquisition on December 30, 2011, the Company participated in a federal income tax allocation agreement with its former parent and affiliates.

#### 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 13 directors. Directors are elected for a period of one year at the annual meeting of the stockholders held in May of each year. As of December 30, 2011, (the date the Company was acquired by FSL), the board of directors consisted of nine members.

The nine former board members, during the examination period, and their principal business affiliation, as of December 30, 2011, were as follows:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>	<u>Year First Elected</u>
Francis Austin, Jr.* New York, NY	Retired New York Telephone Company	2001
Alexander Clark* New York, NY	Managing Director Alexander M. Clark & Co., Inc.	2001
Jeffrey G. Hester Cincinnati, OH	Controller Great American Financial Resources, Inc.	2011
Billy Hill, Jr. Austin, Texas	President Great American Life Insurance Company of NY	2001
Gail Hyman* Fort Myers, FL	Retired Manhattan Life Insurance Company	1999
Christopher Miliano Cincinnati, OH	Senior Vice President and Treasurer Great American Life Insurance Company of NY	2003
Mark Muething Cincinnati, OH	Senior Vice President and General Counsel Great American Life Insurance Company	2005
Nick Pearson* New York, NY	Partner Edwards and Angell	2001
Michael Prager Cincinnati, OH	Executive Vice President, Chief Actuary and Chief Risk Officer Great American Financial Resources, Inc.	2001

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

On December 31, 2011, the board of directors of the newly acquired Company consisted of eight members. Meetings of the board are held four times per year at such times as the board may by resolution from time to time determine.

The eight board members of the newly acquired Company 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>
Kathy H Baxter* Pelham, NY	Partner SNR Denton US LLP	2011
William R Hobbs Leawood, KS	Treasurer and Vice President Fidelity Security Life Insurance Company of NY	2011
Kenneth G. House Kansas City, MO	Vice President Fidelity Security Life Insurance Company of NY	2011
Billy B. Hill, Jr.* Austin, TX	Director of Special Projects AmeriLife Group	2011
Richard F. Jones Shawnee Mission, KS	Chairman of the Board Fidelity Security Life Insurance Company of NY	2011
Steven C. Krueger* Blue Springs, MO	Self Employed Steven C. Krueger Legal Services LLC	2011
Martha E. Madden Prairie Village, KS	Secretary and Vice President Fidelity Security Life Insurance Company of NY	2011
David J. Smith Stilwell, KS	President Fidelity Security Life Insurance Company of NY	2011

\* 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 former board of directors and its audit and finance committee indicated that meetings were well attended and that each director attended a majority of meetings. The former board appointed an executive committee, but this committee did not meet during the examination period.

Section 1202(b)(2) of the New York Insurance Law states:

“The board of directors of a domestic life insurance company shall establish one or more committees comprised solely of directors who are not officers or employees of the company or of any entity controlling, controlled by, or under common control with the company and who are not beneficial owners of a controlling interest in the voting stock of the company or any such entity. Such committee or committees shall have responsibility for recommending the selection of independent certified public accountants, reviewing the company's financial condition, the scope and results of the independent audit and any internal audit, nominating candidates for director for election by shareholders or policyholders, evaluating the performance of officers deemed by such committee or committees to be principal officers of the company and recommending to the board of directors the selection and compensation of such principal officers and in the case of a domestic stock life insurance company.”

The examiner's review of the committee minutes provided, found no evidence that any committee of the former board: recommended the selection of independent certified accountants for the years 2010 and 2011; nominated candidates for director for election by shareholders; or performed an evaluation of the performance of principal officers of the company or recommended the selection and compensation of such principal officers.

The Company violated Section 1202(b)(2) of the New York Insurance Law by failing to establish a committee comprised solely of directors who are not officers or employees of the company to recommend the selection of independent certified public accountants, nominate candidates for director for election by shareholders or policyholders, evaluate the performance of officers deemed by such committee to be principal officers of the company and recommend to the board of directors the selection and compensation of such principal officers.

The examiner recommends that the board establish an independent committee with the requisite authority to ensure compliance with Section 1202(b)(2) of the New York Insurance Law.

On May 12, 2012, the new board established several independent committees with the requisite authority to ensure compliance with Section 1202(b)(2) of the New York Insurance Law.

The following is a listing of the principal officers of the Company as of December 30, 2011:

<u>Name</u>	<u>Title</u>
Billy B. Hill, Jr.	President
Christopher P. Miliano	Senior Vice President and Treasurer
Mark F. Meuthing*	Senior Vice President
Catherine A. Crume	Vice President
Adrienne S. Kessler	Vice President
William T. Gaynor, Jr.	Secretary
Michael J. Lesar	Actuary

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

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

<u>Name</u>	<u>Title</u>
David J. Smith	President
William R. Hobbs	Treasurer and Vice President
Kenneth G. House	Vice President
James M. Merwald, Jr.	Actuary
Martha E. Madden*	Secretary and Vice President
Bryson L. Jones	Assistant Treasurer
Bradford R. Jones	Assistant Secretary

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

#### 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 did not write any new business during the examination period.

The Company is licensed to transact business in two states, namely New York and Mississippi. In 2011, 100% of renewal life premiums were received from Massachusetts and 100% of annuity considerations were received from New York. Policies were written on a non-participating basis.

##### A. Statutory and Special Deposits

As of December 31, 2011, the Company had \$300,000 (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 did not write any new business during the examination period. As of December 31, 2011, the Company had two whole life policies, 386 deferred annuities and 390 immediate annuities in force.

##### C. Reinsurance

As of December 31, 2011, the Company did not have any reinsurance treaties in effect.

## 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:

	December 31, <u>2006</u>	December 31, <u>2011</u>	Increase (Decrease)
Admitted assets	<u>\$54,107,658</u>	<u>\$42,555,250</u>	<u>\$(11,552,408)</u>
Liabilities	<u>\$43,735,934</u>	<u>\$33,996,556</u>	<u>\$ (9,739,378)</u>
Common capital stock	\$ 2,000,000	\$ 2,000,000	\$ 0
SSAP 10R election 10.e.	0	52,643	52,643
Gross paid in and contributed surplus	5,350,000	5,350,000	0
Group contingency life reserve	1,081,983	1,081,983	0
Unassigned funds (surplus)	<u>1,939,741</u>	<u>74,067</u>	<u>(1,865,674)</u>
Total capital and surplus	<u>\$10,371,724</u>	<u>\$ 8,558,693</u>	<u>\$ (1,813,031)</u>
Total liabilities, capital and surplus	<u>\$54,107,658</u>	<u>\$42,555,249</u>	<u>\$(11,552,409)</u>

The Company's invested assets as of December 31, 2011, were mainly comprised of bonds (87.2%) and cash and short-term investments (12.8%).

The majority (94.9%) of the Company's bond portfolio, as of December 31, 2011, was comprised of investment grade obligations.

The Company did not write any new business during the examination period. As of December 31, 2011, the Company had \$7,000 of life insurance issued and in force and 776 ordinary annuities. This was down from \$18,000 issued and in force and 1,341 annuities as of December 31, 2006. This decline is in line with the Company being in run-off.

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

	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>
Ordinary:					
Life insurance	\$ 112	\$ 88	\$ (49)	\$ (164)	\$ (689)
Individual annuities	<u>672,783</u>	<u>123,125</u>	<u>1,002,564</u>	<u>461,717</u>	<u>252,424</u>
Total ordinary	<u>\$672,895</u>	<u>\$123,213</u>	<u>\$1,002,515</u>	<u>\$461,553</u>	<u>\$251,735</u>
Accident and health:					
Other	<u>9</u>	<u>5</u>	<u>29</u>	<u>37</u>	<u>0</u>
Total accident and health	<u>\$ 9</u>	<u>\$ 5</u>	<u>\$ 29</u>	<u>\$ 37</u>	<u>\$ 0</u>
Total	<u>\$672,904</u>	<u>\$123,219</u>	<u>\$1,002,554</u>	<u>\$461,589</u>	<u>\$251,736</u>



## 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 Ernst & Young, LLP 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.

Ernst & Young, LLP 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	\$36,524,997
Cash, cash equivalents and short term investments	5,382,348
Other invested assets	2,554
Investment income due and accrued	458,168
Net deferred tax asset	185,988
Accounts receivable	<u>1,195</u>
 Total admitted assets	 <u>\$42,555,250</u>

C. Liabilities, Capital and Surplus

Aggregate reserve for life policies and contracts	\$30,412,501
Liability for deposit-type contracts	3,112,598
Interest maintenance reserve	105,721
General expenses due or accrued	6,049
Taxes, licenses and fees due or accrued, excluding federal income taxes	73,092
Current federal and foreign income taxes	2,226
Amounts withheld or retained by company as agent or trustee	67,849
Remittances and items not allocated	41,549
Miscellaneous liabilities:	
Asset valuation reserve	134,939
Drafts outstanding	<u>40,032</u>
 Total liabilities	 <u>\$33,996,556</u>
 Common capital stock	 \$ 2,000,000
SSAP 10R election 10.e	52,643
Gross paid in and contributed surplus	5,350,000
Group contingency life reserve	1,081,983
Unassigned funds (surplus)	<u>74,067</u>
Surplus	\$ <u>6,558,693</u>
Total capital and surplus	\$ <u>8,558,693</u>
 Total liabilities, capital and surplus	 <u>\$42,555,250</u>

#### D. Condensed Summary of Operations

	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>
Premiums and considerations	\$ 4,225	\$ 5,237	\$ 26,214	\$ 76,148	\$ 32,772
Investment income	3,111,782	2,793,393	2,391,725	2,191,427	2,225,146
Miscellaneous income	<u>46,104</u>	<u>27,348</u>	<u>19,106</u>	<u>38,299</u>	<u>6,927</u>
Total income	<u>\$ 3,162,111</u>	<u>\$ 2,825,978</u>	<u>\$ 2,437,045</u>	<u>\$ 2,305,874</u>	<u>\$ 2,264,845</u>
Benefit payments	\$ 3,778,113	\$ 3,438,995	\$ 3,239,485	\$ 3,262,652	\$ 2,147,383
Increase in reserves	(1,772,780)	(1,427,089)	(2,185,547)	(1,857,920)	(527,700)
General expenses and taxes	<u>231,411</u>	<u>267,632</u>	<u>124,354</u>	<u>253,520</u>	<u>232,826</u>
Total deductions	<u>\$ 2,236,744</u>	<u>\$ 2,279,538</u>	<u>\$ 1,178,292</u>	<u>\$ 1,658,252</u>	<u>\$ 1,852,509</u>
Net gain (loss)	\$ 925,367	\$ 546,440	\$ 1,258,753	\$ 647,622	\$ 412,336
Federal and foreign income taxes incurred	<u>252,463</u>	<u>423,221</u>	<u>256,209</u>	<u>186,032</u>	<u>160,601</u>
Net gain (loss) from operations before net realized capital gains	\$ 672,904	\$ 123,219	\$ 1,002,544	\$ 461,591	\$ 251,736
Net realized capital gains (losses)	<u>(268)</u>	<u>(72,633)</u>	<u>(220,701)</u>	<u>(81,949)</u>	<u>(141,786)</u>
Net income	<u>\$ 672,636</u>	<u>\$ 50,586</u>	<u>\$ 781,843</u>	<u>\$ 379,642</u>	<u>\$ 109,950</u>

E. Capital and Surplus Account

	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>
Capital and surplus, December 31, prior year	<u>\$10,371,724</u>	<u>\$10,980,155</u>	<u>\$7,092,577</u>	<u>\$8,011,412</u>	<u>\$8,376,884</u>
Net income	\$ 672,636	\$ 50,586	\$ 781,843	\$ 379,642	\$ 109,950
Change in net deferred income tax	(49,713)	243,014	(137,811)	(8,580)	77,320
Change in non-admitted assets and related items	47,821	(193,258)	124,858	28,437	(24,356)
Change in asset valuation reserve	(62,313)	12,080	92,807	(30,356)	19,720
Dividends to stockholders	0	(4,000,000)	0	0	0
SSAP 10R election 10.e	<u>0</u>	<u>0</u>	<u>57,138</u>	<u>(3,671)</u>	<u>(824)</u>
Net change in capital and surplus for the year	<u>\$ 608,431</u>	<u>\$ (3,877,578)</u>	<u>\$ 918,835</u>	<u>\$ 365,472</u>	<u>\$ 181,810</u>
Capital and surplus, December 31, current year	<u>\$10,980,155</u>	<u>\$ 7,092,577</u>	<u>\$8,011,412</u>	<u>\$8,376,884</u>	<u>\$8,558,693</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 Company did not write any new business during the examination period and did not produce any advertising material during the examination period.

### B. Underwriting and policy forms

The Company did not write any new business during the examination period, therefore there were no new underwriting files, issued or declined, to review.

### 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.

## 8. RECORD RETENTION

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

“(a) ...every insurer shall maintain its claims, rating, underwriting, marketing, complaint, financial, and producer licensing records, and such other records subject to examination by the superintendent, in accordance with the provisions of this Part.

(b) Except as otherwise required by law or regulation, an insurer shall maintain:

- (1) A policy record for each insurance contract or policy for six calendar years after the date the policy is no longer in force or until after the filing of the report on examination in which the record was subject to review, whichever is longer. . .
    - (i) the policy term, basis for rating, and return premium amounts, if any;
    - (ii) the application, including any application form or enrollment form for coverage under any insurance contract or policy;
    - (iii) the contract or policy forms issued including the declaration pages, endorsements, riders, and termination notices of the contract or policy. Binders shall be retained if a contract or policy was not issued; and
    - (iv) other information necessary for reconstructing the solicitation, rating, and underwriting of the contract or policy. . .
  - (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. . .
  - (8) Any other-record for six calendar years from its creation or until after the filing of a report on examination or the conclusion of an investigation in which the record was subject to review. . .
- (d) An insurer shall require, by contract or other means, that a person authorized to act on its behalf in connection with the doing of an insurance business, including a managing general agent, an administrator, or other person or entity, shall comply with the provisions of this Part in maintaining records that the insurer would otherwise be required to maintain. Notwithstanding the above, the insurer shall be responsible if the person or entity fails to maintain the records in the required manner.

Section 243.3(a)(4) of Department Regulation No. 152 states:

(4) If the insurer does not retain the original paper record, or if there was no original paper record, a duplicate or back-up system sufficient to permit reconstruction of the record shall be established at a separate location. The record may be retained in any form permitted by this Part.

The examiner requested 11 outgoing replacement files, 20 annuity death claim files, 21 annuity paid claim files, 20 surrender and withdrawal files and 17 actuarial files.

The Company failed to provide:

- any records for 3 (27%) of the 11 outgoing replacement files requested
- any records for 8 (40%) of the 20 annuity death claim files requested
- any records for 9 (43%) of the 21 annuity paid claim files requested
- any records for 4 (20%) of the 20 surrender and withdrawal files requested
- complete records for 14 (82%) of the 17 actuarial files requested

The Company stated that it, “has exercised all of its options for locating the requested files. Due to th[e] transition over the years with the purchases of the Company, the remaining files have been unable to be located.”

The Company violated Sections 243.2(b)(1)(4) and (8) of Department Regulation No. 152 by failing to provide complete records for 38 of the 89 records requested.

The examiner reviewed 8 replacement files, 12 annuity death claim files, 12 annuity paid claim files, and 16 surrender and withdrawal files.

The Company failed to maintain claim files that clearly showed the inception, handling and disposition of the claim in:

- 8 ( 67%) of the 12 remaining annuity death claim files reviewed
  - Five death claim files was missing the Supplementary Contract Providing Annuity Income Benefit Information;
  - One death claim file was missing the corresponding application, the corresponding policy form, the claim form, the calculation of the claim amount and the proof of payment;
  - One death claim file was missing the claim form, the calculation of the claim amount and the proof of payment;
  - One death claim file was missing the calculation of the claim amount and the proof of payment;

- 12 (100%) of the 12 remaining annuity paid claim files reviewed
  - Two annuity paid claim files were missing the corresponding application;
  - One annuity paid claim file was missing the corresponding policy form and the calculation of the amount paid;
  - Two annuity paid claim files were missing the corresponding application, the corresponding policy form and the proof of payment;
  - One annuity paid claim file was missing the corresponding application, the corresponding policy form, the claim form, and the calculation of the claim amount;
  - One annuity paid claim file was missing the corresponding application, the corresponding policy form, the claim form, the calculation of the claim amount and the proof of payment;
  - One annuity paid claim file was missing the corresponding policy form, the claim form, the calculation of the claim amount and the proof of payment;
  - Two annuity paid claim files were missing the claim form and the calculation of the claim amount;
  - Two annuity paid claim files were missing the calculation of the claim amount and the proof of payment;
  
- 10 ( 63%) of the 16 remaining surrender and withdrawal files reviewed
  - Two surrender and withdrawal files were missing the support showing how the withdrawal amount was calculated;
  - Two surrender and withdrawal files were missing the support showing how the withdrawal amount was calculated;
  - One surrender and withdrawal file was missing the surrender request;
  - One surrender and withdrawal file was missing the cancelled check;
  - One surrender and withdrawal file was missing the Required Minimum Distribution calculation sheet, the payment letter and the cancelled check;
  - One surrender and withdrawal file was missing the payment letter and the cancelled check;
  - One surrender and withdrawal file was missing the request to reverse the transaction;
  - One surrender and withdrawal file was missing the partial withdrawal request;

The Company stated that it, “has exercised all of its options for locating the requested files. Due to th[e] transition over the years with the purchases of the Company, the remaining files have been unable to be located.”

The Company violated Section 243.2(b)(4) by failing to maintain claim files that clearly showed the inception, handling and disposition of the claim.



The Company also violated Section 243.3(a)(4) of Department Regulation No. 152 by failing to maintain a duplicate or back-up system sufficient to permit reconstruction of the record at a separate location in those instances where the insurer did not retain the original paper record.

The examiner recommends that the Company implement procedures to maintain its claims, rating, underwriting, marketing and such other records subject to examination by the superintendent, in accordance with the provisions of Department Regulation No. 152. The examiner also recommends that the Company implement controls to ensure that such procedures are followed.

## 9. PRIOR REPORT SUMMARY AND CONCLUSIONS

Following are the violations and recommendation 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 examiner recommended that the Company continue to use the reserving methodology as agreed upon with the Department.</p> <p>The Company established additional reserves in the amount of \$950,000 as of September 30, 2008.</p>
B	<p>The Company violated Section 403(d) of the New York Insurance Law by using a claim form that did not contain the complete fraud warning as required by law.</p> <p>The Company added the New York language to both the annuity claim form and the state specific fraud warning supplement, which is included with the initial forms mailing to each beneficiary.</p>
C	<p>The Company violated Section 3214(c) of the New York Insurance Law by failing to compute interest daily at the rate of interest currently paid by the insurer from the date of death to the date of payment.</p> <p>The Company added two additional days to the interest rate calculation period to cover the additional days needed to run the nightly cycle and generate the check.</p>

## 10. SUMMARY AND CONCLUSIONS

Following are the violations, recommendations and comment contained in this report:

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
A	The Company violated Section 1202(b)(2) of the New York Insurance Law by failing to establish a committee comprised solely of directors who are not officers or employees of the company to recommend the selection of independent certified public accountants, nominate candidates for director for election by shareholders or policyholders, evaluate the performance of officers deemed by such committee to be principal officers of the company and recommend to the board of directors the selection and compensation of such principal officers.	9
B	The examiner recommends that the board establish an independent committee with the requisite authority to ensure compliance with Section 1202(b)(2) of the New York Insurance Law.	9
C	Comment: On May 12, 2012, the new board established several independent committees with the requisite authority to ensure compliance with Section 1202(b)(2) of the New York Insurance Law.	9
D	The Company violated Sections 243.2(b)(1)(4) and (8) of Department Regulation No. 152 by failing to provide complete records for 38 of the 89 records requested.	20
E	The Company violated Section 243.2(b)(4) by failing to maintain claim files that clearly showed the inception, handling and disposition of the claim.	21
F	The Company also violated Section 243.3(a)(4) of Department Regulation No. 152 by failing to maintain a duplicate or back-up system sufficient to permit reconstruction of the record at a separate location in those instances where the insurer did not retain the original paper record.	22
G	The examiner recommends that the Company implement procedures to maintain its claims, rating, underwriting, marketing and such other records subject to examination by the superintendent, in accordance with the provisions of Department Regulation No. 152. The examiner also recommends that the Company implement controls to ensure that such procedures are followed.	22

Respectfully submitted,

\_\_\_\_\_/s/  
S'elrey N. David  
Senior Insurance Examiner

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

S'elrey N. David, being duly sworn, deposes and says that the foregoing report, subscribed by him, is true to the best of his knowledge and belief.

\_\_\_\_\_/s/  
S'elrey N. David

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

APPOINTMENT NO. 30644

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:

**S'EL REY DAVID**

as a proper person to examine the affairs of the

**FIDELITY SECURITY LIFE INSURANCE COMPANY OF NEW YORK**

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 20th day of April, 2012

BENJAMIN M. LAWSKY  
Superintendent of Financial Services

By:

  
MICHAEL MAFFEI

ASSISTANT DEPUTY SUPERINTENDENT  
AND CHIEF OF THE LIFE BUREAU

