



TARGETED MARKET CONDUCT REPORT ON EXAMINATION

OF

THE GUARDIAN LIFE INSURANCE COMPANY OF AMERICA

AS OF DECEMBER 31, 2020

EXAMINER:

JOCELYNE TURENE

DATE OF REPORT:

MAY 20, 2022

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KATHY HOCHUL
Governor



ADRIENNE A. HARRIS
Superintendent

September 1, 2022

Honorable Adrienne A. Harris
Superintendent of Financial Services
New York, New York 10004

Dear Adrienne A. Harris:

In accordance with instructions contained in Appointment No. 32396, dated March 25, 2022, and annexed hereto, an examination has been made into the condition and affairs of The Guardian Life Insurance Company of America, hereinafter referred to as “the Company”. The Company’s home office is located at 10 Hudson Yards, New York, NY 10001. Due to the COVID-19 pandemic, the examination was conducted remotely.

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 finding and violation contained in this report is summarized below.

- The Company violated Section 3201(b)(1) of the New York Insurance Law by using an amendment application form that was not approved by the superintendent, and by using the form in a manner that was not approved by the superintendent. (See item 4B of this report.)

2. SCOPE OF EXAMINATION

This examination covers the period from January 1, 2019, to December 31, 2020.

The examination comprised a review of Company's electronic application process and related market conduct activities.

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

3. DESCRIPTION OF COMPANY

A. History

The Company was incorporated as a stock life insurance company under the laws of the State of New York on April 10, 1860, was licensed on July 10, 1860, and commenced business on July 16, 1860, under the name The Germania Life Insurance Company. In 1918, the Company adopted its present name; and in 1924, the Company adopted a plan to convert to a mutual company. Effective January 1, 1946, the Company adopted and amended its charter and by-laws and became a mutual company.

On July 1, 2001, the Company consummated a statutory merger with Berkshire Life Insurance Company (“BLIC”), a Massachusetts mutual insurer, with the Company being the surviving entity and the policyowners of BLIC becoming the Company’s policyowners. The statutory merger was approved by New York and Massachusetts insurance regulators. Healthsource Insurance Company, a then existing subsidiary of BLIC, was renamed Berkshire Life Insurance Company of America (“BLICOA”). Pursuant to a reinsurance treaty effected between BLICOA and the Company, BLICOA reinsured 100% of BLIC’s and the Company’s existing disability income business. Effective July 1, 2001, all new disability income business is written by BLICOA.

On October 6, 2009, the Company issued 30-year surplus notes with an aggregate principal amount of \$400 million, bearing an interest rate of 7.375% and a maturity date of September 30, 2039. The surplus notes are administered by The Bank of New York Mellon, as fiscal agent, and interest is scheduled to be paid semiannually on March 31 and September 30 of each year.

On December 31, 2012, the Company acquired 100% of Reed Group, Ltd. (“Reed”), a company that provides medical leave and disability management services, to expand its disability and absence management portfolio.

On April 5, 2014, the Company acquired Premier Access Insurance Company (“Premier”). Premier manages and provides dental coverage and care to employers and individuals. The acquisition strengthened the Company’s existing Dental Preferred Provider Organization and Dental Health Maintenance Organization networks in several states including California, Utah, Nevada, and Arizona. This acquisition also extended the Company’s reach into the state-run Medicaid and Children's Health Insurance Program markets.

B. Territory and Plan of Operation

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

The Company is licensed to transact business in all 50 states and the District of Columbia. In 2020, 22.3% of life premiums, 12.8% of accident and health premiums, and 22.7% of annuity considerations were received from New York. Policies are written on a participating basis.

The following tables show the percentage of direct premiums received, by state, and by major lines of business for the year 2020:

<u>Life Insurance Premiums</u>		<u>Annuity Considerations</u>	
New York	22.3%	Georgia	22.9%
New Jersey	10.5	New York	22.7
Florida	7.3	New Jersey	6.9
California	7.1	Louisiana	6.2
Texas	<u>4.8</u>	California	<u>5.7</u>
Subtotal	52.0%	Subtotal	64.4%
All others	<u>48.0</u>	All others	<u>35.6</u>
Total	<u>100.0%</u>	Total	<u>100.0%</u>

<u>Accident and Health Insurance Premiums</u>	
California	14.7%
New York	12.8
Texas	9.0
Florida	8.4
Illinois	<u>4.9</u>
Subtotal	49.8%
All others	<u>50.2</u>
Total	<u>100.0%</u>

The Company markets its individual life and fixed annuities products through an exclusive general agency system consisting of 46 general agencies located throughout the United States with 2,472 field representatives, 205 full-time agents, 113,234 brokers and 13 financial professionals.

4. MARKET CONDUCT ACTIVITIES

The examiner reviewed various elements of the Company's electronic application processes for life insurance and annuities 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 sales activities of the agency force including trade practices, solicitation and the replacement of insurance policies as part of the Company's electronic application process review.

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

B. Underwriting and Policy Forms

The examiner reviewed a sample of new underwriting files, both issued and declined, and the applicable policy forms as part of the Company's electronic application process review.

The examiners reviewed a sample of 65 individual whole life and 65 individual term life policies that the Company issued in the year 2020 using the electronic application process. The examiners noted that the Company used amendment to application form number P89-2011 NY with both whole and term life applications. This amendment to application form was provided to the applicant and signed electronically by the applicant on the date the policy was delivered.

The examiners noted that in 24 instances, the Company used amendment to application form number P89-2011 NY which indicates that the applications were signed electronically before the approval date of April 6, 2020, which is the date the Department permitted the form to be used electronically. The Department's electronic records do not show an extension of approval to use form number P89-2011 NY electronically prior to April 6, 2020.

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

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

In 4 of 65 (6%) individual whole life policies reviewed, the Company used amendment to application form number P89-2011 NY electronically during the months of February 2020 through April 2020, before the form was approved by the Department for electronic use.

In 20 of 65 (31%) individual term life new issues reviewed, the Company used amendment to application form number P89-2011 NY electronically during the months of January 2020 through April 2020, before the form was approved by the Department for electronic use.

Overall, in 24 of 130 (18%) individual life policies reviewed, the Company used amendment to application form number P89-2011 NY during an electronic process without obtaining an extension of approval from the Department to permit the electronic process.

The Company violated Section 3201(b)(1) of the New York Insurance Law by using an amendment application form that was not approved by the superintendent, and by using the form in a manner that was not approved by the superintendent.

C. Option to Opt-Out

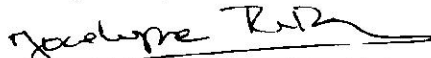
The examiner verified that the applicants had an opportunity to opt out of the electronic process as required by Section 309 of the New York State Technology Law.

5. SUMMARY AND CONCLUSIONS

The following violation is contained in this report:

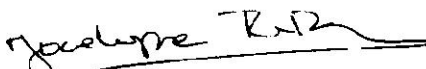
<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
A	The Company violated Section 3201(b)(1) of the New York Insurance Law by using an amendment application form that was not approved by the superintendent, and by using the form in a manner that was not approved by the superintendent.	7

Respectfully submitted,


~~Jocelyne Turene~~
Senior Insurance Examiner

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

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


~~Jocelyne Turene~~

Subscribed and sworn to before me
this 15th day of September, 2022



AUDREY HALL
Notary Public, State of New York
No. 01HA6274900
Qualified in Kings County
Commission Expires January 28, 2025

APPOINTMENT NO. 32396

NEW YORK STATE

DEPARTMENT OF FINANCIAL SERVICES

*I, **ADRIENNE A. HARRIS**, 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:*

JOCELYNE TURENE

as a proper person to examine the affairs of the
GUARDIAN LIFE INSURANCE COMPANY OF AMERICA
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 25th day of March, 2022

ADRIENNE A. HARRIS
Superintendent of Financial Services

By:

Mark McLeod

MARK MCLEOD
DEPUTY CHIEF - LIFE BUREAU

