

REPORT ON
TARGET MARKET CONDUCT EXAMINATION
OF
GENWORTH LIFE AND ANNUITY
INSURANCE COMPANY
AS OF DECEMBER 31, 2011

Conducted from August 17, 2012
through
June 26, 2013

By

Market Conduct Section
Life and Health Market Regulation Division
BUREAU OF INSURANCE
STATE CORPORATION COMMISSION
COMMONWEALTH OF VIRGINIA

FEIN: 54-0283385
NAIC: 65536

COMMONWEALTH OF VIRGINIA

JACQUELINE K. CUNNINGHAM
COMMISSIONER OF INSURANCE
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I, Jacqueline K. Cunningham, Commissioner of Insurance of the Commonwealth of Virginia, do hereby certify that the annexed copy of the Market Conduct Examination of Genworth Life and Annuity Insurance Company, conducted at the State Corporation Commission's Bureau of Insurance in Richmond, VA, as of December 31, 2011, is a true copy of the original Report on file with this Bureau, and also includes a true copy of the Company's response to the findings set forth therein, the Bureau's review letter, the Company's offer of settlement, and the State Corporation Commission's Settlement Order in Case No. INS-2013-00229.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of this Bureau at the City of Richmond, Virginia this 27th day of January 2014.

A handwritten signature in cursive script that reads "Jacqueline K. Cunningham".

Jacqueline K. Cunningham
Commissioner of Insurance

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I. SCOPE OF EXAMINATION

The Target Market Conduct Examination of Genworth Life and Annuity Insurance Company, (hereinafter referred to as “Genworth”), was conducted under the authority of various sections of the Code of Virginia and regulations found in the Virginia Administrative Code, including but not necessarily limited to, the following: §§ 38.2-200, 38.2-515, 38.2-614, 38.2-1317, 38.2-1317.1 and 38.2-1809 of the Code of Virginia, (hereinafter referred to as “the Code”), as well as 14 VAC 5-41-150 C.

A previous target market conduct examination covering the period of January 1, 2005, through June 30, 2005, was concluded on April 11, 2006. As a result of that examination, Genworth offered a monetary settlement that was accepted by the State Corporation Commission on October 4, 2006 in Case No. INS-2006-00244.

A target market conduct examination concerning Genworth’s past underwriting practices was concluded on May 2, 2002. There was no monetary settlement.

The current examination revealed violations that were also noted in the prior examination. Although Genworth had agreed after the earlier examination to change its practices to comply with the Code and regulations, the current examination revealed certain instances where Genworth failed to do so. Therefore, in the examiners’ opinion, Genworth, in some instances, knowingly violated certain sections of the Code and regulations. Section 38.2-218 of the Code sets forth the penalties that may be imposed for knowing violations.

The period of time covered for the current examination, generally, was July 1, 2011, through December 31, 2011. The desk examination was initiated on August 17, 2012, at the office of the State Corporation Commission's Bureau of

Insurance in Richmond, Virginia, and concluded on June 26, 2013. The violations cited and the comments included in this Report are the opinions of the examiners. The examiners may not have discovered every unacceptable or non-compliant activity in which the company is engaged. Failure to identify, comment on, or criticize specific company practices in Virginia or in other jurisdictions does not constitute acceptance of such practices.

The purpose of the examination was to determine whether Genworth was in compliance with various provisions of the Code and regulations found in the Virginia Administrative Code. Compliance with the following regulations was considered in this examination process:

- 14 VAC 5-30-10 et seq. Rules Governing Life Insurance and Annuity Replacements;
- 14 VAC 5-41-10 et seq. Rules Governing Advertisement of Life Insurance and Annuities;
- 14 VAC 5-43-10 et seq. Rules Governing Use of Senior-Specific Certifications and Professional Designations in Sale of Life or Accident and Sickness Insurance or Annuities;
- 14 VAC 5-45-10 et seq. Rules Governing Suitability in Annuity Transactions;
- 14 VAC 5-70-10 et seq. Rules Regarding Accelerated Benefit Provisions;
- 14 VAC 5-100-10 et seq. Rules Governing the Submission for Approval of Life, Accident and Sickness, Annuity, Credit Life and Credit Accident and Sickness Policy Forms;
- 14 VAC 5-180-10 et seq. Rules Governing Underwriting Practices and Coverage Limitations and Exclusions for Acquired Immunodeficiency Syndrome (AIDS);

14 VAC 5-400-10 et seq. Rules Governing Unfair Claim Settlement Practices; and

14 VAC 5-420-10 et seq. Rules Governing Military Sales Practices.

The examination included the following areas:

- Advertising
- Policy and Other Forms
- Agents
- Underwriting/Unfair Discrimination/Insurance Information and Privacy Protection Act
- Premium Notices/Collections/Reinstatements/Policy Loans & Loan Interest
- Cancellations/Non-Renewals/Conversions
- Complaints
- Claim Practices

Examples referred to in this Report are keyed to the numbers of the examiners' Review Sheets furnished to Genworth during the course of the examination.

II. COMPANY HISTORY

Genworth Life and Annuity Insurance Company (Genworth), formerly known as GE Life and Annuity Assurance Company, is a stock life and health insurance company operating under a charter granted by the Commonwealth of Virginia on March 21, 1871, to The Life Insurance Company of Virginia (LOV).

During subsequent years, LOV was owned or affiliated with various companies through stock exchanges and other business transactions. In January 1968, LOV was part of the Richmond Corporation and in June 1977, was acquired by Continental Group, Inc. In June 1983, LOV acquired American Agency Life Insurance Company, and in November 1984, KMI Continental became the parent company of LOV. In April 1986, LOV was acquired by Combined Insurance Company of America, a wholly owned subsidiary of an insurance holding company, Combined International Corporation, which later changed its name to Aon Corporation.

On April 1, 1996, General Electric Capital Corporation (GE Capital) acquired LOV from Aon Corporation. GE Capital subsequently contributed LOV to its wholly owned subsidiary, GE Financial Assurance Holdings, Inc. (GEFAHI) and ultimately to the majority of the outstanding common stock of General Electric Capital Assurance Company (GE Capital Assurance). As part of an internal reorganization of GE Financial Assurance's insurance subsidiaries, the Harvest Life Insurance Company (Harvest) merged into LOV on January 1, 1999. At that time, LOV was renamed GE Life and Annuity Assurance Company (GELAAC). Harvest's former parent, Federal Home Life Insurance Company (FHL), received GELAAC common stock in exchange for its interest in Harvest.

On May 24, 2004, GEFAHI, an indirect subsidiary of General Electric Company (GE), transferred substantially all of its assets to Genworth Financial, Inc. (Genworth), including all of the outstanding capital stock of GNA Corporation (GNA), the indirect parent of GELAAC, and 800 shares of GELAAC common stock that GEFAHI held directly. As a result, GELAAC became an indirect wholly owned subsidiary of Genworth.

On May 31, 2004, Genworth contributed to GNA, and GNA in turn contributed to General Electric Capital Assurance Company (GECA, now known as Genworth Life Insurance Company) (1) 5,125 shares of FHL's common stock and (2) 800 shares of GELAAC common stock. Also on May 31, 2004, FHL paid a dividend to GECA consisting of 2,378 shares of GELAAC common stock. As a result of the foregoing contribution and dividend, GELAAC became an indirect wholly owned subsidiary of Genworth. On January 1, 2006, GELAAC's name was changed to Genworth Life and Annuity Insurance Company. On January 2, 2007, both FHL and First Colony Life Insurance Company merged into Genworth.

Net admitted assets as of December 31, 2011, totaled \$23,484,472,138. As of December 31, 2011, total life insurance premiums in Virginia were \$66,238,843 and annuity considerations were \$12,078,087.

III. ADVERTISING

A review was conducted of Genworth's advertising materials to determine compliance with the Unfair Trade Practices Act, to include §§ 38.2-502, 38.2-503 and 38.2-504 of the Code, as well as 14 VAC 5-41-10 et seq., Rules Governing Advertisement of Life Insurance and Annuities, 14 VAC 5-43-10 et seq. Rules Governing Use of Senior-Specific Certifications and Professional Designations in Sale of Life or Accident and Sickness Insurance or Annuities and 14 VAC 5-420-10 et seq. Rules Governing Military Sales Practices.

14 VAC 5-41-150 C requires an insurer to maintain at its home or principal office a complete file of all advertisements with a notation indicating the manner and extent of distribution and the form number of any policy referred to in the advertisement.

The review revealed that Genworth was in substantial compliance.

A sample of 100 was selected from a population of 927 advertisements distributed in Virginia during the examination time frame.

The review revealed that Genworth was in substantial compliance.

IV. POLICY AND OTHER FORMS

A review was conducted to determine if Genworth complied with various statutory, regulatory and administrative requirements governing the filing and approval of forms. Section 38.2-316 of the Code sets forth the filing and approval requirements for forms and rates that are to be issued or issued for delivery in Virginia.

LIFE INSURANCE POLICIES

The examiners reviewed a sample of 103 from the total population of 1,467 life insurance policies issued during the examination time frame.

The review revealed that the policies and amendments/riders issued were filed with and approved by the Commission.

ANNUITY CONTRACTS

The examiners reviewed a sample of 5 from the total population of 26 annuity contracts issued during the examination time frame.

The review revealed that the contracts and amendments/riders issued were filed with and approved by the Commission.

APPLICATION FORMS

Sections 38.2-316 B and 38.2-316 C 1 of the Code set forth the requirements for the filing and approval of application forms prior to use.

The review revealed that the application forms used by Genworth were filed with and approved by the Commission.

V. AGENTS

A review was conducted to determine compliance with various sections of Title 38.2 of Chapter 18 of the Code. The 96 writing agents and 56 agencies designated in the 108 new business files were reviewed.

LICENSED AGENT REVIEW

Section 38.2-1822 A of the Code requires that a person be licensed prior to soliciting insurance contracts or receiving or sharing, directly or indirectly, any commission or other valuable consideration.

The review revealed 12 violations of this section. As discussed in Review Sheet AG10, the review revealed that Genworth paid commission to an unlicensed agency in 12 instances. Genworth agreed with the examiners' observations.

APPOINTED AGENT REVIEW

Section 38.2-1833 A 1 of the Code requires that an insurer, within 30 calendar days of the date of execution of the first application submitted by a licensed but not yet appointed agent, either reject such application or appoint the agent.

The review revealed 1 violation of this section. As discussed in Review Sheet AG09, a review of the file indicated that Genworth had accepted an application submitted by an agent that was not appointed. Genworth agreed with the examiners' observations.

COMMISSIONS

Section 38.2-1812 A of the Code prohibits the payment of commission or other valuable consideration to an agent or agency which was not appointed or which was not licensed for the class of insurance involved at the time of the transaction.

The review revealed 13 violations of this section. An example is discussed in Review Sheet AG09, where Genworth paid a commission to an agent that was not appointed. Genworth agreed with the examiners observations.

TERMINATED AGENT APPOINTMENT REVIEW

Section 38.2-1834 D of the Code requires that an insurer notify the agent within 5 calendar days, and the Commission within 30 calendar days, upon termination of the agent's appointment. A sample of 29 was selected from the total population of 202 agents whose appointments terminated during the examination time frame.

As discussed in Review Sheet AG01, the review revealed that Genworth failed in 7 instances to notify an agent within 5 calendar days of the termination of his or her appointment, in violation of § 38.2-1834 D of the Code. Genworth agreed with examiners' observations.

SUMMARY

Due to the fact that violations of §§ 38.2-1812 A and 38.2-1822 A of the Code were discussed in the prior Report, the current violations could be construed as knowing. Section 38.2-218 of the Code sets forth the penalties for knowing violations.

VI. UNDERWRITING/UNFAIR DISCRIMINATION/INSURANCE INFORMATION AND PRIVACY PROTECTION ACT/ INSURANCE REPLACEMENT

The examination included a review of Genworth’s underwriting practices to determine compliance with the Unfair Trade Practices Act, §§ 38.2-500 through 38.2-514; and the Insurance Information and Privacy Protection Act, §§ 38.2-600 through 38.2-620 of the Code, as well as 14 VAC 5-30-10 et seq., Rules Governing Life Insurance and Annuity Replacements, 14 VAC 5-45-10 et seq., Rules Governing Suitability in Annuity Transactions and 14 VAC 5-180-10 et seq., Rules Governing Underwriting Practices and Coverage Limitations and Exclusions for Acquired Immunodeficiency Syndrome (AIDS).

UNDERWRITING/UNFAIR DISCRIMINATION

A review was conducted to determine whether Genworth’s underwriting guidelines were unfairly discriminatory, whether applications were underwritten in accordance with Genworth’s procedures, and that correct premiums were being charged.

UNDERWRITING REVIEW

The examiners reviewed a sample of 103 from the total population of 1,467 life insurance policies issued during the examination time frame and a sample of 5 from the total population of 26 annuity contracts issued during the examination time frame.

The review revealed no evidence of unfair discrimination.

UNDERWRITING PRACTICES – AIDS

14 VAC 5-180-10 et seq. sets forth rules and procedural requirements that the Commission deems necessary to regulate underwriting practices and policy limitations and exclusions with regard to HIV infection and AIDS.

The review revealed that Genworth was in substantial compliance.

MECHANICAL RATING REVIEW

The review revealed that Genworth calculated premium amounts in accordance with its established guidelines.

INSURANCE INFORMATION AND PRIVACY PROTECTION ACT

Title 38.2, Chapter 6 of the Code requires a company to establish standards for collection, use and disclosure of personal/privileged information gathered in connection with insurance transactions.

NOTICE OF INSURANCE INFORMATION PRACTICES (NIP)

Section 38.2-604 of the Code sets forth the requirements for a NIP, either full or abbreviated, to be provided to all applicants that are individually underwritten.

The review revealed that the NIP forms provided to applicants for coverage complied with the requirements of this section.

DISCLOSURE AUTHORIZATION FORMS

Section 38.2-606 of the Code sets forth standards for the content and use of the disclosure authorization forms to be used when collecting personal or privileged information about individuals in connection with insurance transactions.

As discussed in Review Sheet UN08, Disclosure Form #0508, submitted by an agency and used to collect information for the underwriting of a universal life policy,

failed to specify the length of time such authorization shall remain valid, and failed to comply with subsection 7 a 1 of § 38.2-606 of the Code. Genworth responded that, “The attached authorization is not ours. Since it accompanied documents sent to us, we filed it as we file all other documents.” However, Genworth’s appointed agent utilized this non-compliant disclosure authorization form in connection with an insurance transaction, and Genworth will be required to notify its agents/agencies that all disclosure authorization forms used in the marketing and underwriting of Genworth’s insurance policies and annuity contracts must comply with § 38.2-606 of the Code.

The review revealed 5 instances where a disclosure authorization submitted by an agency failed to comply with subsection 8 of § 38.2-606 of the Code, which requires that a disclosure authorization form advise the individual or person authorized to act on behalf of the individual that the individual or the individual’s authorized representative is entitled to receive a copy of the form. An example is discussed in Review Sheet UN19, where the disclosure authorization form submitted by the agency listing Genworth as the underwriting insurer, failed to contain the language specified by subsection 8 of § 38.2-606 of the Code. Genworth responded that, “This form is not ours and was not used by us.” However, Genworth’s appointed agent utilized this non-compliant disclosure authorization form in connection with an insurance transaction, and Genworth will be required to notify its agents/agencies that all disclosure authorization forms used in the marketing and underwriting of Genworth’s insurance policies and annuity contracts must comply with § 38.2-606 of the Code.

ACCELERATED BENEFITS

14 VAC 5-70-80 requires that a written disclosure, including a brief description of the provisions of an Accelerated Benefit Rider, be given to each applicant and an acknowledgment of the disclosure shall be signed by the applicant and agent.

The review revealed that Genworth was in substantial compliance.

ACCESS TO RECORDED PERSONAL INFORMATION

Section 38.2-608 sets forth the requirements of providing access to personal information and the correction or amendment of such information.

The review revealed that Genworth was in substantial compliance.

ADVERSE UNDERWRITING DECISIONS (AUD)

Section 38.2-610 A of the Code requires that, in the event of an adverse underwriting decision, the insurance institution responsible for the decision shall give a written notice in a form approved by the Commission.

A sample of 42 from a total population of 191 declined applicant files was selected by the examiners for review. Additionally, the 108 new business files were reviewed for situations where an AUD notice was required to have been provided to an applicant for coverage.

Section 38.2-610 A 1 of the Code states that, in the event of an adverse underwriting decision, the insurer shall give a written notice that either provides the applicant with the specific reason or reasons for the adverse underwriting decision in writing or advises such person that upon written request he may receive the specific reason or reasons in writing. Section 38.2-610 A 2 of the Code states that, in the event of an adverse underwriting decision, the insurer responsible for the decision shall give a

written notice in a form approved by the Commission that provides the applicant with a summary of the rights established under subsection B of this section and §§ 38.2-608 and 38.2-609 of the Code.

Administrative letter 2003-6 states that when coverage is offered at a reduced benefit level from that applied for, an AUD notice must be furnished. As discussed in Review Sheet UN11, the review revealed 1 instance where Genworth failed to provide an AUD in this situation, in violation of §§ 38.2-610 A 1 and 38.2-610 A 2 of the Code. Genworth agreed with the examiners' observation.

Additionally, Administrative Letter 2003-6 states that when an application file is closed because the applicant or any other individual or entity furnishing information relating to the applicant's insurance application, fails to furnish requested information, such closure is considered a declination of coverage. Because the closure of an application file resulting from lack of information, failure to respond to requests for information, or any other related situation is considered an Adverse Underwriting Decision, the AUD notice must be furnished.

As discussed in Review Sheets UN20, UN21, UN22, UN23, UN24, UN25 and UN26, the review revealed 7 instances where Genworth failed to provide the applicant with an AUD notice when an application file was closed due to the failure to provide requested information, in violation of §§ 38.2-610 A 1 and 38.2-610 A 2 of the Code. Genworth agreed with the examiners' observations in each instance.

INSURANCE REPLACEMENT

A review was conducted to determine if Genworth was in compliance with the requirements of 14 VAC 5-30-10 et seq., Rules Governing Life Insurance and Annuity Replacements.

14 VAC 5-30-51 A 2 states that when a replacement is involved in the transaction, the replacing insurer shall notify any other existing insurer that may be affected by the proposed replacement within 5 business days of receipt of a completed application indicating replacement.

As discussed in Review Sheet UN04, there was 1 instance where Genworth notified the existing insurer indicated on the application and replacement form within 5 business days. However, the existing insurer responded that the applicant was not one of its policyholders. While not a violation, the examiners noted that no subsequent attempt was made by Genworth to ascertain the identity of the existing insurer.

14 VAC 5-30-60 A 2 states that each insurer shall maintain a system of supervision and control to insure compliance with the requirements of this chapter, and shall provide to each agent a written statement of the company's position with respect to the acceptability of replacements, providing guidance to its agents as to the appropriateness of these transactions.

The review revealed that Genworth was in substantial compliance.

SUITABILITY

A review was conducted to determine if Genworth was in compliance with the requirements of 14 VAC 5-45-10 et seq., Rules Governing Suitability in Annuity Transactions.

The examiners reviewed a sample of 5 from a total population of 26 annuity contracts issued during the examination time frame.

14 VAC 5-45-40 B requires that prior to the purchase of an annuity, an insurer shall make reasonable efforts to obtain information concerning the consumer's financial status, tax status, investment objectives and other information considered to be reasonable by the insurer, in making recommendations to the consumer.

The review revealed that Genworth was in substantial compliance.

14 VAC 5-45-40 D 1 requires that an insurer establish and maintain a system to supervise recommendations that is reasonably designed to achieve compliance with this chapter. Such system shall include, but is not limited to maintaining written procedures and conducting periodic reviews of its records.

The review revealed that Genworth was in substantial compliance.

ADMINISTRATIVE LETTER 2010-12

The purpose of this Administrative Letter was to inform life and accident and sickness insurers of the disclaimer required to be attached to policies in order to comply with § 38.2-1715 B of the Code, which states that an insurer may not deliver a policy or contract to a policy or contract owner unless the summary document is delivered to the policy or contract owner at the time of delivery of the policy or contract. The summary document, *Notice of Protection Provided by the Virginia Life, Accident and Sickness Insurance Guaranty Association*, was approved effective November 1, 2010.

The review revealed that Genworth was in substantial compliance.

VII. PREMIUM NOTICES/REINSTATEMENTS POLICY LOANS AND LOAN INTEREST

The examiners reviewed Genworth's procedures and practices for processing premium notices and reinstatements.

PREMIUM NOTICES

Genworth provided the examiners with the established premium billing procedures for its Term, Traditional Whole Life Products, Universal Life Products and Interest Sensitive Whole Life Products.

The review revealed that Genworth was in substantial compliance with its premium billing procedures.

REINSTATEMENTS

When a reinstatement is requested, Genworth provides the policy owner with a policy change form for completion. Once the completed form is received, it is sent to underwriting for review. If reinstatement is denied, a declination letter is sent. If the reinstatement is approved, a letter requesting the premium due is sent to the policy owner and once the premium is received, a letter is sent to the policy owner advising him or her of the policy's paid-to date. The letter also includes a copy of the reinstatement application and any amendment or illustration, if applicable.

A sample of 20 was selected from a population of 108 life insurance policies for which reinstatement was requested. The review revealed that Genworth was in substantial compliance with its established procedures.

POLICY LOANS AND LOAN INTEREST

Genworth's procedures state that once a loan request is received and the amount requested is valid, it will be processed within 3 business days. If loan interest is due in advance, interest is charged to the next anniversary. If loan interest is in arrears, loan interest is not charged until the next policy anniversary. As of the policy anniversary, loan interest, if not paid, is capitalized and added to the existing loan balance to bear interest at the same rate.

The examiners reviewed a sample of 100 policy loan transactions from a total population of 1,441 life insurance policies with loan activity.

The review revealed that policy loans and loan interest were calculated in accordance with established procedures and the policy provisions.

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VIII. CANCELLATIONS / NONRENEWALS AND CONVERSIONS

The examination included a review of Genworth's cancellation/nonrenewal practices and procedures to determine compliance with its policy provisions and the requirements of § 38.2-508 of the Code concerning unfair discrimination.

A sample of 30 from a total population of 776 lapsed life insurance policies was reviewed along with a sample of 51 from a total population of 5,139 life insurance policies that had either matured or expired. A sample of 5 was selected from a total population of 17 terminated annuity contracts.

The review revealed that the policies/contracts were terminated in accordance with Genworth's established procedures and the policy/contract provisions.

Cash Withdrawals and Surrenders

A sample of 10 from a total population of 16 policies from which cash withdrawals were requested during the examination time frame was reviewed. A sample of 30 from a total population of 1,053 policies surrendered for cash during the examination time frame was also reviewed. The examiners reviewed the policy values and calculations for each cash withdrawal and surrender.

The review revealed that Genworth calculated the cash withdrawal and surrender amounts in accordance with the policy provisions.

Reduced Paid-Up and Extended Term Insurance

The total population of 2 policies converted to reduced paid-up insurance during the examination time frame was reviewed along with the total population of 7 policies that converted to extended term insurance.

The review revealed that the transactions were handled in accordance with established procedures and the policy provisions.

Conversions

A sample of 5 was selected from a total population of 20 policies that involved a conversion during the examination time frame.

The review revealed that the conversions were handled in accordance with established procedures and the policy provisions.

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IX. COMPLAINTS

Genworth's complaint records were reviewed for compliance with § 38.2-511 of the Code. This section sets forth the requirements for maintaining complete records of complaints to include the number of complaints, the classification by line of insurance, the nature of each complaint, the disposition of each complaint, and the time it took to process each complaint. A "complaint" is defined by this section as "any written communication from a policyholder, subscriber or claimant primarily expressing a grievance."

The total population of 20 written complaints received during the examination time frame was reviewed. The review revealed that Genworth was in substantial compliance.

X. CLAIM PRACTICES

The examination included a review of Genworth's claim practices for compliance with §§ 38.2-510 and 38.2-3115 of the Code and 14 VAC 5-400-10 et seq., Rules Governing Unfair Claim Settlement Practices.

GENERAL HANDLING STUDY

The review consisted of a sampling of closed life and annuity death claims. The examiners were provided access to Genworth's claim handling procedures.

PAID CLAIM REVIEW

A sample of 173 from a total population of 663 life insurance claims paid during the examination time frame and a sample of 35 from a total population of 129 annuity death claims paid during the examination time frame was reviewed.

The review revealed that the claims were paid in accordance with the policy provisions.

Statutory Interest – Life Insurance

Section 38.2-3115 B of the Code states that interest upon the principal sum shall be paid at an annual rate of 2.5% or the annual rate currently paid by the insurer on proceeds left under the interest settlement option, whichever is greater.

As discussed in Review Sheet CL15, the review revealed 1 violation of this section for the underpayment of the statutory interest due upon a universal life death claim payment. The amount of the underpayment was \$0.13. Genworth agreed with the examiners' observations.

Statutory Interest – Annuities

The review of paid variable annuity death claims revealed 22 instances where Genworth did not calculate the statutory interest due in accordance with § 38.2-3115 B of the Code, which states that the statutory interest upon the principal sum paid to the beneficiary or policyowner shall be computed daily commencing from the date of death on an annuity contract claim to the date of payment. Genworth disagreed with the examiners' observations and stated that "Statutory interest is paid from the date of last requirement until the date of payment." Genworth asserted in its response to the examiners that the calculation of interest commencing from the date of death is incompatible with federal law, which provides that the death benefit value must be based on the current net asset value of a security after receipt of a tender for redemption. The death benefit value is unknown at the time of death and cannot be determined until a redemption event, such as the receipt of a tender for redemption occurs.

The examiners responded that although the death benefit is not always known until the redemption event takes place, this does not necessarily create a conflict between federal law and § 38.2-3115 B of the Code. Once a redemption event occurs and the death benefit value is known, the insurer can calculate the amount of interest upon the principal sum commencing from the date of death. The amount of interest calculated from the date of death would be added to the death benefit value as of the date of the redemption event.

Genworth has advised that it intends to request an amendment to the Code of Virginia regarding the starting date for the calculation of interest and has agreed that

until such time as an amendment is passed, Genworth agrees to calculate interest on a prospective basis from the date of death.

TIME PAYMENT STUDY

The time payment study was computed by measuring the time it took Genworth, after receiving the properly executed proof of loss, to issue a check for payment. The term “working days” does not include Saturdays, Sundays, or holidays. The study was conducted on the total sample of 208 paid claims.

Of the 208 paid claims reviewed for the time study, 100% were settled within 15 working days after receipt of a properly executed proof of loss.

DENIED CLAIM REVIEW

The total population of 2 life insurance claims denied during the examination time frame was reviewed. The review revealed that the claims were handled in accordance with the policy provisions.

UNFAIR CLAIM SETTLEMENT PRACTICES REVIEW

A total sample of 210 paid and denied claims was reviewed for compliance with 14 VAC 5-400-10 et seq., Rules Governing Unfair Claim Settlement Practices which requires that an insurer maintain adequate claim files and that all claims be settled as soon as possible in accordance with the terms of the insurance contract.

The review was conducted using the date the check was mailed as the settlement date. The review revealed that Genworth was in substantial compliance.

THREATENED LITIGATION

There were no claims with respect to threatened litigation during the examination time frame.

XI. CORRECTIVE ACTION PLAN

Based on the findings of the Report, it is recommended that Genworth implement the following corrective actions:

1. As recommended in the prior Report, strengthen its procedures for compliance with §§ 38.2-1812 A, 38.2-1822 A, 38.2-1833 A 1 and 38.2-1834 D of the Code concerning the licensing, appointment, payment of commission, and appointment termination of agents/agencies;
2. Notify its agents/agencies that all disclosure authorization forms used in the marketing and underwriting of Genworth's insurance policies and annuity contracts must comply with § 38.2-606 of the Code;
3. Establish and maintain procedures to ensure that the AUD notice required by §§ 38.2-610 A 1 and 38.2-610 A 2 of the Code is provided to applicants in accordance with the guidelines established by Administrative Letter 2003-6;
4. Update its procedures for the payment of interest due on life insurance and annuity claims, in accordance with § 38.2-3115 B of the Code;
5. Until such time as the Code of Virginia is amended to provide that the starting date for the calculation of interest on a variable annuity death benefit is a date other than the date of death, on a prospective basis, from October 3, 2013 going forward, calculate the statutory interest due on a variable annuity death claim from the date of death to the date of claim payment in accordance with § 38.2-3115 B of the Code. Once a redemption event occurs and the death benefit value is known, the amount of interest due from the date of death to the date of claim payment shall be added to the death benefit value as of the date of the redemption event; and

6. Within 120 days of this Report being finalized, furnish the examiners with documentation that each of the above actions has been completed.

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XII. ACKNOWLEDGMENT

The courteous cooperation extended to the examiners by Genworth's officers and employees during the course of this examination is gratefully acknowledged.

Gregory Lee, FLMI, CIE, MCM, Bill Benson, FLMI, AIE, ACS, MCM, and Melissa Gerachis, FLMI, AIRC, MCM, of the Bureau of Insurance participated in the work of the examination and writing of the Report.

Respectfully submitted,

Julie Fairbanks, AIE, AIRC, FLMI, MCM
Principal Insurance Market Examiner
Market Conduct Section
Life and Health Market Regulation Division
Bureau of Insurance

COPY

XIII. AREA VIOLATIONS SUMMARY BY REVIEW SHEET

AGENTS

§ 38.2-1812 A, **13** violations, AG09, AG10 (12)

§ 38.2-1822 A, **12** violations, AG10

§ 38.2-1833 A 1, **1** violation, AG09

§ 38.2-1834 D, **7** violations, AG01

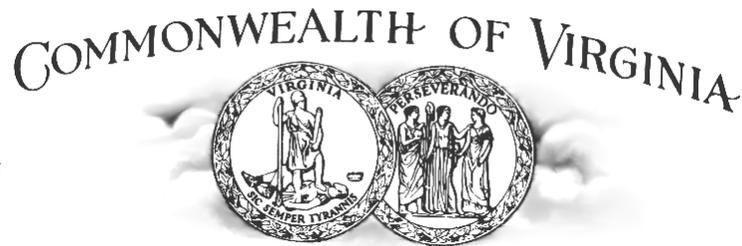
UNDERWRITING/UNFAIR DISCRIMINATION/INSURANCE INFORMATION AND PRIVACY PROTECTION ACT/INSURANCE REPLACEMENT

§§ 38.2-610 A 1 and 38.2-610 A 2, **8** violations, UN11, UN20, UN21, UN22, UN23,
UN24, UN25, UN26

CLAIM PRACTICES

§ 38.2-3115 B, **23** violations, CL15, CL16, CL17, CL18, CL19, CL20, CL21, CL22,
CL23, CL24, CL25, CL26, CL27, CL28, CL29, CL30, CL31, CL32, CL33, CL34, CL35,
CL36, CL37

JACQUELINE K. CUNNINGHAM
COMMISSIONER OF INSURANCE
STATE CORPORATION COMMISSION
BUREAU OF INSURANCE



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August 13, 2013

CERTIFIED MAIL 7012 2210 0000 4815 3105
RETURN RECEIPT REQUESTED

Mr. Bob Bowen
Associate General Counsel
Genworth Life and Annuity Insurance Company
700 Main Street
Lynchburg, VA 24504

RE: Market Conduct Examination Report
Exposure Draft

Dear Mr. Bowen:

Recently, the Bureau of Insurance conducted a Market Conduct Examination of Genworth Life and Annuity Insurance Company (Genworth) for the period of July 1, 2011, through December 31, 2011. A preliminary draft of the Report is enclosed for your review.

Since it appears from a reading of the Report that there have been violations of Virginia Insurance Laws and Regulations on the part of Genworth, I would urge you to read the enclosed draft and furnish me with your written response within 30 days of the date of this letter. Please specify in your response those items with which you agree, giving me your intended method of compliance, and those items with which you disagree, giving your specific reasons for disagreement. Genworth's response(s) to the draft Report will be attached to and become part of the final Report.

Once we have received and reviewed your response, we will make any justified revisions to the Report and will then be in a position to determine the appropriate disposition of this matter.

Thank you for your prompt attention to this matter.

Yours truly,

Julie Fairbanks, AIE, AIRC, FLMI, MCM
Principal Insurance Market Examiner
Market Conduct
Life and Health Division
Bureau of Insurance
(804) 371-9385

JRF:mhh
Enclosure
cc: Althelia Battle



Robert J. Bowen
Associate General
Counsel

Genworth Life & Annuity Insurance
Company
700 Main Street
Lynchburg, VA 24504
Phone: (434) 948-5544
Fax: 434.948.5198

September 12, 2013

Ms. Julie Fairbanks, AIE, AIRC, FLMI, MCM
Principal Insurance Market Examiner
Market Conduct - Life and Health Division
Bureau of Insurance
P.O. Box 1157
Richmond, Virginia 23218-1157

Re: Market Conduct Examination Report
Exposure Draft
Genworth Life and Annuity Insurance Company
NAIC Company Code: 65536

Dear Ms. Fairbanks:

This letter is the response of Genworth Life and Annuity Insurance Company (GLAIC) to the Exposure Draft mailed by the Bureau of Insurance on August 13, 2013 and received by GLAIC on August 16, 2013. In this response references are to the appropriate section and page number of the Exposure Draft.

Section V. Agents – Licensed Agent Review (page 8): The Exposure Draft cites 12 instances of payment of commissions to an unlicensed agency. The 12 instances refer to payment to the same producer. GLAIC's licensing processor misread the information on the Bureau's website about this producer and considered the producer as having an active license when the license was in an inactive status. GLAIC has an automated process to terminate producers whose license status has been changed to an inactive status. These status changes are downloaded from the National Insurance Producer Registry (NIPR) directly to PPlus, GLAIC's administration system, and are processed overnight after they are received. When we instituted this PPlus process, this producer was unfortunately already in an inactive status. The processor's error was discovered in November 2012, and the producer was terminated. Other license updates are processed manually. An audit of 5% of these license updates is performed to detect processing errors.

Section V. Agents – Appointed Agent Review (page 8): The Exposure Draft cites one instance in which GLAIC did not appoint the producer as its agent within 30 calendar days of the first application submitted by the producer. When the application was received, the processor identified the producer as already appointed with GLAIC when the appointment was with GLAIC's affiliated insurance company, Genworth Life Insurance Company. Since February 2013, GLAIC has conducted an audit of 100% of daily transactions and corrects any errors.

Section V. Agents – Commissions (pages 8 and 9): The Exposure Draft cites 13 instances in which GLAIC paid commissions to agents who were not appointed. The 13 instances cited were payments to the two producers whose license/and or appointments were not processed correctly as described above. GLAIC's processing system is designed to prevent payment of commissions to producers unless the producers are licensed and appointed. Because the human errors described above were made in the



licensing and appointment process, when commissions were paid, they were paid to producers who appeared to be properly licensed and appointed.

Section V. Agents -- Terminated Agent Appointment Review (page 9): The Exposure Draft cites seven instances in which GLAIC did not notify producers of termination within five calendar days of termination of the producers' appointments. Please consider the following:

BOI #'s 1 and 14 -- These terminations were processed manually. In August 2012, we began auditing 100% of producer terminations in PPlus to ensure that termination letters are sent to producers as required.

BOI #'s 6 and 8 -- In error GLAIC's Compliance Department requested that appointments for two producers be terminated. Notices of termination of these producers were sent to the Bureau of Insurance on August 9, 2011. Before the termination letter to one of the producers could be sent, (BOI# 6), the error was discovered, and the producer was reappointed on August 16, 2011. In error, a termination letter was not sent to the other producer. The producer was reappointed on February 28, 2012. The PPlus audit described above is designed to identify and correct such an error.

BOI#17 -- The producer was terminated in 2008. In 2011, during renewal processing, it was discovered that the producer still appeared on the Bureau's records as having an active appointment for GLAIC. A termination was processed manually, and the Bureau of Insurance was notified. A termination letter, however, was not sent to the producer. Because this termination was not a routine termination, it was not processed in PPlus and thus subject to the 100% audit described above. Review of this situation revealed that auditing PPlus terminations was not sufficient, and auditing was expanded to include auditing of terminations done outside of PPlus (there should not be many such terminations).

BOI #'s 7 and 11 -- The terminated producers were employees. Because these producers were also employees, their records do not appear in the normal workflow. At the time of these terminations, records of producers who were also employees remained stored on the personal computers of the personnel processing the terminations. Records on these personal computers regarding these agents were deleted in error, preventing GLAIC from providing the examiners with copies of the appropriate termination letters. In April 2012, a new procedure was put in place requiring these employee/producer records to be saved to a shared drive in order to be more easily accessible to authorized personnel. As a result of a recent change in process, these employee/producer records are now being stored in GLAIC's permanent filing system with access being limited only to authorized personnel.

The violations cited by the Bureau of Insurance are not the result of improper training or processes, but are primarily the result of human errors. As such, they are not deliberate and should not be considered as either knowing or willful. Indeed, the most significant finding of payments to an unlicensed agency resulted because an individual misread information on the website of the Bureau of Insurance. Renewed emphasis has been placed on proper training, and the additional audits put in place since the period of the examination should help to prevent future violations.

Section VI. Underwriting/Unfair Discrimination/Insurance Information and Privacy Protection Act/Insurance Replacement -- Disclosure Authorization Forms (pages 11 and 12): The Exposure Draft alleges that, as discussed in Review sheet UN08, the underwriting file contained an authorization of an insurance agency that was not in compliance with subsection 7 a (1) of §38.2-606 of the Code of Virginia. Specifically it is alleged that the authorization does not specify the length of time for which the authorization remains valid. The cited subsection of the Code of Virginia provides, "Notwithstanding any other provision of law of this Commonwealth, no insurance institution, agent, or insurance-support organization shall utilize as its disclosure authorization form in connection with insurance transactions...a



form or statement ... unless the form or statement:... Specifies the length of time such authorization shall remain valid, which shall be no longer than:... (1) thirty months....” (Emphasis added). The authorization that GLAIC utilizes as its authorization is the authorization found on page 3 of GLAIC’s Application for Life Insurance – Part I. A copy of page 3 of the pertinent application is attached as Exhibit A to this letter. This authorization complies with the requirements of §38.2-606 of the Code of Virginia. The authorization provided by the agency is not the authorization GLAIC utilizes as its authorization, and the agency’s authorization was not used in any manner. GLAIC’s authorization complies with the law of Virginia, and GLAIC cannot agree that the alleged violation occurred.

The Exposure Draft cites five alleged violations of §38.2-606 of the Code of Virginia and cites Review Sheet UN19 as an example of the violation. The application in question was not a life insurance application, but rather an application for a single-premium deferred annuity. GLAIC does not utilize any authorization with respect to deferred annuities and therefore cannot be cited for violating §38.2-606, a copy of an insurance agency’s authorization notwithstanding. GLAIC maintains its disagreement that the alleged violation occurred. With respect to Review Sheets UN08, UN14, UN17, and UN18, GLAIC maintains its disagreement because GLAIC utilizes a compliant authorization as its authorization, notwithstanding that the insurance agency’s authorization was provided to GLAIC. This compliant authorization is found on page 3 of the respective applications for insurance. This authorization is identical to the authorization in Exhibit A.

Section VI. Underwriting/Unfair Discrimination/Insurance Information and Privacy Protection

Act/Insurance Replacement -- Adverse Underwriting Decisions (AUD): The Exposure Drafts cites six instances, as discussed in Review Sheets UN09, UN10, UN11, UN12, UN13, UN15, in which it is alleged that the applicant applied for a term life insurance policy, but received a universal life insurance policy. It is further alleged that no notices of Adverse Underwriting Decisions were provided as required by §§38.2-610 A 1 and 38.2-610 A 2 of the Code of Virginia. Review Sheet UN 11 makes no such allegations, and GLAIC believes that this Review sheet was referred to in error. Review Sheet 11 refers to failing to send an Adverse Underwriting Decision notice when the underwriter approved issuance of a policy at the best premium class but at a reduced amount. GLAIC’s process is to send the AUD notice in such a case. Failure to do so was the result of human error.

With respect to the remaining five Review sheets, GLAIC maintains its disagreement with the allegations. Subdivision 2 of §38.2-602 of the Code of Virginia states, “Notwithstanding subdivision 1 of this definition, the following actions shall not be considered adverse underwriting decisions, but the insurance institution or agent responsible for their occurrence shall provide the applicant or policyholder with the specific reasons for their occurrence: a. The termination of an individual policy form on a class or statewide basis....” GLAIC stopped selling term life insurance in late 2009, and did not again sell term life insurance until 2013. With respect to each application cited in Review Sheets, UN09, UN10, UN12, UN13, and UN 15, ~~an amendment of each application was required to be signed. A sample of this amendment is attached as Exhibit B to this letter.~~ The amendment clearly states in pertinent part, “Important Explanation Regarding Plan of Insurance Amendment: The plan of insurance is Colony Term UL, which is a universal life insurance policy. If you applied for term life insurance, we no longer offer that product and we have offered you our most comparable policy....” In accordance with subdivision 2 of §38.2-602 of the Code of Virginia offering Colony Term UL is by definition not an Adverse Underwriting Decision, and we complied with the terms of subdivision 2 by requiring a written amendment containing a clear explanation of the specific reason for not issuing term life insurance, *i.e.*, we were no longer offering term life insurance.

With respect to the cited violations as provided in Review Sheets UN20, UN21, UN22, UN23, UN24, UN25, and UN26, appropriate corrective actions have been taken. In one instance, UN 20, the insured



resided in Maryland, but the applicant was a resident of Virginia. System logic has been developed to identify situations in which the state of residence of the insured differs from that of the applicant so that the proper letter will automatically be sent. The remaining cases were closed because required information or documents had not been provided. Because there were no indications that the premium class of any policy issued would have been other than the best premium class, the underwriters mistakenly believed that no Adverse Underwriting Decision notices were required. System logic is being updated so that the proper notice will automatically be provided even when there is no indication that the premium class will be other than the best class. In the meantime, a manual process has been set up to make sure that the proper Adverse Underwriting Decision notices are sent in such situations.

Section X. Claim Practices – Paid Claim Review – Statutory Interest – Life Insurance: The claim examiner in error identified the policy as one with respect to which interest was not to be paid on a refund of premium. GLAIC's procedures correctly identify the policy as one with respect to which interest is payable on a refund of premium. The additional interest has been paid.

Section X. Claim Practices – Paid Claim Review – Statutory Interest – Annuities: GLAIC's variable annuities must comply with the requirements of federal securities laws and regulations. Section 22(e) of the Investment Company Act of 1940 prohibits postponement of redemption of a redeemable security for more than seven days after its tender for redemption. Rule 22c-1 under the 1940 Act prohibits redemption of a security except at a price based on the current net asset value of the security next computed after receipt of a tender of such security for redemption. GLAIC's variable annuity contracts are designed to comply with these requirements. Assets must also be held in a separate account until a request for redemption is received. Thus the amount payable upon death cannot be known until the date the request for redemption is received. Since federal law requires the price paid upon redemption to be the net asset value on that date, the requirements of §38.2-3115.B. of the Code of Virginia are incompatible with federal law and preempted.

While not an absolute rule of law, payment of interest does not generally become due or payable until the principal becomes due and payable. The Supreme Court of Virginia followed the general rule in the case of *Hayes v. Parker* previously cited to the examiners. Application of this rule would result in no interest being payable until the redemption date because no principal is due and payable until then. Stated another way, any interest accruing from the date of death to date of redemption would be zero.

In 1966, the defined term, "annuities," in the then existing insurance code was amended to include variable products. Section 38.2-3115.B. was adopted in 1977. In 1986 the insurance code was rewritten. At that time the term, "variable annuity," was added to the Code of Virginia. See Va. Code §38.2-107. At the same time, the definition of "annuities" in Section 38.2-106 was amended to create an exception to the inclusion of variable annuities within the defined term where the context so requires. Because it is illogical to require the payment of interest when principal is not due and payable, GLAIC thinks that payment of variable-annuity death benefits is such a context and, therefore, that Section 38.2-3115.B. does not apply.

The concept underlying the payment of interest from a date presumes that the holder of money is benefitting or profiting from holding the money. In fact the Bureau seems to believe that GLAIC is receiving a windfall if interest on variable annuity death benefits is not paid from the date of death. Because variable-annuity assets are held in separate accounts until redeemed, the assets are not inuring to GLAIC's benefit, except for contractual fees, e.g., mortality and expense risk fees.



As we discussed in our meeting on September 10, the current position of the examiners that GLAIC's calculation of statutory interest is improper is surprising because the Bureau has not taken such a position in previous examinations.

GLAIC continues to believe that its payment of interest from the date of receipt of required documents is consistent with the requirements of the Code of Virginia and must maintain its disagreement with the findings of the examiners.

Respectfully submitted,

Robert J. Bowen
Vice President and Associate General Counsel

Enc.

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Exhibit A

Authorization to Collect and Disclose Information

Information Information means facts about the Proposed Insured. It includes facts about these topics: mental and physical health, including facts about communicable diseases such as HIV infection, AIDS, tuberculosis, and sexually transmitted diseases; other insurance coverage; hazardous activities; character; general reputation; mode of living; finances; vocation; and other personal traits. It does not include facts about sexual orientation. The following statements apply to information being collected in the states named: **New Jersey** Information does not include facts about previously administered tests for HIV Antibodies, T-Cell Counts, or AIDS. **Vermont** Information does not include facts about previously administered tests for HIV Antibodies, T-Cell Counts, or AIDS. In Vermont, the Company will not forward the results of any new tests it requests to any other entity.

Source Medical physicians; chiropractors; physical therapists; psychologists; drug, alcohol, or mental health counselors; hospitals; clinics; drug or alcohol treatment or consultation facilities; nursing homes; mental health facilities; ambulatory care centers; facilities or offices staffed or run by care providers; insurers; reinsurers; MIB; consumer reporting agencies; financial sources; employers; the Social Security Administration; neighbors; friends; and relatives.

Insurer Genworth Life Insurance Company, and Genworth Life and Annuity Insurance Company as indicated on Page 1 of the application

Proposed Insured The Proposed Insured is the person whose life is proposed to be insured.

Authorization The Authorization is this Authorization to Collect and Disclose Information.

MIB MIB is the medical information bureau known as MIB, Inc.

The following parties may need to collect information in regard to proposed coverage: the Insurer and its reinsurers; MIB; consumer reporting agencies; and all persons authorized to represent these parties. Those parties that may need to collect information may generally disclose information to the following: other insurers to which the Proposed Insured has applied or may apply; reinsurers; MIB; or persons who perform business, professional, or insurance tasks for them. They may disclose information as allowed or required by law. MIB and consumer reporting agencies may disclose information only as set forth in an agreement with a member company or organization. Certain laws may pertain to some kinds of information and may further restrict disclosure of that information. The Insurer and its reinsurers will use information to evaluate the application.

By signing this Application - Part I, the Proposed Insured or the person authorized to act on the Proposed Insured's behalf (1) authorizes each Source to give information when this Authorization is presented; and (2) acknowledges receipt of the Notice to Proposed Insured and Owner. A copy of this Authorization will be as valid as the original. The Proposed Insured or the person authorized to act on the Proposed Insured's behalf may revoke this Authorization by sending written notice to the Insurer. Failing to sign, changing, or revoking this Authorization will impair processing of the application; as a result, the application may be denied.

In all states except Rhode Island and Vermont, this Authorization will be valid for thirty (30) months after the date this Application - Part I is signed. In Rhode Island and Vermont, this Authorization will be valid for twenty-four (24) months after the date this Application - Part I is signed. The Proposed Insured or an authorized representative of the Proposed Insured may ask to receive a copy of this Authorization.

Representations

This application includes the Application - Parts I and II and all approved supplemental forms or amendments the Insurer specifically designates as parts of the application by attaching copies of them to any policy delivered to the Owner. No licensed insurance agent is authorized to: (a) make or modify contracts; (b) waive any Insurer rights or requirements; or (c) waive any information the Insurer requires.

I represent: (1) the statements and answers given in the application are true, complete, and correctly recorded to the best of my knowledge and belief; and (2) the insurance being applied for is suitable for the Owner's insurance needs.

I agree that: (1) I will notify the Insurer if any statement or answer given in the application changes prior to policy delivery; and (2) except as provided in the Temporary Insurance Application and Agreement, if any, insurance will not begin unless all persons proposed for insurance are living and insurable as set forth in the application at the time a policy is delivered to the Owner and the first medal premium is paid.

State in which Owner Signed Application VA

State in which Policy will be Delivered VA

Signature of Proposed Insured _____ Date _____ Owner (if not Proposed Insured: Signature and any title) _____

Signature of Licensed Insurance Agent _____ Signature of Licensed Insurance Agent _____

Licensed Insurance Agent's Printed Name _____ Licensed Insurance Agent's Printed Name _____

Social Security No. _____ License No. _____ Managing Agency/ Brokerage No. _____ Social Security No. _____ License No. _____ Managing Agency/ Brokerage No. _____

Witness

Signature of Insured

Witness

Signature of Owner
(if other than insured)

DO NOT ALTER THIS FORM. If this amendment is unacceptable, return the policy for reissue. If acceptable,
SIGN BOTH COPIES AND RETURN LOOSE COPY to the Company.

COPY

202500400027280



0200103027280

COMMONWEALTH OF VIRGINIA

JACQUELINE K. CUNNINGHAM
COMMISSIONER OF INSURANCE
STATE CORPORATION COMMISSION
BUREAU OF INSURANCE



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October 3, 2013

**CERTIFIED MAIL 7012 2210 0000 4815 3136
RETURN RECEIPT REQUESTED**

Robert J. Bowen
Vice President and Associate General Counsel
Genworth Life and Annuity Insurance Company
700 Main Street
Lynchburg, Virginia 24504

RE: Genworth Life and Annuity Insurance Company's (Genworth) Response to the Draft Examination Report

Dear Mr. Bowen:

The examiners have received and reviewed Genworth's response to the Draft Report dated September 12, 2013. This response will only address those areas of the response where Genworth disagreed with the findings and corrective actions of the Report or where upon further review, the examiners noted that revisions to the Report were necessary.

Section V. Agents – Licensed Agent Review (page 8)

Section V. Agents – Appointed Agent Review (page 8)

Section V. Agents – Commission (Pages 8 and 9):

While it may have appeared to the individual employed by Genworth to appoint its agents/agencies that the entities referred to in Review Sheets AG09 and AG10 were licensed and appointed, they were not properly licensed and appointed and were paid commission by Genworth. The Report has been modified slightly to clarify that § 38.2-1812 A of the Code prohibits the payment of commission or other valuable consideration to an agent or agency which was not appointed or which was not licensed for the class of insurance involved at the time of the transaction. Other than this minor revision for clarification purposes, the Report appears correct as written and no additional changes are necessary.

Section V. Agents – Terminated Agent Appointment Review (page 9):

The company states that the violations discussed in the Agents section of the Report should not be considered knowing because the violations were "...primarily the result of human errors" and "...additional audits put in place since the period of the examination should help prevent future violations." The examiners would note that Genworth's descriptions of the audit procedures in place during and subsequent to the examination time frame bear little resemblance to the procedures described in the Company's response to the prior Report, which stated:

The Company would note that it has updated its policies and procedures effective November 7, 2005 and now requires all agent termination letters to be copied to the agent's file and imaged in the Company's agent database for future reference. *Further, the Company has instituted daily audit procedures with respect to all aspects of the agent termination process* (italics added). Each day, a sample of the terminations processed the previous day are pulled and audited for accuracy of process. Part of this audit is to determine if a termination notice has been scanned (imaged) into the agent's file. Because the Company's current agent termination Standard Operating Procedure is to create and mail the agent the termination notice the same day the termination is processed, it is part of the audit procedure to check for the termination notice the very next day. If the letter is not part of the agent's file, an audit reject is immediately created and routed back to the original processor to fix. These audit rejects are worked on a daily basis.

It is the opinion of the examiners that if Genworth had implemented the procedures above, its agent appointment termination practices would have been in substantial compliance. Although the current examination revealed that the number of violations of § 38.2-1834 D of the Code was 7 compared to 32 in the prior Report, the number of violations of § 38.2-1812 A of the Code increased from 7 to 13 and the number of violations of § 38.2-1822 A of the Code increased from 7 to 12. Additionally, there was no violation of § 38.2-1833 A 1 of the Code mentioned in the prior Report. It is apparent that Genworth failed to comply with the prior Report's recommendation that it strengthen its procedures for compliance with §§ 38.2-1812 A and 38.2-1822 A of the Code regarding the licensing, appointment, and payment of commissions to its agents. However, Genworth's practices in regards to agent appointment terminations, while remaining non-compliant, did improve marginally, which indicates that an attempt was made to "strengthen" its procedures. Therefore, the examiners are willing to remove the reference to the violations of § 38.2-1834 D of the Code as "knowing".

Section VI. Underwriting/Unfair Discrimination/Insurance Information and Privacy Protection Act – Disclosure Authorization Forms (Pages 11 and 12):

The Report will be changed to state that disclosure authorization forms "...failed to comply" and the corrective action will be changed to require Genworth to notify its agents/agencies that all disclosure authorization forms used in the marketing and underwriting of its products must comply with § 38.2-606 of the Code.

Section VI. Underwriting/Unfair Discrimination/Insurance Information and Privacy Protection Act – Adverse Underwriting Decisions (AUD):

Genworth's response, which fails to specifically address the Bureau's guidelines related to Adverse Underwriting Decisions Notices stated in Administrative Letter 2003-6, is indicative of why the current examination revealed deficiencies in this area. The applications associated with Review Sheets UN09, UN10, UN12, UN13 and UN15, clearly document that the applicant applied for term coverage. Genworth has multiple term life insurance policies approved for sale in Virginia and issued 30 "Corporate Term" life insurance policies during the examination time frame. A temporary (and recently reversed) decision by Genworth's management to not actively market term life insurance to certain income levels does not constitute "...termination of an individual policy form on a class or statewide basis." The signed amendment letters referred to in Genworth's response do not meet the statutory requirements applicable to an AUD notice and do not document compliance with §§ 38.2-610 A 1 and 38.2-610 A 2 of the Code.

The Report will be changed by adding a separate paragraph to discuss the violation documented in Review Sheet UN11.

Section X. Claim Practices – Paid Claim Review – Statutory Interest – Annuities:

While it may be true that the death benefit value and payment is not known until a redemption event takes place, this does not necessarily create a conflict between federal securities law and § 38.2-3115 B of the Code. This section can be read in conjunction with federal securities law provisions so that once a redemption event occurs and the death benefit value is known, one may go back and calculate the amount of interest upon the principal sum commencing from the date of death. The amount of interest calculated from the date of death can be added to the death benefit value as of the date of the redemption event.

The examiners are obligated to address all issues of non-compliance revealed during the course of an examination and cannot ignore an issue because it was not addressed previously.

Corrective Action #5 will be changed to require Genworth to bring its procedures for paying interest on variable annuity death claims into compliance with § 38.2-3115 B of the Code on a prospective basis.

A copy of the entire Report with revised pages is attached and the revised pages contain the only substantive revisions we plan to make before the Report becomes final.

On the basis of our review of the entire file, it appears that Genworth violated §§ 38.2-610 A 1, 38.2-610 A 2, 38.2-1812 A, 38.2-1822 A, 38.2-1833 A 1, 38.2-1834 D and 38.2-3115 B of the Code.

Violations of the above sections of the Code can subject Genworth to monetary penalties of up to \$5,000 for each violation and suspension or revocation of its license to transact business in the Commonwealth of Virginia.

In light of the foregoing, this office will be in further communication with you shortly regarding the appropriate disposition of this matter,

Very truly yours,

Julie R. Fairbanks, AIE, AIRC, FLMI, MCM
Principal Insurance Market Examiner
Market Conduct Section
Life and Health Market Regulation Division
Telephone (804) 371-9385



Robert J. Bowen
Associate General
Counsel

Genworth Life and Annuity Insurance
Company
700 Main Street
Lynchburg, VA 24504
Phone: (434) 948-5544
Fax: 434.948.5198

November 19, 2013

Ms. Julie R. Fairbanks, AIE, AIRC, FLMI, MCM
Principal Insurance Market Examiner
Market Conduct Section
Life and Health Market Regulation Division
P. O. Box 1157
Richmond, VA 23218

Re: Market Conduct Examination of Genworth Life and Annuity Insurance Company
Your Letter of October 3, 2013.

Dear Ms. Fairbanks:

In response to the information in your letter, we offer the following and refer to the appropriate sections of the revised Draft Examination Report dated October 3, 2013:

Section V. Agents – Licensed Agent Review (revised page 8) – The examiners conclude, based on the increase in the number of cited violations of §38.2-1822 A that we have not been diligent in our compliance efforts and that our failure to be diligent in the 12 cases cited rises to the level of knowing violations of the law. The number of violations of §38.2-1822 A increased from 7 to 12. The 12 violations were the result of a single processor's error in coding an agent's license status as "active" instead of "inactive." Between the time the error was made and the time the error was discovered, we began automatically processing downloads from the National Producer Registry (NIPR) of changes of agents' statuses from "active" to "inactive." Because the status of the agent was already showing in our system as "active" when we instituted the NIPR process and because we did not receive a change in status to "inactive" from NIPR, we did not discover the processor's error until an additional 11 applications were processed. We respectfully disagree that the increase in the number of violations because of a single processor's mistake should merit a finding that the violations were knowing violations.

Section V. Agents --Commissions – The examiners have also concluded that we have failed to be diligent in our compliance efforts because the number of violations of §38.2-1812 A increased from 7 to 13. We paid commissions in 12 of the cited instances because our records were incorrect as a result of the processing error described above, and we paid commissions in an additional instance because our processor identified the producer as being appointed by Genworth Life and Annuity Insurance Company (GLAIC) when the producer's appointment was with GLAIC's affiliate, Genworth Life Insurance Company. These two processor errors resulted in 13 payments of commissions to agents not appointed by GLAIC. Again we respectfully disagree that these errors should merit a finding that the violations were knowing violations.

Section V. Agents --Terminated Agent Appointment Review (revised page 9) – Your letter describes in detail the agent-termination procedures we updated in 2005 and says that the



examiners have concluded that, had we followed these procedures, our agent terminations would have been in substantial compliance with requirements. Your letter further states that because we did marginally improve our practices, indicating that we made an attempt to strengthen them, the examiners are willing to remove the reference that the cited violations are knowing violations.

Since 2005 we have strengthened our procedures considerably. Since 2005 we have followed the procedures shown on page 15 of 98 (attached as Exhibit A) of our current procedures. These procedures require that once a producer is terminated the processor must send a termination letter to the producer on the same day and requires the letter to be imaged into our filing system, e-process. For security reasons the records for producers (BOI #'s 7 and 11) were not kept in e-process until recently. We are now able to protect the confidentiality of employee records in e-process.

From 2005 until the changes in our agent-termination audit percentage to 100% as described in our letter to you of September 12, we audited 5-10% of termination transactions as we said we would do. Please note that not all termination transactions result in termination of an agent's appointment. Many terminations, for example, are terminations of an agency relationship with one brokerage general agency and not true terminations of appointments requiring notification to the Bureau of Insurance and the producer. Attached as Exhibit B are the results of our audits for calendar year 2011. Please also note also that most terminations occur during renewal time in June. These terminations are processed automatically by our system. During the remaining times of the year, a larger percentage of terminations are processed manually than are processed during renewal time and, unfortunately, are more subject to errors. The examination period occurred outside of renewal time in June.

In 2005 the majority of agent terminations were processed manually. Since then we have continuously improved our processes by increasing the numbers of automated transactions and now process greater than 90% of Virginia agents' terminations automatically and not manually. With this transition to automatic processing and our 100% auditing of manual terminations that began in 2012, we have made more than marginal improvements in our processes since 2005.

Section VI. Underwriting/Unfair Discrimination/Insurance Information and Privacy Protection Act – Adverse Underwriting Decisions (AUD) – We maintain our disagreement with respect to Review Sheets UN09, UN10, UN11, UN13, and UN15. With respect to Review Sheets UN09, UN10, and UN12, we provided the examiner with evidence contemporaneous with the applications for insurance clearly showing that the plan of insurance was intended to be Colony Term UL, not term insurance. It is unclear to us why our requesting amendments to the applications clarifying that the plans applied for were Colony Term UL plans is an Adverse Underwriting Decision. We issued exactly what the applicants wanted.

With respect to Review Sheets UN09, UN10, UN12, UN13, and UN15, we continue to disagree with the examiner's finding that the signed amendments stating that we are no longer offering term life insurance do not meet statutory requirements. Subsection 38.2-602 2 b specifically states that a declination of insurance coverage "solely because that coverage is no longer available on a class or statewide basis" is not to be considered as an Adverse Underwriting Decision. Attached for your information as Exhibit C is the first page of our Bulletin dated



November 16, 2009, introducing Colony Term UL. Please note the first sentence of the bulletin that says, "Effective November 16, 2009, Colony Term UL will replace Colony term and Sure Term life insurance series in those states where approved." Please note that as of November 16, 2009, Colony Term UL was approved for sale in Virginia. Our amendments notifying the applicants that the plans of insurance applied for were not available comply with the statutory requirements, and thus we disagree that notices of Adverse Underwriting Decisions were required.

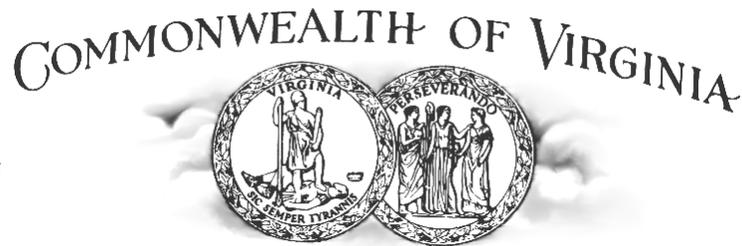
Section X. Claim Practices – Statutory Interest – Annuities – We were not aware of the Bureau's position that Code Section 38.2-3115 B requires that interest on a variable annuity claim be paid from the date of death even though the principal sum is not determinable until redemption. While we believe that the Code permits interest to be calculated from the redemption date, we recognize that the Code could be clearer on this point. We intend to ask the General Assembly to clarify the starting date for the calculation of interest. We will agree that until such time as the General assembly may amend the Code to provide that the starting date for calculation of interest is a date other than the date of death, from October 3, 2013, we will on a prospective basis calculate interest on variable annuities from the date of death.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert J. Bowen".

Robert J. Bowen
Vice President and Associate General Counsel

COPY



November 27, 2013

**CERTIFIED MAIL 7012 2210 0000 4815 3167
RETURN RECEIPT REQUESTED**

Robert J. Bowen
Vice President and Associate General Counsel
Genworth Life and Annuity Insurance Company
700 Main Street
Lynchburg, Virginia 24504

RE: Genworth Life and Annuity Insurance Company's (Genworth) Response to the Revised Draft Examination Report

Dear Mr. Bowen:

The examiners have received and reviewed Genworth's November 19, 2013, response to the findings of the revised Draft Report and have prepared the following response.

Section V. Agents – Licensed Agent Review (revised page 8)
Section V. Agents – Commission (revised pages 8 and 9)

The Report makes no statement regarding the Company's diligence in its compliance efforts. The review of the limited sample (108 out of 1,493 policies issued) revealed that Genworth's established procedures for licensing and appointing its producers continued to be deficient. While Genworth asserts that the 12 violations of § 38.2-1822 A and 12 of the 13 violations of § 38.2-1812 A cited in the Report were "the result of a single processor's error," Genworth made 12 commission payments to an unlicensed agency in connection with 5 different Virginia issued policies between August 20, 2011, and December 3, 2011. Genworth indicated that the error was discovered on November 12, 2012; therefore, it seems reasonable to assume that Genworth continued to pay commissions to this unlicensed agency until that date. A single processor error in entering the agent's license status does not justify numerous commission payments made to an unlicensed agency over the course of 14 months. Adequate controls were not in place to identify this type of error. The Report appears correct as written.

Section V. Agents – Appointed Agent Review (revised page 8)

Section V. Agents – Commission (revised pages 8 and 9)

In Genworth's prior September 12, 2013, response it stated in regards to the violations discussed in Review Sheet AG09, that "*Since February 2013, GLAIC has conducted an audit of 100% of daily transactions and corrects any errors.*" The examiners would note that per the Bureau's records as of October 24, 2013, the agent referenced in Review Sheet AG09, has still not been appointed by Genworth. Genworth agreed in its February 22, 2013, response to this Review Sheet that it had accepted an application from, and paid commission to, this non-appointed agent. Genworth's current and past actions could be construed as knowing and no changes to the Report are necessary.

Section V. Agents – Terminated Agent Appointment Review

The examiners acknowledge Genworth's assertion that it has "...made more than marginal improvements" since 2005. However, the current examination revealed 7 instances of non-compliance and the internal audit documented in Exhibit B would appear to indicate that an additional 28 violations of § 38.2-1834 D of the Code occurred in 2011. It is apparent that additional improvement is necessary in order to reduce the number of agent appointment terminations that are "...subject to errors."

Section VI. Underwriting/Unfair Discrimination/Insurance Information and Privacy Protection Act – Adverse Underwriting Decisions (AUD):

The examiners have reviewed the additional documentation provided by Genworth and the 5 violations of §§ 38.2-610 A 1 and 38.2-610 A 2 of the Code discussed in Review Sheets UN09, UN10, UN12, UN13 and UN15 have been removed from the Report.

Section X. Claim Practices –Statutory Interest – Annuities:

The Bureau acknowledges that Genworth intends to request an amendment to the Code of Virginia regarding the starting date for the calculation of interest and has agreed that until such time as an amendment is passed, Genworth will calculate interest from the date of death to the date of payment from October 3, 2013 going forward. The Report has been revised to reflect such and the revised pages are attached for your review.

A copy of the entire Report with revised pages is attached and the revised pages contain the only substantive revisions we plan to make before the Report becomes final.

On the basis of our review of the entire file, it appears that Genworth violated §§ 38.2-610 A 1, 38.2-610 A 2, 38.2-1812 A, 38.2-1822 A, 38.2-1833 A 1, 38.2-1834 D and 38.2-3115 B of the Code.

Violations of the above sections of the Code can subject Genworth to monetary penalties of up to \$5,000 for each violation and suspension or revocation of its license to transact business in the Commonwealth of Virginia.

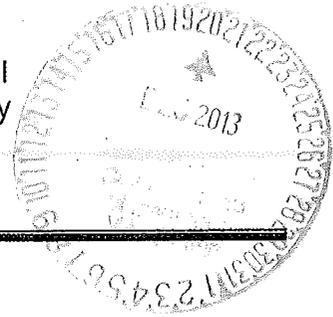
In light of the foregoing, this office will be in further communication with you shortly regarding the appropriate disposition of this matter,

Very truly yours,

Julie R. Fairbanks, AIE, AIRC, FLMI, MCM
Principal Insurance Market Examiner
Market Conduct Section
Life and Health Market Regulation Division
Telephone (804) 371-9385

COPY

Robert J. Bowen
Vice President and Associate General Counsel
Genworth Life and Annuity Insurance Company
700 Main Street
Lynchburg, Virginia 24504



Althelia P. Battle, FLMI, HIA, AIE, MHP, AIRC, ACS
Deputy Commissioner
Bureau of Insurance
Post Office Box 1157
Richmond, VA 23218

530095

RE: Alleged Violations of §§ 38.2-610 A 1, 38.2-610 A 2, 38.2-1812 A, 38.2-1822 A, 38.2-1833 A 1, 38.2-1834 D and 38.2-3115 B of the Code.

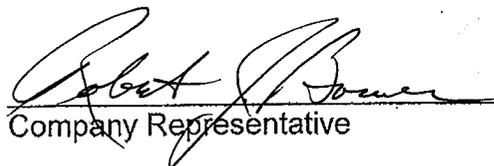
Dear Ms. Battle:

This will acknowledge receipt of your letter dated December 3, 2013, concerning the above-captioned matter.

Genworth wishes to make a settlement offer for the alleged violations cited above. Enclosed with this letter is a check (certified, cashier's or company) in the amount of \$13,000 payable to the Treasurer of Virginia. The Company further understands that as part of the Commission's Order accepting the offer of settlement, it is entitled to a hearing in this matter and waives its right to such a hearing and agrees to comply with the Corrective Action Plan contained in the Target Market Conduct Examination Report as of December 31, 2011.

This offer is being made solely for the purpose of a settlement and does not constitute, nor should it be construed as, an admission of any violation of law.

Yours very truly,



Company Representative



Date

Enclosure (check)

COMMONWEALTH OF VIRGINIA **140120058**
STATE CORPORATION COMMISSION

AT RICHMOND, JANUARY 15, 2014

SCC-CLERK'S OFFICE
DOCUMENT CONTROL CENTER

2014 JAN 15 A 11: 25

COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

v.

CASE NO. INS-2013-00229

GENWORTH LIFE AND ANNUITY
INSURANCE COMPANY,
Defendant

SETTLEMENT ORDER

Based on a target market conduct examination performed by the Bureau of Insurance ("Bureau"), it is alleged that Genworth Life and Annuity Insurance Company ("Defendant"), duly licensed by the State Corporation Commission ("Commission") to transact the business of insurance in the Commonwealth of Virginia ("Commonwealth"), in certain instances, violated §§ 38.2-610 A (1) and 38.2-610 A (2) of the Code of Virginia ("Code") by failing to accurately provide the required adverse underwriting decision and reasons to insureds; violated § 38.2-1812 A of the Code by paying commissions for services as an agent to persons who were not properly licensed and appointed; violated § 38.2-1822 A of the Code by knowingly permitting unlicensed persons to act as agents; violated §§ 38.2-1833 A (1) and 38.2-1834 D of the Code by failing to comply with agent licensing requirements; and violated § 38.2-3115 B of the Code by failing to properly pay interest on life insurance proceeds.

The Commission is authorized by §§ 38.2-218, 38.2-219, and 38.2-1040 of the Code to impose certain monetary penalties, issue cease and desist orders, and suspend or revoke a defendant's license upon a finding by the Commission, after notice and opportunity to be heard, that a defendant has committed the aforesaid alleged violations.

The Defendant has been advised of its right to a hearing in this matter whereupon the Defendant, without admitting any violation of Virginia law, has made an offer of settlement to the Commission wherein the Defendant has tendered to the Commonwealth the sum of Thirteen Thousand Dollars (\$13,000), waived its right to a hearing, and agreed to comply with the corrective action plan contained in the Target Market Conduct Examination Report as of December 31, 2011.

The Bureau has recommended that the Commission accept the offer of settlement of the Defendant pursuant to the authority granted the Commission in § 12.1-15 of the Code.

NOW THE COMMISSION, having considered the record herein, the offer of settlement of the Defendant, and the recommendation of the Bureau, is of the opinion that the Defendant's offer should be accepted.

Accordingly, IT IS ORDERED THAT:

- (1) The offer of the Defendant in settlement of the matter set forth herein is hereby accepted.
- (2) This case is dismissed, and the papers herein shall be placed in the file for ended causes.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: Robert J. Bowen, Vice President and Associate General Counsel, Genworth Life and Annuity Insurance Company, 700 Main Street, Lynchburg, Virginia 24504; and a copy shall be delivered to the Commission's Office of General Counsel and the Bureau of Insurance in care of Deputy Commissioner Althelia P. Battle.

A True Copy
Teste:



Clerk of the
State Corporation Commission