

STATE OF NEW YORK INSURANCE DEPARTMENT

REPORT ON EXAMINATION

OF

THE GUARDIAN LIFE INSURANCE COMPANY OF AMERICA

AS OF

DECEMBER 31, 1999

DATE OF REPORT:

APRIL 13, 2001

EXAMINER:

DANIEL GUMAER

REPORT ON ASSOCIATION EXAMINATION
OF
THE GUARDIAN LIFE INSURANCE COMPANY OF AMERICA
AS OF
DECEMBER 31, 1999
BY THE INSURANCE DEPARTMENTS OF
NEW YORK
MISSISSIPPI
NEVADA

REPORT DATED:

APRIL 13, 2001

TABLE OF CONTENTS

<u>ITEM</u>		<u>PAGE NO.</u>
1.	Executive summary	2
2.	Scope of examination	3
3.	Description of Company	4
	A. History	4
	B. Holding company	5
	C. Management	5
	D. Territory and plan of operation	7
	E. Reinsurance	8
4.	Significant operating results	10
5.	Financial statements	12
	A. Assets, liabilities, surplus and other funds	12
	B. Condensed summary of operations	15
	C. Surplus account	16
6.	Market conduct activities	17
	A. Advertising and sales activities	17
	B. Underwriting and policy forms	18
	C. Treatment of policyholders	20
7.	Department Stipulation from previous report on examination	21
8.	Department Regulation Number 152	26
9.	Prior report summary and conclusions	29
10.	Summary and conclusions	31



STATE OF NEW YORK
INSURANCE DEPARTMENT
25 BEAVER STREET
NEW YORK, NEW YORK 10004

April 13, 2001

Honorable Alfred W. Gross
Commissioner of Insurance
State of Virginia
Secretary, Southeastern Zone
Richmond, Virginia

Honorable Robert Lohr
Commissioner of Insurance
State of Alaska
Secretary, Western Zone
Juneau, Alaska

Honorable Gregory V. Serio
Superintendent of Insurance
State of New York
Albany, New York

Dear Sir:

In accordance with instructions and pursuant to the provisions of statute, we have made an examination of the affairs and condition of The Guardian Life Insurance Company of America hereinafter referred to as "the Company" or "Guardian," at its home office located at 7 Hanover Square, New York, New York 10004.

The examination was conducted by the State of New York Insurance Department, hereinafter referred to as the "Department," with participation from the states of Nevada representing the Western Zone and Mississippi representing the Southeastern Zone of the National Association of Insurance Commissioners ("NAIC").

The report on examination is herewith respectfully submitted.



STATE OF NEW YORK
INSURANCE DEPARTMENT
25 BEAVER STREET
NEW YORK, NEW YORK 10004

April 13, 2001

Honorable Gregory V. Serio
Superintendent of Insurance
Albany, New York 12257

Sir:

In accordance with instructions contained in Appointment Number 21515, dated March 9, 2000 and annexed hereto, a limited scope examination has been made into the condition and affairs of The Guardian Life Insurance Company of America, hereinafter referred to as "the Company" or "Guardian," at its home office located at 7 Hanover Square, New York, New York 10004.

Wherever "Department" appears in this report, it refers to the State of New York Insurance Department.

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

1. EXECUTIVE SUMMARY

This was a limited scope examination of The Guardian Life Insurance Company of America as of December 31, 1999 that included: 1) a review or audit of certain targeted balance sheet items and 2) a review or audit of certain market conduct activities of the Company. The examiner's review of a sample of transactions did not reveal any differences that materially affected the Company's financial condition as presented in its financial statements contained in the December 31, 1999 filed annual statement. (See item 2 of this report)

On September 6, 2000, Guardian and Berkshire Life Insurance Company announced that their Boards of Directors have approved, subject to policyholder and regulatory approval, a proposal to merge.

The Company violated the Department Stipulation Agreement from the previous report on examination. (See item 7 of this report)

The Company violated Section 3227 of the New York Insurance Law by not paying interest on surrenders and Section 216.11 of Department Regulation Number 64 by not maintaining its surrender files so as to enable the examiner to determine the Company's compliance with Section 3227 of the New York Insurance Law. (See item 7 of this report)

The Company violated various sections of Department Regulation Number 60 by not having completed "Definition of Replacement" forms when required and by not dating the "Definition of Replacement" forms upon receipt. (See item 6A of this report)

The Company violated Section 52.54(c)(2)(iv) of Department Regulation Number 62 by not having the required language in its disclosure statements. (See item 6B of this report)

The Company violated Section 243.2(b) of Department Regulation Number 152 by not maintaining application and claim files as required. (See item 8 of this report)

2. SCOPE OF EXAMINATION

The prior examination was conducted as of December 31, 1994. This examination covers the period from January 1, 1995 through December 31, 1999. This was a limited scope examination which included: 1) a review or audit of certain targeted balance sheet items considered by this Department to require analysis, verification or description, 2) a review of certain market conduct activities of the Company and 3) a review or audit of the items noted in the following paragraph. The balance sheet items targeted for review were reinsurance assets and liabilities, bonds, preferred stocks, common stocks, policy loans, premium assets and liabilities, reserves and dividend accumulations. The market conduct activities targeted for review were advertising and sales practices, underwriting and treatment of policyholders. As necessary, the examiner reviewed transactions occurring subsequent to December 31, 1999 but prior to the date of this report (i.e., the completion date of the examination).

The examiner utilized the National Association of Insurance Commissioners' Examiners Handbook or such other examination procedures, as deemed appropriate, in such review and in the review or audit of the following matters:

- Company history
- Management and control
- Corporate records
- Territory and plan of operation
- Market conduct activities
- Growth of Company
- Business in force by states
- Accounts and records
- Policy forms and underwriting practices
- Financial statements

The examiner also reviewed the corrective actions taken by the Company with respect to violations, recommendations and comments contained in the prior report on examination. The results of the examiner's review are contained in item 9 of this report.

This report on examination is confined to comments on those matters which involve departures 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 and commenced business on July 16, 1860 as The Germania Life Insurance Company. In 1918 the Company changed its name to its present name of The Guardian Life Insurance Company of America. In 1924, the Company adopted a plan to convert to a mutual company. In 1945, Guardian acquired all of the outstanding stock of the Company. Effective January 1, 1946, the Company adopted and amended its charter and by-laws and became a mutual company.

In 1996, Guardian purchased First International Life Insurance Company (“First”) for the purpose of purchasing blocks of business from other insurers. First changed its name to Park Avenue Life Insurance Company.

In 1999, Guardian purchased the Fiduciary Insurance Company of America, a domestic accident and health insurer that specializes in statutory disability benefit insurance.

On September 6, 2000, Guardian and Berkshire Life Insurance Company announced that their boards of directors have approved, subject to policyholder and regulatory approval, a proposal to merge.

B. Holding Company

The Company maintains a multi-tiered downstream holding company system through which its subsidiary operations are conducted. The Company has both insurance and non-insurance subsidiaries that market insurance and investment products in the United States and several foreign countries.

The Company reported invested assets with a value of \$397.5 million, as of December 31, 1999 for its subsidiaries.

C. Management

The Company's by-laws provide that the board of directors shall be comprised of not less than 13 and not more than 20 directors, as may be determined from time to time by the board. The directors are divided into three classes, as nearly equal as may be, to be elected annually in consecutive years for a term of three years. The charter provides for the election of directors to be held annually at the home office of the Company on the second Wednesday in December. As of December 31, 1999, the board of directors consisted of 16 members. Meetings of the board are held quarterly in February, May, September, and November. In addition an annual meeting is held in December.

The 16 board members and their principal business affiliation, as of December 31, 1999, were as follows:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>	<u>Year First Elected</u>
Richard E. Cavanaugh Bronxville, NY	President and Chief Executive Officer The Conference Board, Inc.	1998
Kay K. Clarke East Haddam, CT	President Templeton, Ltd.	1989
Martin J. Cleary Bay Village, OH	Retired President and Chief Operating Officer The Richard E. Jacobs Group	1984
James E. Daley Plano, TX	Executive Vice President and Chief Financial Officer Electronic Data Systems Corp.	1998

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>	<u>Year First Elected</u>
Philip H. Dutter Greenwich, CT	Management Consultant	1988
Arthur V. Ferrara Greenwich, CT	Former Chairman of the Board and Chief Executive Officer The Guardian Life Insurance Company of America	1981
Leo R. Futia Greenwich, CT	Former Chairman of the Board The Guardian Life Insurance Company of America	1970
Edward K. Kane New York, NY	Executive Vice President The Guardian Life Insurance Company of America	1989
James A. Kennedy Bernardsville, NJ	Former Chairman and Chief Executive Officer National Starch & Chemical Corporation	1999
Dr. Noah N Langdale, Jr. Atlanta, GA	President Emeritus Georgia State University	1967
Karen G. Mills New York, NY	Managing Director and Founder Solera Capital, LLC	1999
Fred B. Morrison Wakefield, RI	Real Estate Consultant	1973
Joseph D. Sargent Fairfield, CT	President and Chief Executive Officer The Guardian Life Insurance Company of America	1993
John A. Somers Leonardo, NJ	Executive Vice President Teachers Insurance & Annuity Association College Retirement Equities Fund	1996
Barry F. Sullivan Bronxville, NY	Vice Chairman Sithe Energies, Inc.	1995
William C. Warren Ridgewood, NJ	Dean Emeritus Kent Professor Emeritus of Law Columbia Law School	1957

Mr. Warren passed away in September 2000 and was not replaced.

The examiner's review of the minutes of the meetings of the board of directors and its committees indicated that meetings were well attended and that each director attended a majority of meetings.

The following is a listing of the principal officers of the Company as of December 31, 1999:

<u>Name</u>	<u>Title</u>
Joseph D. Sargent	President and Chief Executive Officer
Peter L. Hutchings	Executive Vice President and Chief Financial Officer
Frank J. Jones	Executive Vice President and Chief Investment Officer
Dennis J. Manning	Executive Vice President – Individual Markets and Group Pensions
Edward K. Kane	Executive Vice President
Gary B. Lenderink	Executive Vice President – Group Insurance and Administration

Dennis Manning became the Chief Operating Officer in 2000. In addition, Bruce Long and Armand DePalo were promoted to Executive Vice Presidents in 2000.

D. 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 fifty states and the District of Columbia. The following tables show the percentage of direct premiums received for major lines of business, by state, for the year 1999:

<u>Life Insurance Premiums</u>		<u>Annuity Considerations</u>	
New York	21.1%	New York	24.6%
New Jersey	10.2	Florida	15.9
California	6.4	Tennessee	11.2
Massachusetts	<u>5.0</u>	Ohio	<u>7.3</u>
Subtotal	42.7%	Subtotal	59.0
All others	<u>57.3</u>	All others	<u>41.0</u>
Total	<u>100.0%</u>	Total	<u>100.0%</u>

Accident and Health
Insurance Premiums

New York	20.1%
California	9.8
Illinois	7.2
New Jersey	<u>6.8</u>
Subtotal	43.9
All others	<u>56.1</u>
Total	<u>100.0%</u>

The Company's business is divided into two main business lines, individual and group insurance. Guardian's primary focus is on group business sold to small and medium size employers as a package of benefits. Group accident and health insurance represented approximately 55% of total premiums for 1999. Individual markets consist of life insurance and disability income insurance. The primary products are participating whole life insurance, term insurance and disability income insurance. Group insurance consists of life insurance, dental, disability, vision care and personal provider medical insurance.

E. Reinsurance

In 1996, Guardian entered into several reinsurance and marketing agreements with Physicians Health Services ("PHS") to jointly market group health plans in New York, Connecticut and New Jersey. The reinsurance and service agreements call for Guardian and PHS to split the business on a 50/50 basis, whereby Guardian writes the out of network business (keeping its 50% share while ceding the rest to PHS) and PHS writes the in network business (keeping its 50% share while ceding the rest to Guardian). Guardian administers the claim payments for both in and out of network business.

Ceded

As of December 31, 1999, the Company had individual and group life reinsurance cession agreements with 13 authorized reinsurers. Reinsurance is placed on both a facultative and an automatic basis.

The maximum retention limit for individual life contracts is \$5 million. The total face amount of life insurance ceded as of December 31, 1999 was \$30,704,615,000, which represents 21.7% of the total face amount of life insurance in force and 29.2% of the total direct life business in force.

As of December 31, 1999, the Company had individual and group accident and health reinsurance cession agreements with eight reinsurers. The total reserve credit taken for ceded reinsurance as of December 31, 1999 was \$102,105,812, which represents 8.8% of the total accident and health claim reserves.

Assumed

As of December 31, 1999, the Company assumed individual and group life business from two affiliates and individual life business from 13 unaffiliated insurers. The total face amount of individual life business assumed as of December 31, 1999 was \$36,098,242,000, or 34.3% of the total face amount of life insurance in force. Of that amount, \$10,454,064,000, or 29% was assumed from affiliated insurers. The total amount of group life business assumed was \$35,485,000 or 4.4% of the total group life insurance in force. All group life reinsurance assumed is from one affiliated insurer.

As of December 31, 1999, the Company had assumed individual and group accident and health insurance from 18 insurers. The total reserves for assumed reinsurance as of December 31, 1999 was \$27,518,901, which represented 2.4% of the total accident and health claim reserves.

4. SIGNIFICANT OPERATING RESULTS

The information contained in the following tables has been extracted from the Company's filed annual statements for the period under examination and has been subjected to a limited audit or review as indicated in the Scope of Examination. (See item 2 of this report) Failure of items to add to the totals shown in any table in this report is due to rounding.

The following table indicates the Company's financial growth during the period under review:

	December 31, <u>1994</u>	December 31, <u>1999</u>	<u>Increase</u>
Admitted assets	\$ <u>9,870,992,410</u>	\$ <u>16,874,176,728</u>	\$ <u>7,003,184,318</u>
Liabilities	\$ <u>8,858,703,945</u>	\$ <u>15,349,105,790</u>	\$ <u>6,490,401,845</u>
Special surplus funds	\$ 45,312,236	\$ 66,063,917	\$ 20,751,681
Unassigned funds (surplus)	<u>966,976,229</u>	<u>1,459,007,021</u>	<u>492,030,792</u>
Total surplus	\$ <u>1,012,288,465</u>	\$ <u>1,525,070,938</u>	\$ <u>512,782,473</u>
Total liabilities and surplus	\$ <u>9,870,992,410</u>	\$ <u>16,874,176,728</u>	\$ <u>7,003,184,318</u>

The Company's invested assets as of December 31, 1999, were mainly comprised of bonds (56%), stocks (26.6%), policy loans (6.4%), mortgage loans (5%) and cash and short-term investments (4.2%). The majority (98.1%) of the Company's bond portfolio as of December 31, 1999, was comprised of investment grade obligations.

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

	<u>1995</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>
Ordinary:					
Life insurance	\$ (317,948)	\$ (843,500)	\$ (6,633,110)	\$(71,883,367)	\$(53,714,727)
Individual annuities	13,721,498	7,141,054	16,797,221	1,254,215	(1,420,043)
Supplementary contracts	<u>11,063,874</u>	<u>5,198,045</u>	<u>6,336,665</u>	<u>8,309,560</u>	<u>5,804,109</u>
Total ordinary	\$ <u>24,467,424</u>	\$ <u>11,495,599</u>	\$ <u>16,500,776</u>	\$ <u>(62,319,592)</u>	\$ <u>(49,330,661)</u>
Credit life	\$ <u>1,623,417</u>	\$ <u>1,113,132</u>	\$ <u>(2,248,817)</u>	\$ <u>(3,138,072)</u>	\$ <u>(264,264)</u>
Group:					
Life Annuities	\$ 18,375,256	\$39,448,931	\$45,901,461	\$ 33,081,177	\$ 42,274,978
	<u>(8,419,804)</u>	<u>1,004,527</u>	<u>(1,323,446)</u>	<u>5,809,457</u>	<u>421,633</u>
Total group	\$ <u>9,955,452</u>	\$ <u>40,453,458</u>	\$ <u>44,578,015</u>	\$ <u>38,890,634</u>	\$ <u>42,696,611</u>
Accident and health:					
Group	\$(23,763,409)	\$18,521,772	\$31,846,487	\$ 3,810,394	\$ 15,418,464
Credit	2,964,630	(8,251,780)	29,720	(1,378,627)	1,345,338
Other	<u>(16,696,960)</u>	<u>(18,534,314)</u>	<u>(33,729,660)</u>	<u>(24,630,155)</u>	<u>(37,712,982)</u>
Total accident and health	\$ <u>(37,495,739)</u>	\$ <u>(8,264,322)</u>	\$ <u>(1,853,453)</u>	\$ <u>(22,198,388)</u>	\$ <u>(20,949,180)</u>
All other lines	\$ <u>1,176,963</u>	\$ <u>404,303</u>	\$ <u>411,497</u>	\$ <u>(2,441,390)</u>	\$ <u>(1,671,483)</u>
Total	\$ <u>(272,483)</u>	\$ <u>45,202,170</u>	\$ <u>57,388,018</u>	\$ <u>(51,206,809)</u>	\$ <u>(29,518,980)</u>

For each of the years under review, the Company reported a loss on the individual life line of business. However, for each of the years under review, the Company reported net realized capital gains for all lines of business in amounts over \$108 million. Fluctuations in the amounts reported as losses on the individual life line of business are due to changes in the amounts reported for reinsurance for each of the years under review.

The losses reported on the other accident and health line are due to higher morbidity on the individual disability insurance product, and a closed block of individual major medical insurance.

5. FINANCIAL STATEMENTS

The following statements show the assets, liabilities, surplus and other funds as of December 31, 1999, as contained in the Company's 1999 filed annual statement, a condensed summary of operations and a reconciliation of the surplus account for each of the years 1995 through 1999 as extracted from the Company's filed annual statements for the period under examination. These financial statements have been subjected to a limited audit or review as indicated in the Scope of Examination. (See item 2 of this report)

A. ASSETS, LIABILITIES, SURPLUS AND OTHER FUNDS AS OF DECEMBER 31, 1999

Admitted Assets

Bonds	\$ 8,909,046,250
Stocks:	
Preferred stocks	552,676,977
Common stocks	3,680,694,418
Mortgage loans - First liens	793,679,006
Real estate:	
Properties occupied by the company	26,778,091
Properties acquired in satisfaction of debt	5,427,026
Investment real estate	93,514,149
Policy loans	1,022,674,678
Cash on hand and on deposit	(82,915,936)
Short term investments	750,988,462
Other invested assets	94,270,676
Receivable for securities	57,660,632
Currency forwards	2,471,480
Reinsurance ceded:	
Amounts recoverable from reinsurers	14,813,623
Commissions and expense allowances due	11,505,400
Other amounts receivable under reinsurance contracts	90,580
Electronic data processing equipment	7,355,455
Guaranty funds receivable or on deposit	223,484
Life insurance premiums and annuity considerations	
deferred and uncollected on in force business	483,342,244
Accident and health premiums due and unpaid	151,852,924
Investment income due and accrued	177,068,724
Receivable from parent, subsidiaries and affiliates	62,937,730
Amounts recoverable from ceding companies	37,262,595
Suspense accounts	18,217,915
Premiums due and unpaid on all other lines of business	924,754
Premium tax credit receivable	897,674
Other assets	717,716
Total admitted assets	<u>\$16,874,176,728</u>
<u>Liabilities, Surplus and Other Funds</u>	

Aggregate reserve for life policies and contracts	\$10,030,108,080
Aggregate reserve for accident and health policies	1,371,994,687
Supplementary contracts without life contingencies	130,529,872
Policy and contract claims:	
Life	76,135,990
Accident and health	444,378,132
Policyholders' dividend and coupon accumulations	99,713,921
Policyholders' dividends and coupons due and unpaid	(16,835,982)
Provision for policyholders' dividends and coupons payable in following calendar year – estimated amounts:	
Dividends apportioned for payment	406,590,388
Premiums and annuity considerations received in advance	47,253,876
Liability for premium and other deposit funds:	
Other contract deposit funds	4,218,289
Policy and contract liabilities:	
Interest maintenance reserve	191,733,445
Commissions to agents due or accrued	52,583,886
Commissions and expense allowances payable on reinsurance assumed	15,116,358
General expenses due or accrued	135,917,876
Taxes, licenses and fees due or accrued	11,027,482
Federal income taxes due or accrued	38,427,095
Cost of collection on premiums and annuity considerations deferred and uncollected in excess of total loading thereon	32,985,841
Unearned investment income	30,584,336
Amounts withheld or retained by company as agent or trustee	63,545,629
Amounts held for agents account	1,379,269
Remittances and items not allocated	8,748,528
Net adjustment in assets and liabilities due to foreign exchange rates	6,196,052
Liability for benefits for employees and agents	161,921,822
Borrowed money and interest thereon	12,560
Miscellaneous liabilities:	
Asset valuation reserve	1,190,246,987
Reinsurance in unauthorized companies	1,404,431
Payable to parent, subsidiaries and affiliates	2,679,603
Payable for securities	308,369,617
Liability for dollar repurchase agreements and reverse purchase agreements	440,027,814
Federal income taxes attributable to accrued bond discount	18,046,000
Contingency reserve for group life premiums and retired lives	17,736,132
Miscellaneous liabilities	8,949,628
Claim liabilities for all other lines of business	8,024,181
Provision for Guaranty Association assessments	5,199,715
Provision for investments	4,771,020
Unearned premium reserve for all other lines of business	923,379
Commissions for all other lines of business	376,402
Miscellaneous group deposits	152,927
Accounts payable – Third party administrators	(42,472)
Funds held by Company under reinsurance treaties	<u>(2,027,007)</u>

Total liabilities	<u>\$15,349,105,790</u>
Contingency reserve for group life	\$ 62,060,994
Contingency reserve for aviation reinsurance	3,000,000
Permanent surplus (Arkansas requirements)	1,000,000
Contingency reserve for deposit administration	2,923
Unassigned funds (surplus)	<u>1,459,007,021</u>
Total surplus and other funds	<u>\$ 1,525,070,938</u>
Total liabilities, surplus and other funds	<u>\$16,874,176,728</u>

B. CONDENSED SUMMARY OF OPERATIONS

	<u>1995</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>
Premiums and considerations	\$4,778,133,663	\$5,243,188,201	\$5,122,558,465	\$5,966,702,927	\$5,086,924,841
Investment income	680,454,427	712,395,678	764,349,762	812,257,437	911,136,203
Commissions and reserve adjustments on reinsurance ceded	599,004,552	(490,766,627)	1,450,443,027	(528,008,055)	1,154,490,066
Miscellaneous income	<u>3,498,291</u>	<u>(47,796,284)</u>	<u>(118,452,720)</u>	<u>(63,356,119)</u>	<u>(20,643,472)</u>
 Total income	 <u>\$6,061,090,933</u>	 <u>\$5,417,020,969</u>	 <u>\$7,218,898,534</u>	 <u>\$6,187,596,188</u>	 <u>\$7,131,907,639</u>
 Benefit payments	 \$3,472,219,851	 \$3,072,328,004	 \$3,097,810,139	 \$3,398,906,963	 \$3,361,344,964
Increase in reserves	780,618,666	900,958,835	1,140,441,790	987,238,962	890,252,028
Commissions	286,735,249	339,247,696	379,747,405	476,434,524	411,325,088
General expenses and taxes	704,248,317	696,159,931	742,881,093	830,465,759	886,091,646
Increase in loading and cost of collection	1,896,832	(8,817,511)	(42,001,007)	(1,997,544)	4,662,759
Miscellaneous deductions	<u>486,904,986</u>	<u>21,065,445</u>	<u>1,511,552,567</u>	<u>100,434,461</u>	<u>1,143,582,484</u>
 Total deductions	 <u>\$5,732,623,901</u>	 <u>\$5,020,942,400</u>	 <u>\$6,830,431,987</u>	 <u>\$5,791,483,127</u>	 <u>\$6,697,258,970</u>
 Net gain	 \$ 328,467,032	 \$ 396,078,569	 \$ 388,466,547	 \$ 396,113,061	 \$ 434,648,669
Dividends	238,293,975	326,049,985	370,419,265	416,498,344	424,831,348
Federal income taxes	<u>90,445,540</u>	<u>24,826,417</u>	<u>(39,340,736)</u>	<u>30,821,526</u>	<u>39,336,301</u>
 Net gain (loss) from operations before net realized capital gains	 \$ (272,483)	 \$ 45,202,167	 \$ 57,388,017	 \$ (51,206,809)	 \$ (29,518,980)
Net realized capital gains (losses)	<u>119,990,380</u>	<u>108,268,964</u>	<u>208,963,806</u>	<u>160,598,975</u>	<u>288,346,846</u>
 Net income	 <u>\$ 119,717,897</u>	 <u>\$ 153,471,133</u>	 <u>\$ 266,351,823</u>	 <u>\$ 109,392,166</u>	 <u>\$ 258,827,866</u>

C. SURPLUS ACCOUNT

	<u>1995</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>
Capital and surplus, December 31, prior year	\$ <u>1,012,288,465</u>	\$ <u>1,115,023,095</u>	\$ <u>1,178,080,103</u>	\$ <u>1,403,045,436</u>	\$ <u>1,555,380,518</u>
Net income	\$ 119,717,897	\$ 153,471,133	\$ 266,351,823	\$ 109,392,166	\$ 258,827,866
Change in net unrealized capital gains (losses)	147,806,687	163,813,273	284,123,988	53,476,280	25,221,226
Change in non-admitted assets and related items	(21,800,881)	(17,317,886)	(21,168,030)	(16,303,873)	(45,962,215)
Change in liability for reins. In unauthorized companies	(375,745)	(6,637,433)	2,474,371	4,282,339	(563,221)
Change in reserve valuation basis	(7,695,745)	(21,271,471)	0	0	0
Change in asset valuation reserve	(157,028,155)	(114,743,952)	(166,363,435)	(102,852,705)	(304,453,485)
Change in surplus as a result of reinsurance	0	(111,050,678)	(139,229,173)	91,661,464	42,278,477
Additional pension liability	28,815,446	7,670,000	930,000	(1,291,367)	(779,363)
Change in provision for Guaranty					
Association assessments	(2,903,400)	887,221	651,924	561,131	11,008,993
Change in provision for investments	(1,683,351)	3,168,042	11,140,437	9,466,357	3,470,300
Change in liability for federal income taxes	(1,118,123)	(1,421,482)	(4,407,218)	(5,596,063)	(19,358,158)
Change in contingent liabilities	(1,000,000)	1,000,000	0	0	0
Change in surplus on group life reserves prior year	0	(4,812,740)	0	0	0
Contingency for policies submitted but not issued	0	0	(9,539,354)	9,539,354	0
Surplus adjustment taxes on accrued bond discount, prior years	<u>0</u>	<u>10,302,980</u>	<u>0</u>	<u>0</u>	<u>0</u>
Net change in capital and surplus	\$ <u>102,734,630</u>	\$ <u>63,057,008</u>	\$ <u>224,965,333</u>	\$ <u>152,335,083</u>	\$ <u>(30,309,581)</u>
Capital and surplus, December 31, current year	\$ <u>1,115,023,095</u>	\$ <u>1,178,080,103</u>	\$ <u>1,403,045,436</u>	\$ <u>1,555,380,518</u>	\$ <u>1,525,070,938</u>

6. MARKET CONDUCT ACTIVITIES

The examiner reviewed various elements of the Company's market conduct activities affecting policyholders, claimants, and beneficiaries to determine compliance with applicable statutes and regulations and the operating rules of the Company.

A. Advertising and Sales Activities

The examiner reviewed a sample of the Company's advertising files and the sales activities of the agency force, including trade practices, solicitation and the replacement of insurance policies.

Section 51.6(a) of Department Regulation Number 60 states, in part:

"Each insurer shall . . .

(2) Require with or as part of each application, a completed "Definition of Replacement" signed by the applicant and agent . . ."

A review of a sample of 62 individual life underwriting files revealed that in four cases the file did not contain a completed "Definition of Replacement" form signed by the applicant and the agent.

The Company violated Section 51.6(a) of Department Regulation Number 60 for not having a completed "Definition of Replacement" form signed by the applicant and agent in all cases.

Section 51.6(e) of Department Regulation Number 60 states, in part:

"Both the insurer whose life insurance policy or annuity contract is being replaced and the insurer replacing the life insurance policy or annuity contract shall establish and implement procedures to ensure compliance with the requirements of this Part. These procedures shall include a requirement that all material be dated upon receipt. . . ."

Part II, Section C2 of the Company's replacement procedures, filed with the Department on November 10, 1998 and modified on November 12, 1998, state, in part:

"Mail Unit must "Date Stamp" New York Applications and Replacement Forms"

Of the original sample of 62 individual underwriting files selected, 42 were potential replacements. A review of those 42 files revealed that only the application was date stamped although the Department Regulation requires dating of all material upon receipt and the Company's filed procedures call for the date stamping of applications and replacement forms.

The Company violated Section 51.6(e) of Department Regulation Number 60 by not dating all material upon receipt and by not complying with procedures on file with the Department.

B. Underwriting and Policy Forms

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

Section 52.54(c) of Department Regulation Number 62 states, in part:

“ . . . no certificate of insurance covering persons resident in this state shall be used in conjunction with a group...accident or health insurance policy delivered or issued for delivery in this State unless incorporated in or accompanied by . . .

(2) the appropriate disclosure statement or statements as follows . . .

(iii) Major medical insurance. The insurance evidenced by this certificate meets the minimum standards for major medical insurance as defined by the New York State Insurance Department. It does NOT provide basic hospital or basic medical insurance.

(iv) Limited benefits health insurance. The insurance evidenced by this certificate provides limited benefits health insurance only. It does NOT provide basic hospital, basic medical, major medical, Medicare supplement, long term care insurance, nursing home insurance only, home care insurance only, or nursing home and home care insurance as defined by the New York State Insurance Department. . . . ”

A review of a sample of group insurance underwriting files marketed jointly by the Company and PHS was made. The Disclosure Statement (Form # CGP-3-JVDISC-NY) included in the booklets provided to prospective policyholders and certificate holders states, in part:

“As evidenced by your certificate booklet, this plan provides the following health insurance benefits:

Out of Network Expense Insurance (defined as Limited Benefits Health Insurance by the New York State Insurance Department).

This plan does not provide Basic Hospital Insurance, Basic Medical Insurance, Medicare Supplement Insurance, or Major Medical Insurance, as defined by the New York State Insurance Department.”

This disclosure statement does not use the same language as prescribed by Section 52.54(c)(2)(iv) of Department Regulation Number 62. It makes no reference to long-term care insurance, nursing home insurance only, home care insurance only, or nursing home and home care insurance. These types of insurance are required to be included in the disclosure statement as types of insurance that limited benefits health insurance policies do not provide.

The Company violated Section 52.54(c)(2)(iv) of Department Regulation Number 62 for not having the required language in its disclosure statements.

Under this same jointly marketed group health insurance, a potential policyholder can choose what types of coverage they want from several different plans. Depending on the choices made by the applicant, the coverage selected could be a limited benefits health insurance plan or a major medical insurance plan. It is the examiner’s understanding that there are three parts of insurance to this plan; indemnity, participating provider organization (“PPO”) and the out-of-network portion of the point-of-service plan. Both the indemnity and the PPO are major medical plans, while the out-of-network is a limited benefits health insurance plan. When the out-of-network portion of the point-of-service plan is combined with other insurance offered in the jointly marketed plan, the combination would meet the definition of major medical insurance.

Throughout the examination period, the Company sent acceptance letters and renewal letters to policyholders and certificate holders for out-of-network expense insurance under the jointly marketed group health plans that state, in part:

“The indemnity, the PPO and the out-of-network portion of the Point-Of-Service Plans meet the minimum standards for “Major Medical” insurance as defined by the New York State Insurance Department. (Including coverage for in-hospital service, out-of-hospital care and mental health care, subject to policy limitations). These policies do not provide basic hospital, or basic medical insurance as defined by the New York State Insurance Department . . . New York Out-of-Network POS Contract Number GP-1-JV-HCS-NY-1”

Those same policyholders and certificate holders receive a certificate booklet under the jointly marketed group health plans that describes the out-of-network expense insurance as a limited benefits health insurance plan. The acceptance and renewal letter sent does not agree with the information in the certificate booklet.

The documentation given to the policyholder and the certificate holder is the same in all situations and does not describe which type of coverage the applicant has selected. The examiner recommends that the Company review its forms, acceptance letters and renewal letters used in connection with limited benefits and major medical insurance issued under the jointly marketed group health plans, and revise those documents to clearly describe the benefits provided in each instance, including whether the coverage meets the definition of major medical insurance or limited benefits insurance.

C. Treatment of Policyholders

The examiner reviewed a sample of various types of claims, surrenders, changes and lapses. The examiner also reviewed the various controls involved, checked the accuracy of the computations and traced the accounting data to the books of account.

7. DEPARTMENT STIPULATION FROM PREVIOUS REPORT ON EXAMINATION

The previous report on examination contained several violations of the New York Insurance Law and Department Regulations. As a result of the previous report on examination, the Company (“Respondent”) signed a stipulation dated January 3, 2000. The stipulation states, in part:

“ . . . 1. (b) Respondent violated Section 3227 of the Insurance Law by failing to pay interest on policies surrendered for cash values; and

(c) Respondent failed to maintain many of its files pertaining to policy surrenders in a manner which permitted Department examiners to determine the dates of receipt of surrender documents and the dates of communications and transactions pertaining thereto. . . .

4. Respondent agrees to fully comply with the provisions of Section . . . 3227 of the Insurance Law. . . .

5. Respondent agrees to take all steps necessary to prevent the recurrence of the violations cited herein. . . .

7. Respondent agrees to take the following remedial action with respect to the violations cited in paragraphs 1(b) and (c) above:

(a) Within 60 days of the approval of this stipulation, Respondent’s procedures for the processing of cash surrenders shall be modified such that . . . (iv) cash surrender requests, and all communications and transactions in connection therewith, shall be date-stamped upon receipt by the company.

(b) For all cash surrenders in the amount of \$8,500 or more processed during the period January 1, 1990 to April 21, 1997, and for cash surrenders in the amount of \$8,500 or more classified as Section 1035 exchanges processed during the period January 27, 1999 to the date of approval of this stipulation for which Section 3227 interest has not been paid, Respondent shall pay interest to the policyholder at the statutory rate in accordance with Section 3227 based upon an assumed processing time of fifteen (15) working days. The payment shall also include interest on such interest payments calculated from the date the cash surrender was disbursed to the date of the interest payment. All such payments shall be made within 120 days of the approval of this stipulation. . . .

9. Respondent acknowledges that this stipulation may be used against it in any future proceeding if there is reason to believe the terms of the stipulation have been violated by Respondent, or if the Department institutes disciplinary action against Respondent for any reason other than the acts considered herein. . . .”

In connection with the Stipulation, the Company, in a letter to the Department dated March 10, 2000, stated, in part:

“This is to inform you of the steps that Guardian has taken to date to fulfill the terms of Paragraph 7(a) of the Stipulation as to the processing of cash surrenders of life insurance policies and the payment of interest on surrenders pursuant to Section 3227 of the Insurance Law. . . .

4. Cash surrender requests are date-stamped upon receipt by Individual Markets Service and Administration. In order to assure proper handling and payment of interest due, the date for purposes of calculating whether or not interest is due on the surrender payment is the stamped date if the surrender has been received directly from the policyholder. If the request is received from an agent or agency, the date used for calculating whether interest is due is assumed to be 3 days before the stamped date to allow for mailing from the agency. See Attachment 3, February 8, 2000 memorandum to Individual Markets Service and Administration, “Payment of Interest on Cash Surrenders.” . . .”

Attachment 3, the memorandum to Individual Markets Service and Administration, “Payment of Interest on Cash Surrenders” dated February 8, 2000, states, in part:

“In order for us to comply with the provisions of a recent New York State stipulation regarding interest paid on surrenders:

- Continue to date stamp all Life Policy Transaction request forms (V167).
- If the surrender is not processed within *10 business days pay interest on the surrender proceeds.
 - *7 business days if the Form (V167) was received from our Field Force.
- The payment of interest on cash surrenders has been automated.

The cash surrender screen GVO1 has been modified and the date-received field must be entered. . . .”

Section 3227 of the New York Insurance Law states, in part:

“(a) Interest, at the rate provided for in section three thousand two hundred fourteen of this article, shall be payable by life insurers . . . upon: (1) the value of policies surrendered by policyholders for cash values . . . Such interest payment shall be added to and be a part of the total sum paid or be paid separately at the option of the insurer.

(b) The interest calculated on amounts described in paragraphs one . . . of subsection (a) hereof shall be calculated from the date the documentation necessary to complete the transaction is received by the insurer and shall be payable if the funds are not mailed or delivered by the insurer within ten working days of said receipt.

(c) No interest need be payable pursuant to this section unless the amount of such interest is at least twenty-five dollars or if the payment of benefits by the insurer has been deferred pursuant to other provisions of this chapter. . . .”

Section 216.11 of Department Regulation Number 64 states:

“To verify compliance with this Part and related statutes, Insurance Department examiners will investigate the market performance of insurers. To enable department personnel to reconstruct an insurer’s activities, all insurers subject to the provisions of this Part must maintain within each claim file all communications, transactions, notes and workpapers relating to the claim. All communications and transactions, whether written or oral, emanating from or received by the insurer shall be dated by the insurer. Claim files must be so maintained that all events relating to a claim can be reconstructed by the Insurance Department examiners. Insurers shall either make a notation in the file or retain a copy of all forms mailed to claimants.”

A review was made of a sample of 103 payments made on New York policies surrendered from March 10, 2000 through November 15, 2000, to test for compliance with the applicable New York Insurance Laws, Department Regulations and the Stipulation between the Company and the Department. Out of the 103 surrender files requested, 96 of those were reviewed. The other seven files were processed as surrenders but did not contain any documentation concerning a surrender request. The examiner asked that the Company reconstruct those seven files. (See item 8 of this report) Out of the 96 files reviewed, 63 of those files did not comply with the aforementioned Stipulation, Law or Regulation.

The following is a brief description of items missing from those 63 files which made it impossible for the examiner to determine compliance with the Stipulation, Law or Regulation:

1. The Company surrender request form (V167) was not date stamped in 7 of the 52 cases in which this form was used.
2. The 1035 exchange forms were not date stamped in 9 of the 33 surrender requests in which 1035 exchange forms were used.
3. The examiner reviewed 32 surrender requests from agencies. Of the 32 surrender requests received from agencies, no instances were noted in which the Company used seven days as the number of days to determine whether or not the surrendered policies qualified for interest to be paid on the proceeds.
4. In ten instances, the date received on the Company’s system was not the date stamped on the surrender request.
5. In ten instances, the Life Policy Transaction History screen on the Company’s computer system, did not contain a date received for the surrender request.
6. In three instances, the examiner could not determine whether the surrender requests were received from an agent or directly from the policyholder.

7. In six instances, in which a surrender transaction was processed, there was no evidence in the claim file that a surrender request had been received from the policyholder.
8. In three instances where the examiner had sufficient information to determine if interest was due on the surrender proceeds, the Company did not pay any interest although interest was due pursuant to Section 3227 of the New York Insurance Law.

In addition, a review of the current surrender process revealed that in the one instance in which a surrender request was received from an agent, no record was made of this when the information was entered into the Company's computer system.

A review of the Company's records pertaining to surrenders processed after the date of the Stipulation revealed that the Company has not complied with the terms and conditions of the Stipulation dated January 3, 2000.

Also, a review of surrenders revealed that the Company has still not fully complied with Section 3227 of the New York Insurance Law. In addition, the Company's surrender claim files were not maintained in accordance with Section 216.11 of Department Regulation Number 64, so as to enable the examiner to determine the Company's current compliance with Section 3227 of the New York Insurance Law.

In connection with the Stipulation, the Company, in a letter to the Department dated April 24, 2000, stated in part:

"This is to inform you of the steps that Guardian has taken to date to fulfill the terms of Paragraphs 7(b) and 8 of the Stipulation as to the processing of cash surrenders of life insurance policies and the payment of interest on surrenders pursuant to Section 3227 of the Insurance Law.

1. All cash surrenders in the amount of \$8,500 or more processed during the period January 1, 1990 to April 21, 1997 and cash surrenders in the amount of \$8,500 or more classified as "Section 1035 exchanges" during the period January 27, 1999 to the date of the approval of this Stipulation for which Section 3227 interest had not been paid were selected and interest was paid at the statutory rate assuming a processing time of fifteen (15) working days. The payments included interest on such interest calculated from the date such cash surrender was disbursed to the date of the interest payment. All of these payments were sent out from Guardian life's processing center in Lehigh Valley, Pennsylvania on April 19 and April 20, 2000 . . . "

A review indicated that the Company calculated interest until April 14, 2000. The review also indicated that the checks were sent out from the Brooklyn, NY processing center on April

19 or 20, 2000. When asked by the examiner why interest was only calculated until April 14, 2000 and not the date of payment, the Company responded; “We feel that we have adhered to the Stipulation. The time difference between the interest calculation end date and the disbursement dates of April 19th and April 20th reflects our administrative processing time to have checks printed and stuffed for mailing. We determined the “date of the interest payment” at the beginning of our process to fulfill the terms of the Stipulation in January 2000 in order to program the computer runs to make necessary calculations. The five (5) days necessary to process the checks and envelopes is in our view a reasonable time and was of de minimis impact on the total amount paid.” The Company did not comply with the terms and conditions of the Stipulation dated January 3, 2000.

8. DEPARTMENT REGULATION NUMBER 152

Department Regulation Number 152 states, in part:

“PART 243. MAINTENANCE OF INSURANCE COMPANY RECORDS

. . . 243.2 Records required for examination purposes and retention period

(a) In addition to any other requirement contained in Insurance Law Section 325, any other section of the Insurance Law or other law, or any other provision of this Title, every insurer shall maintain its claims, rating, underwriting marketing, complaint, financial, and producer licensing records, and such other records subject to examination by the superintendent, in accordance with the provisions of this Part.

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

(1) A policy record for each insurance contract or policy for six calendar years after the date the policy is no longer in force or until after the filing of the report on examination in which the record was subject to review, whichever is longer. Policy records need not be segregated from the policy records of other states as long as they are maintained in accordance with the provisions of this part. A separate copy need not be maintained in an individual policy record, provided that any data relating to a specific contract or policy can be retrieved pursuant to subdivision (a) of Section 243.3 of this Part. A policy record shall include:

- (i) The policy term, basis for rating, and return premium amounts, if any;
- (ii) The application, including any application form or enrollment form for coverage under any insurance contract or policy;
- (iii) The contract or policy forms issued including the declaration pages, endorsements, riders, and termination notices of the contract or policy. Binders shall be retained if a contract or policy was not issued; and
- (iv) Other information necessary for reconstructing the solicitation, rating, and underwriting of the contract or policy. . . .

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

For the review of various items in connection with this examination, the examiner requested policy application and claim files from the Company. All files provided, were furnished in their original form. In those cases where the Company was unable to supply the original claim or application file, the examiner requested that the Company reconstruct the files. In each of the 11 cases requested, (4 application files and 7 surrender files), the Company was unable to reconstruct those files.

The Company violated Section 243.2(b) of Department Regulation Number 152 for not maintaining application and claim files.

The previous report on examination was filed on January 6, 2000. Department Regulation Number 152 requires a Company to maintain certain policy information for six calendar years after the date the policy is no longer in force or until after the filing of the report on examination in which the record was subject to review, whichever is longer. The Company destroyed policies in the first quarter of 1998 that were terminated in 1991 (NY Terminated - Lapsed, Expiry, Not Taken) and policies from 1991 that were incomplete, declined or inquiry. These files were required to be maintained until January 2000, the date the previous report on examination was filed.

The Company violated Section 243.2(b) of Department Regulation Number 152 for failing to maintain policies and applications files from 1991, until the filing of the report on examination in which the record was subject to review.

The Company's "Record Retention Policy and Procedures" manual states, in part:

" . . . Quarterly destruction's are performed for all departments and regional offices in order to maximize storage space. A memo detailing the destruction process is sent to the person responsible for record retention in each department or regional office. This memo is sent along with a report detailing every box stored for the department. This is titled "**Summarized Index**" (see Page 11). This report is for your records and does not have to be returned. If the department has boxes marked for destruction, a second report is included. This is titled "**Destruction Notification**" (see page 12). This report should be reviewed and signed by the person responsible for record retention in the department or regional office. The completed Destruction Notification must be returned to the Records Retention department in the Corporate Distribution Center on or before the deadline specified. This is to ensure that boxes are not destroyed unnecessarily . . . "

The examiner requested from the Company a copy of all destruction notification reports for the period from 1995 to 2000. The Company responded that "Users are required to return the destruction notification report only if a change to the destruction review date is necessary. The cover letter states, "if not responded to, the boxes will be destroyed on (specified date)." Changes to the destruction review date only occur if a department requires an extension of the review period. Copies of the original destruction notification report are not retained by the Office Services Record Retention department. If a signed destruction notification report is returned, the

Office Services Record Retention department retains a copy. Attachment #2 contains all the destruction Notifications received by Office Services Record Retention department.”

The Company is not following its own Records Retention Policies and Procedure Manual by not maintaining all signed copies of all of “Destruction Notification” forms. The examiner recommends that the Company maintain all signed copies of the “Destruction Notification” forms.

The Company was requested to furnish any documentation available that shows what group master files were destroyed for the period January 1, 1995 until the first quarter of 1998. The Company responded: “Cancelled Group master files are sent to the Office Services Record Retention department for storage by the Group Profit Center. The group master files are kept on shelves and sectioned by year of cancellation. The Guardian record retention period is 7 years. At the conclusion of the retention period, all the cancelled Group planholder master files in the section become eligible for destruction. The Office Services Record Retention department does not maintain documentation that shows what Group Master files are destroyed.”

The Company was unable to furnish any documentation detailing the group master files that were destroyed for the period from January 1, 1995 until May of 1997.

Based upon the review of the Company’s compliance with Department Regulation Number 152 and its disaster recovery plan, the Company could not evidence maintenance of files in accordance with Department Regulation Number 152 and was unable to reconstruct missing files. The examiner recommends that the Company conduct a thorough review of its file maintenance and disaster recovery procedures and take the necessary steps that clearly demonstrate that it has complied with Department Regulation Number 152.

9. PRIOR REPORT SUMMARY AND CONCLUSIONS

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

<u>Item</u>	<u>Description</u>
A	<p>The Company violated Section 4228(i) of the New York Insurance Law for making loans to agents without taking adequate collateral security.</p> <p>A review of a sample of agents loans made during the period under examination revealed that the Company is taking adequate collateral security on those loans.</p>
B	<p>The Company violated Section 1411(c) of the New York Insurance Law for exceeding the 5% limit on lending or pledging securities for investments in reverse repurchase agreements and mortgage backed securities rollovers.</p> <p>In a letter dated April 25, 1996, the Department allowed the Company to invest up to 10% of its admitted assets in loans subject to Section 1411(c) of the New York Insurance Law. As part of this approval, the Company was required to submit quarterly activity reports to the Department that clearly stated the highest amount of securities pledged and/or loaned at any one time during that quarter. A review of these filings and the Company's supporting documentation revealed that the Company has not exceeded the 10% limit.</p>
C	<p>The examiner recommended that the Company maintain in its files documented verifiable evidence for policy loans requested by phone so as to determine compliance with Section 3227 of the New York Insurance Law.</p> <p>A review of a sample of policy loans requested by phone revealed that the Company maintains documentation in its files so as to determine compliance with Section 3227 of the New York Insurance Law.</p>
D	<p>The examiner recommended that the Company treat premiums under its paid up insurance rider as single premiums in future annual statements and in future expense limitations computations.</p> <p>Beginning with the 1998 annual statement, the Company reported the subject premiums as single premiums.</p>

<u>Item</u>	<u>Description</u>
E	<p>The Company violated Department Regulation Number 60 for failing to request and maintain completed disclosure statements in its home office on replacement policies. The Company violated Department Regulation Number 60 for not presenting to an applicant not later than the time of taking an application, a completed disclosure statement signed by the agent.</p> <p>A review of the Company's files regarding compliance with Department Regulation Number 60 revealed that the Company maintains in its home office the completed "disclosure statements." The review also revealed that the Company does not always maintain a signed "Definition of Replacement" form and does not date stamp all material received. (See item 6A of this report)</p>
F	<p>The examiner recommended that the Company maintain an adequate listing of declined underwriting applications for the period under examination.</p> <p>A review revealed that the Company maintained an adequate listing of declined underwriting applications for the period under examination.</p>
G	<p>Comment that the Company has agreed to fully comply with the confidentiality requirements of Section 2782 of the Public Health Law.</p> <p>The Company has revised its procedures and maintains the information in question in compliance with Section 2782 of the Public Health Law.</p>
H	<p>The Company violated Section 3214(c) of the New York Insurance Law for not paying settlement interest on matured policies.</p> <p>A review of a sample of matured policies revealed that the Company is paying interest as required by Section 3214(c) of the New York Insurance Law on matured policies.</p>
I	<p>The Company violated Section 216.11 of Department Regulation Number 64 for failing to date surrender request documentation upon receipt.</p> <p>A review of a sample of policies surrendered revealed that the Company has not date stamped all documentation as required by Section 216.11 of Department Regulation Number 64. (See item 7 in this report)</p>
J	<p>The Company violated Section 3227(d) of the New York Insurance Law for failing to make payments of interest when due on cash surrenders.</p> <p>A review of a sample of policies surrendered revealed that the Company is once again in violation of Section 3227(d) of the New York Insurance Law for failing to make payments of interest due on cash surrenders. (See item 7 of this report)</p>

10. SUMMARY AND CONCLUSIONS

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

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
A	The Company violated Section 51.6(a) of Department Regulation Number 60 for not having a completed "Definition of Replacement" form signed by the applicant and agent in all cases.	17
B	The Company violated Section 51.6(e) of Department Regulation Number 60 for not dating "Definition of Replacement Forms."	17 - 18
C	The Company did not comply with its filed replacement procedures.	18
D	The Company violated Section 52.54(c)(2)(iv) of Department Regulation Number 62 for not having the required language in its disclosure statements.	18 - 19
E	The examiner recommends that the Company review its forms, acceptance letters and renewal letters used in connection with limited benefits and major medical insurance issued under the joint venture and change those documents as necessary.	19 - 20
F	The Company violated the Stipulation Agreement from the previous report on examination.	21 - 25
G	The Company violated Section 3227 of the New York Insurance Law.	21 - 25
H	The Company violated Section 216.11 of Department Regulation Number 64 by not maintaining its surrender files so as to enable the examiner to determine the Company's compliance with Section 3227 of the New York Insurance Law.	23 - 24
I	Comment that the Company did not pay the correct interest on surrenders as required by the Stipulation.	24 - 25
J	The Company violated Section 243.2(b) of Department Regulation Number 152 for not maintaining application and claim files.	26 - 27

<u>Item</u>	<u>Description</u>	<u>Page No(s).</u>
K	The Company violated Section 243.2(b) of Department Regulation Number 152 for failing to maintain policies and applications files from 1991, until the filing of the report on examination in which the record was subject to review.	26
L	The examiner recommends that the Company maintain all signed copies of their "Destruction Notification" forms.	27 - 28
M	The examiner recommends that the Company conduct a thorough review of its file maintenance and disaster recovery procedures and take the steps necessary to clearly demonstrate that it has complied with Department Regulation Number 152.	28

Respectfully submitted,

/s/

Daniel Gumaer
Examiner In Charge
State of New York
Representing Zone I

/s/

Joseph Pires CFE, CIE
Senior Examiner
State of Mississippi
Representing Zone II

/s/

Ken Wise CFE, CIE
Senior Examiner
State of Nevada
Representing Zone IV

APPOINTMENT NO. 21515

STATE OF NEW YORK
INSURANCE DEPARTMENT

I NEIL D. LEVIN, Superintendent of Insurance of the

State of New York, pursuant to the provisions of the Insurance Law, do hereby appoint:

DANIEL GUMAER

as proper person to examine into the affairs of the

THE GUARDIAN LIFE INSURANCE COMPANY OF AMERICA

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

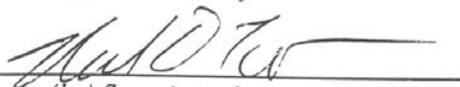
COMPANY

with such other information as he shall deem requisite.

In Witness Whereof, I have hereunto subscribed by name
and affixed the official Seal of the Department
at the City of New York

this 9th day of March, 2000

NEIL D. LEVIN
Superintendent of Insurance


(by) Superintendent

