



State of New Jersey  
DEPARTMENT OF BANKING AND INSURANCE  
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June 10, 2013

Kenneth Kobylowski  
Commissioner

Kevin G. Smith  
Chief Legal Officer  
Genworth Life Insurance Company  
6604 West Broad Street  
Richmond, VA 23230

**Re: Adopted New Jersey Market Conduct Examination Report**

Dear Mr. Smith,

I am enclosing a copy of the adopted Market Conduct Examination report of Genworth Life Insurance Company and Genworth Life and Annuity Insurance Company. This report contains the findings of the Department's examiners based on their recent examination. The examiner-in-charge filed and verified the report on October 17, 2012 pursuant to N.J.S.A. 17:23-24c. The New Jersey Commissioner of Banking and Insurance has adopted the report pursuant to accompanying Order No. E13-54 dated May 24, 2013.

In adopting this report, the Commissioner gave due consideration to all comments that your staff provided to the Department. These comments include inquiry responses during the fieldwork, and your company's November 29, 2012 and December 29, 2012 written responses to the filed report.

Please note that all items requested in the Recommendation section of the report, as well as all affidavits required pursuant to N.J.S.A. 17:23-24d(1) which requires the Company to file an affidavit with the Department's Market Conduct Unit stating under oath that its directors have received a copy of the adopted report, should be sent to my attention within 30 days of receipt of the report attached hereto. The Department expects the company's cooperation in complying with all recommendations where applicable. We believe that once our recommendations are implemented, the company's compliance efforts will be significantly improved. I look forward to receiving your response in this regard.

On behalf of the Market Conduct Examiners, I would like to thank you and your staff for their courteous efforts in facilitating this examination.

Very truly yours,

Clifton J. Day, MPA, CPM, CSM  
Manager, Market Conduct Examinations and  
Anti-Fraud Compliance Unit

STATE OF NEW JERSEY  
DEPARTMENT OF BANKING AND INSURANCE

IN THE MATTER OF:

Proceedings by the Commissioner of	)	
Banking and Insurance, State of New	)	CONSENT
Jersey, with respect to Genworth Life Ins. Co.,	)	
NAIC No. 70025 and Genworth Life and	)	ORDER
Annuity Ins. Co., NAIC No. 65536	)	

TO: Genworth Life Ins. Co.  
6604 West Broad Street  
Richmond, VA 23230

This matter, having been opened to the Commissioner of Banking and Insurance (“Commissioner”), State of New Jersey, upon the filing of a Market Conduct Examination Report (“the Report”) containing the results of the January 1, 2011 to December 31, 2011 examination of advertising, marketing, forms and agent licensing processes for to Genworth Life Insurance Company and Genworth Life and Annuity Insurance Company (“the Companies”) performed by the Department of Banking and Insurance (Department) pursuant to the authority provided at N.J.S.A. 17:23-20 et seq.; and

WHEREAS, the market conduct examination revealed certain instances, as fully set forth in the Report, where the Companies’ practices did not accord fully with various provisions of New Jersey insurance statutes or regulations; and

WHEREAS the Companies’ practices contained certain instances where the frequency of error was such as to constitute an improper general business practice; and

WHEREAS, based on the documentation and information submitted by the Companies, the Department is satisfied that the Companies have taken or will take corrective measures pursuant to the recommendations of the Report.

NOW, THEREFORE, IT IS on this 24<sup>th</sup> day of May, 2013

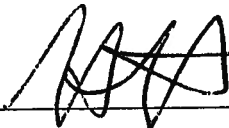
ORDERED AND AGREED that the attached Report will be adopted and filed as an official record of the Department; and

IT IS FURTHER ORDERED AND AGREED that the Companies shall comply with New Jersey insurance statutes and regulations and the recommendations contained in the attached Report; and

IT IS FURTHER ORDERED AND AGREED that the Department will commence a reexamination of the Companies within two years of the date of this Consent Order to determine if the Companies have complied with the recommendations contained in the attached Report; and

IT IS FURTHER ORDERED AND AGREED that in the event the reexamination determines that the Companies have not fully implemented the recommendations and complied with New Jersey insurance statutes and regulations, the company will be subject to appropriate penalties and administrative sanctions; and

IT IS FURTHER ORDERED AND AGREED that pursuant to N.J.S.A. 17:23-24d(1), within 30 days of the adoption of the Report, the Companies shall file an affidavit with the Department's Market Conduct Unit, stating under oath that its directors have received a copy of the adopted Report.



Peter Hartt  
Acting Director of Insurance

Genworth Life and Annuity Insurance Company  
Genworth Life Insurance Company

Consented to as to form, content and entry



Name Elena K. Edwards  
President and CEO, Genworth Life and Annuity Insurance Company  
Senior Vice President, Genworth Life Insurance Company

Title

Date: 5/24/13

**MARKET CONDUCT EXAMINATION**

**of the**

**GENWORTH LIFE INSURANCE COMPANY**

**and**

**GENWORTH LIFE AND ANNUITY INSURANCE COMPANY**

**located in**

**RICHMOND, VIRGINIA**

**as of**

**May 7, 2012**

**BY EXAMINERS**

**of the**

**STATE OF NEW JERSEY**

**DEPARTMENT OF BANKING AND INSURANCE**

**OFFICE OF CONSUMER PROTECTION SERVICES**

**MARKET CONDUCT EXAMINATIONS and ANTI-FRAUD  
COMPLIANCE SECTIONS**

**REPORT ADOPTED:**

**JUNE 10, 2013**

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## **I. INTRODUCTION**

This is a report of the Market Conduct activities of the Genworth Life Insurance Company and Genworth Life and Annuity Insurance Company (hereinafter referred to as "Genworth" or "the Company"). In this report, examiners of the New Jersey Department of Banking and Insurance (NJDOBI) present their findings, conclusions and recommendations as a result of their examination.

### **A. SCOPE OF EXAMINATION**

The purpose of this examination was to evaluate Genworth's compliance with certain regulations and statutes that pertain to immediate and deferred, fixed and variable annuities. Areas of review included advertising, marketing, forms, and agent licensing. The review period for the examination was January 1, 2011 to December 31, 2011. The examiners conducted their fieldwork at Genworth's office in Richmond, Virginia, between March 5, 2012 and March 23, 2012. On various dates following the fieldwork, the examiners completed additional review work and report writing in Trenton, N.J. The Market Conduct Examiners were Examiner-in-Charge Robert Only, William Sonntag, and Richard Segin. Marleen Sheridan performed as team supervisor.

The examiners randomly selected files and records from computer listings and documents provided by the Company. The random selection process is in accordance with the National Association of Insurance Commissioner's (NAIC) Market Regulation Handbook. The examiners used the NAIC Market Regulation Handbook, Chapters Sixteen (General Examination Standards) and Nineteen (Conducting the Life and Annuity Examination) as a guide to examine the Company and write this report.

### **B. ERROR RATIOS**

Error ratios are the percentage of files reviewed which an insurer handles in error. A file is counted as an error when it is mishandled or the insured is treated unfairly, even if no statute or regulation is applicable. If a file contains multiple errors, the examiners will count the file only once in calculating error ratios. However, any file that contains more than one error will be cited more than once in the report. In the event that the insurer corrects an error as a result of a consumer complaint or due to the examiners' findings, the error will be included in the error ratio. If the insurer corrects an error independent of a complaint or NJDOBI intervention, the error is not included in the error ratios.

There may be errors cited in this report that define practices as specific acts that an insurer commits so frequently that it constitutes an improper general business practice. Whenever the examiners find that the errors cited

constitute an improper general business practice, they have stated this in the report.

The examiners sometimes find improper general business practices or insurer errors that may be technical in nature or which did not have an impact on a consumer. Even though such errors or practices would not be in compliance with law, the examiners do not count each of these files as an error in determining error ratios. Whenever such business practices or errors do have an impact on the consumer, each of the files in error will be counted in the error ratio. The examiners indicate in the report whenever they did not count particular files in the error ratio.

The examiners submitted written inquiries to Company representatives on the errors cited in this report. These inquiries provided Genworth the opportunity to respond to the examiners' findings and to provide exceptions to the statutory and/or regulatory errors or mishandling of files reported. In response to these inquiries, Genworth agreed with some of the errors cited in this report. On those errors with which the Company disagreed, the examiners evaluated the individual merits of each response and gave due consideration to all comments. In some instances, the examiners did not cite the files due to the Company's explanatory responses. In others, the errors remained as cited in the examiners' inquiries. For the most part, this is a report by exception.

## **C. COMPANY PROFILE**

### **Genworth Life Insurance Company**

Genworth Life Insurance Company (successor by name change on January 1, 2006 to General Electric Capital Assurance Company), was incorporated as United Pacific Life Insurance Company in the State of Washington on September 28, 1956 and was re-domiciled to Delaware in 1992. The Company is a stock life insurance company and is licensed in the District of Columbia and all states except New York.

The Company markets a diversified mix of life insurance, deferred annuities, and long-term care insurance. Life insurance is marketed primarily to individuals. Annuities and long-term care insurance are marketed on an individual and group insurance basis.

The Company distributes life insurance and deferred annuities through financial institutions and stock-brokerage firms and also through independent insurance agents on the general agency system. Long term care insurance is distributed primarily by long term care specialists and independent insurance agents.

Effective October 31, 1994, Federal Home Life Insurance Company and its subsidiaries, The Harvest Life Insurance Company and PHS Life Insurance Company, became affiliated with the Company. Effective October 2, 1995, AMEX Life Assurance Company (AMEX Life) was acquired by the Company together with the Company's indirect parent, General Electric Capital Corporation (GECC). Effective April 1, 1996, The Life Insurance Company of Virginia (LOV) became affiliated with the Company pursuant to the Company's indirect parent, GECC, assigning its rights to receive 80 percent of the stock of LOV to the Company.

Effective June 30, 1996, AMEX Life was merged with and into the Company. Effective December 1, 1996, First Colony Life Insurance Company (FCL) and its subsidiaries, Jamestown Life Insurance Company and American Mayflower Life Insurance Company of New York, became affiliated with the Company when First Colony Corporation (FCC) transferred its ownership of FCL to GECC pursuant to an Amended and Restated Agreement and Plan of Merger by and between GECC, FCMS, Inc. and FCC. Effective January 1, 1999, Great Northern Insured Annuity Corporation merged with and into its parent, General Electric Capital Corporation. On January 1, 2006 the name of General Electric Capital Corporation was changed to Genworth Life Insurance Company.

### **Genworth Life and Annuity Insurance Company**

Genworth Life and Annuity Insurance Company, 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 January 1, 2006, GELAAC's name was changed to Genworth Life and Annuity Insurance Company (GLAIC). On January 2, 2007, both FHL and First Colony Life Insurance Company also merged into GLAIC.

## II. COMPLAINT REVIEW

### A. INTRODUCTION

The examiners reviewed Genworth's complaint register for compliance with N.J.S.A. 17B:30-13.2. The examiners used Chapters Sixteen (General Examination Standards) and Nineteen (Conducting the Life and Annuity Examination) of the Market Regulation Handbook, as a guide to conduct this review.

### B. COMPLAINT REGISTER

Pursuant to N.J.S.A. 17B:30-13.2, insurers are required to maintain a record of all complaints received by the company. These records shall indicate the total number of complaints, the classification by line of insurance, the nature and the disposition of each complaint and the time it took to process each complaint. This statute is similar in content to Standard One of the NAIC Market Regulation Handbook which specifies that "All complaints (should be) recorded in the required format on the regulated entity's complaint register." The examiners found no errors in this review.

### III. REPLACEMENT REVIEW

#### A. INTRODUCTION

N.J.A.C. 11:4-2 et seq. governs insurer and agent replacements of existing insurance (both within the same company and between two different companies). This regulation protects the interests of life insurance and annuity policyholders by establishing minimum standards of agent and insurer conduct.

N.J.A.C. 11:4-2.2 defines a replacement "... as a transaction in which a new policy or contract is to be purchased, and is known or should be known to the proposing producer, or to the proposing insurer if there is no producer, that by reason of the transaction, an existing policy has been or is to be:

1. lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer or otherwise terminated;
2. converted to reduced paid-up insurance, continued on extended term insurance, or otherwise reduced in value by the use of non-forfeiture benefits or other policy values;
3. amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;
4. reissued with any reduction in cash value; or
5. used in a financed purchase."

One focus of this examination was a random sample review of the Company's replacement activities for the review period January 1, 2011 through December 31, 2011. Genworth's replacement log included 2,176 annuity contracts written during the review period. From this log, the examiners randomly selected 56 replacement files.

The examiners checked for compliance with all applicable New Jersey statutes and regulations including N.J.A.C. 11:4-2 et seq. which governs insurer and agent replacements of existing annuities (both within the same company and between two different companies). The examiners also placed emphasis on the Company's ability to recognize and identify as replacements all policy loans defined as a financed purchase.

#### B. ERROR RATIOS

The examiners calculated error ratios for the replacement review by applying the procedure outlined in the introduction of this report. The following chart itemizes the review sample, the number of errors and the error ratio.

<u>Review Sample Category</u>	<u>Files Reviewed</u>	<u>Files in Error</u>	<u>Error Ratio</u>
Fixed Annuities	56	18	32%

**C. EXAMINERS' FINDINGS**

**1. Failure to Notify Existing Insurer of Replacement within Five Business Days – 12 Files in Error**

N.J.A.C. 11:4-2.4(a)3 states that, where a replacement is involved in an annuity transaction, a replacing insurer shall notify any other existing insurer that may be affected by the proposed replacement within five business days of receipt of a completed application that serves to replace a current contract with an existing insurer.

Contrary to this regulation, the Company failed to provide this notice within five business days on 12 annuity contracts. The notification to the replaced insurer on ten of these contracts varied from 1-17 business days beyond five business days. On contract numbers 43A114867, TN4085632 and 43A113801 the Company disagreed with this finding and stated that it issued a timely replacement notice; however, Genworth did not provide documentation or actual notices to support this contention.

**SEE APPENDIX A-1 FOR A LIST OF CONTRACTS IN ERROR**

**2. Failure of Appointed Agents to Submit Sales Illustrations Along with Annuity Applications that Replaced Existing Contracts and Failure to Maintain System of Supervision on Replacements – 6 Files in Error**

Pursuant to N.J.A.C. 11:4-2.3(d), producers are required to submit with an application a copy of all sales materials and illustrations utilized at the point of sale when replacing an existing contract. Contrary to this requirement, the examiners found six contracts in which producers utilized but failed to retain these materials. In response to the examiners' inquiries, the Company confirmed that the agents utilized sales materials on these files, but did not include those sales materials with the applications. Consequently, the Company was unable to provide these sales materials for the examiners' review.

Moreover, where a Company utilizes producers to effectuate and service business, N.J.A.C. 11:4-2.5(a) requires insurers to maintain a system of supervision and control over producer sales to ensure compliance with regulatory requirements governing replacements. Genworth failed to comply

with this requirement since it accepted these applications without requiring and reviewing the applicable sales illustrations for compliance with N.J.A.C. 11:4-2.5(a) through (h).

**SEE APPENDIX A-2 FOR A LIST OF CONTRACTS IN ERROR**

## IV. ANNUITY SUITABILITY REVIEW

### A. INTRODUCTION

The examiners randomly selected and reviewed 75 annuity contracts from the Company's inforce population of 24,504 annuities. The examiners also randomly selected and reviewed 56 new business contracts from a total new business population of 566 annuity contracts. As part of the examination, the examiners checked for compliance with N.J.S.A. 17B:25-38 (determination as to annuity suitability for consumers). This statute became effective April 1, 2009.

### B. ERROR RATIOS

The examiners calculated error ratios for the suitability review by applying the procedure outlined in the introduction of this report. The following chart itemizes the review sample, the number of errors and the error ratio by type of transaction.

<b><u>Suitability Review</u></b>	<b><u>Files Reviewed</u></b>	<b><u>Files in Error</u></b>	<b><u>Error Ratio</u></b>
Inforce	75	17	23%
New Business	<u>56</u>	<u>12</u>	21%
<b>Total</b>	131	29	22%

### C. EXAMINERS' FINDINGS

#### 1. **Failure to Document Compliance with Suitability Requirements – 8 Files in Error**

N.J.S.A. 17B:25-38b(1) and (2)(a) through (e) permit an insurer or producer to negotiate or sell an annuity to a customer if that insurer or producer has reasonable grounds for believing that the annuity is suitable for the consumer. This determination is made by assessing information and facts disclosed by the consumer as to the consumer's investments, other insurance products, financial situation and objectives. The insurer or producer must also make reasonable efforts to obtain and record information concerning the consumer's:

- a) financial status;
- b) tax status;
- c) investment objectives;

- d) any other information relevant for providing reasonable grounds for believing that the annuity is suitable for the consumer;
- e) and the consumer's acknowledgment that the solicitation, negotiation and sale of the annuity are subject to regulatory oversight by the department and receipt of appropriate contact information for the department's consumer assistance services.

The Commissioner issued Bulletin 09-06 on March 3, 2009 and Bulletin 09-12 on April 20, 2009 to remind carriers of the requirement stated in N.J.S.A. 17B:25-38b(1) and (2)(a) through (e) as referenced above. Those Bulletins advised carriers in part that all persons who sell individual fixed deferred and immediate annuities are required to make reasonable efforts to obtain and record information about the suitability of the product for the consumer and to retain and make available to the Department copies of the suitability form that records required information, dates and signatures.

The examiners reviewed 131 contracts selected from the Company's system and did not find suitability forms on 7 contracts. The producers did not retain these forms. In addition, on annuity contract number **43A113778** the Company submitted a suitability form dated and signed April 24, 2012, or eight months after the annuity application was signed on August 30, 2011. Completion of mandatory suitability forms eight months after a contract is effectuated defeats the purpose of point-of-sale protection afforded under N.J.S.A. 17B:25-38b(1) and (2)(a) through (e).

Failure to retain suitability forms containing the financial status, tax status and the consumer's investment objectives for the purpose of determining suitability at the time of sale is contrary to N.J.S.A. 17B:25-38 and is further inconsistent with Bulletins 09-06 and 09-12. As a result of this error, the examiners were unable to ascertain suitability on the above-referenced contracts.

### **SEE APPENDIX B-1 FOR CONTRACTS IN ERROR**

#### **2. Failure to Advise Annuitant that DOBI has Regulatory Oversight on the Solicitation, Negotiation and Sale of Annuities with Respect to Suitability – 21 Files in Error (Improper General Business Practice)**

N.J.S.A. 17B:25-38b(2)(e) requires producers to make reasonable effort to obtain and record the consumer's acknowledgement that DOBI has regulatory oversight on the solicitation, negotiation and sale of annuities concerning suitability. This statute also requires contact information for consumers to refer questions or concerns to DOBI's consumer assistance section. In response to inquiries the Company stated that, "it was Genworth's position that it was the responsibility of the writing producer to retain copies of that document. In most, if not all cases, we went back to the agents for this

form, and we were informed the agents did not have that form in their files.” The examiners found that the Company and all producers (most in the random sample according to the Company) who did not retain the consumer acknowledgement form failed to comply with N.J.S.A. 17B:25-38b(2)(e) as an improper general business practice.

**SEE APPENDIX B-2 FOR CONTRACTS IN ERROR**

**D. SUITABILITY OVERSIGHT**

N.J.S.A. 17B:25-38c(1)-(3) requires an insurer to establish and maintain a system of supervision concerning the negotiation and sale of annuities directly negotiated and sold by the insurer to assure compliance with the consumer suitability requirements set forth in the statute. The system shall include but not be limited to a written set of procedures concerning the negotiation and sale of annuities. There shall also be periodic reviews of information as set forth by the Commissioner to assist in detecting and preventing violations. If an insurer authorizes a third party to act on its behalf, the insurer shall make reasonable inquiry to assure that its third party establishes and maintains a system of supervision.

Genworth makes available to its appointed producers an Annuity Suitability Profile, which is designed to assist producers with their suitability determination. The Annuity Suitability Profile captures necessary and relevant financial and suitability information. The Company believes that the Profile aids the producer with respect to whether a recommendation to purchase one of the Company’s fixed annuity products is warranted, based on the specific facts and circumstances of the individual case. Genworth requires its producers to submit this profile with every annuity application. The annuity new business unit reviews the Profile for completeness and identifies any red flag responses.

If any red flag response is received, the case is escalated for a secondary heightened review to a cross-functional team comprised of product experts, new business quality analysts, legal and compliance. Through the heightened review process, it is often necessary to communicate further with the producer and/or customer to understand the basis for the response raising the red flag in order to assist the Company in determining whether the transaction is suitable and a contract may be issued.

Additionally, customers who have purchased one of the Company’s fixed annuity products will receive a customer satisfaction survey. The survey asks if the producer reviewed or offered to review the customer’s financial status, tax status, investment objectives, and other pertinent information before making a recommendation to purchase this product. For negative responses to



both questions, the Company will follow up with the writing producer to obtain suitability documentation to ensure that a proper review was performed and will take any corrective action deemed necessary.

Genworth's Chief Compliance Officer monitors several activities to identify potential issues, including the following:

1. A review of contracts that have been free-looked on a monthly basis. The Compliance Officer then further identifies which of these contracts were free looked by an owner age 65 and older. The data is analyzed to compare free looks as a percentage of total contracts sold.
2. Upon receipt of a customer complaint, research is conducted to determine if the reason for the complaint relates to the suitability of the annuity transaction.
3. The Compliance Department monitors replacement activity to identify potential undisclosed replacements, missing replacement forms, and potential churning by a producer.
4. When the activity of a producer is in question, the Compliance Department investigates the producer's activity and trends in the producer's book of business. Disciplinary action, up to and including termination, is taken if suspected activity is confirmed. If suspected activity is identified but cannot be confirmed, the producer is added to a compliance watch list.

The examiners' review concluded that Genworth's stated system of supervision regarding the negotiation and sale of annuities is comprehensive and fulfills the intent of the above-referenced statute. Aside from the two findings addressed above, it appears that the Company utilizes its suitability oversight methodology.

## **V. SURRENDER PENALTY REVIEW**

Genworth's electronic records indicated that 1,273 consumers surrendered annuity contracts during the review period of January 1, 2011 to December 31, 2011. The examiners randomly selected and reviewed 45 surrendered contracts by comparing the rate of surrender that was included in the contract and the actual surrender penalty that the Company charged. The examiners found no errors in this review.

## VI. ADVERTISING AND FORMS REVIEW

### A. INTRODUCTION

Genworth provided the examiners with its three website advertisements and 209 advertising forms that the Company utilized to solicit individual annuities during the review period. The examiners reviewed 212 advertising files for compliance with N.J.A.C. 11:2-23.1 et seq. (regulations governing advertisement of annuity contracts), N.J.A.C. 11:4-40.1 et seq. (regulations governing annuity contracts) and N.J.S.A. 17B:30-3 and 4 (statutes prohibiting misrepresentation, false information and false advertising). The examiners also checked the Company's Buyer's Guide and Annuity Contract Disclosure Statements for compliance with N.J.S.A. 17B:25-37b and c.

### B. ERROR RATIOS

<u>Type of Review</u>	<u>Files Reviewed</u>	<u>Files in Error</u>	<u>Error Ratio</u>
Buyer's Guide	1	0	0%
Disclosures	7	0	0%
Forms	209	4	2%
Internet	<u>3</u>	<u>0</u>	0%
Total	220	4	2%

### C. EXAMINERS' FINDINGS

#### 1. Failure to Include Liabilities when Utilizing Advertisements that State Assets – 4 Advertisements in Error

N.J.S.A. 17B:18-48 stipulates that a company that advertises its assets must equally and conspicuously advertise its liabilities. Additionally, N.J.A.C. 11:2-23.4(a) requires that advertisements be truthful and not misleading, while also not exhibiting the capacity or tendency to mislead.

The examiners found four advertisements that referenced either \$112 billion or \$113.9 billion in assets that represent, in entirety, all companies under the General Financial, Inc. Group (the Parent company to both companies subject to this examination). Contrary to N.J.S.A. 17B:18-48, these advertisements did not state the Parent company's collective liabilities.

Since these advertisements do not provide individual assets for the companies that comprise the Parent, consumers may interpret Genworth Financial's assets as applicable to Genworth Life Insurance Company and/or Genworth Life and Annuity Insurance Company. Lacking such clarity and contrary to N.J.A.C. 11:2-23.4(a), these advertisements have a capacity or tendency to mislead consumers as to the financial condition of the individual company from which an annuity contract is sought.

Genworth disagreed with these errors, stating that the cited advertisements "... are general in nature and are not intended, nor are they designed, to be used with any specific issuing company or product." The examiners found, however, that advertisement form **48563P** prominently displays the names of the individual insurance companies in proximity with the Parent company name and its assets. Similar language appears on advertisement forms **48563B, 48563A and 48563**. Notwithstanding a producer's attempts to provide oral disclaimers at the point of sale when this advertisement is actually used, these advertisements have the capacity or tendency to mislead when viewed by prospective customers.

**SEE APPENDIX C-1 FOR ADVERTISEMENTS IN ERROR**

## VII. LICENSING REVIEW

According to N.J.S.A. 17:22A-26 et seq. and N.J.A.C. 11:17-1 through N.J.A.C. 11:17E-1, a person shall not sell, solicit or negotiate insurance in this State unless the person is licensed for a specific line or lines of authority. N.J.S.A. 17:22A-42c requires an insurance company to file a Notice of Appointment with the Department providing the licensed agent's name, business address and any limitations on their authority.

Genworth provided the examiners with a list of 226 agents who sell annuity products for the Company in New Jersey. The examiners found that, contrary to N.J.S.A. 17:22A-42c, Genworth failed to appoint 17 agents that sold annuities during the review period, January 1, 2011 to December 31, 2011.

In response to the examiners' inquiries, the Company agreed that it did not properly complete producer appointments for some annuity applications. Genworth stated that the Company has immediately taken steps to implement better controls of producer appointments.

## VIII. RECOMMENDATIONS

Genworth Life Insurance Company and Genworth Life and Annuity Insurance Company should inform all responsible personnel and third party entities who handle the files and records cited as errors in this report of the examiners' recommendations and remedial measures that follow in the report sections indicated. The examiners also recommend that Genworth establish procedures to monitor compliance with these measures.

Throughout this report, the examiners cite and/or discuss all errors found. If the report cites a single error, the examiners often include a "reminder" recommendation because if a single error is found, additional errors may have occurred.

Non-compliant activity was identified in this report which may extend to other jurisdictions. The Company is directed to take immediate corrective action to demonstrate its ability and intention to conduct business according to New Jersey law. When applicable, corrective action for other jurisdictions should be addressed.

The examiners acknowledge that during the examination, Genworth agreed and had already complied with, either in whole or in part, some of the recommendations. For the purpose of obtaining proof of compliance and for the Company to provide its personnel with a document they can use for future reference, the examiners have listed all recommendations below.

### A. GENERAL INSTRUCTIONS

All items requested for the Commissioner and copies of all written instructions, procedures, recommended forms, etc., should be sent to the Commissioner, c/o Clifton J. Day, Manager of the Market Conduct Examinations and Anti-Fraud Compliance Unit, Mary Roebing Building, 20 West State Street, PO Box 329, Trenton, N.J. 08625, within thirty (30) days of the date of the adopted report.

### B. REPLACEMENT REVIEW

1. The Company must issue written instructions to all appropriate personnel stating that, pursuant to N.J.A.C. 11:4-2.4(a)3, the replacing insurer shall notify any other existing insurer that may be affected by the proposed replacement within five business days of receipt of a completed application that serves to replace another annuity contract.
2. Genworth must issue written instructions to all appropriate personnel stating that N.J.A.C. 11:4-2.3(d) requires a producer, in connection with a replacement transaction, to retain and submit with the application to the insurer, copies of all required documents, including a statement that identifies

company-approved sales material, as well as individualized sales materials including illustrations related to the specific contract purchased. These instructions should also emphasize that N.J.A.C. 11:4-2.4(a)2 requires replacing insurers to ascertain that the sales materials and illustrations utilized at the point of sale are compliant with N.J.A.C. 11:4-2.5(a)4 and other regulations as applicable.

### **C. ANNUITY SUITABILITY**

3. In order to assure product suitability, the Company should issue written instructions to all appropriate personnel and producers stating that suitability must be completed by the broker/dealer and the consumer whenever the company's representative has grounds to believe an annuity is suitable for the consumer. This analysis should also be completed if the consumer refuses to provide relevant information to determine the suitability of the product. These instructions should emphasize that a record of each suitability analysis should be retained and made available for the Commissioner's inspection.

4. Genworth should issue written instructions to all appropriate personnel stating that producers should make reasonable effort to obtain and record the consumer's acknowledgement that DOBI has regulatory oversight on the solicitation, negotiation, suitability and sale of annuities. The Company should provide applicants with contact information regarding DOBI's consumer assistance services.

### **D. ADVERTISING AND FORMS**

5. Genworth must issue a written reminder to all appropriate personnel stating that N.J.S.A. 17B:18-48 requires that a company advertising its assets must equally and conspicuously advertise its liabilities. This reminder should also advise that N.J.A.C. 11:2-23.4(a) prohibits misleading advertisements.

### **E. LICENSING**

6. Genworth must issue written instructions to all appropriate personnel stating that N.J.S.A. 17:22A-42c requires an insurance company to file a Notice of Appointment with the Department providing the licensed agent's name, business address and any limitations on their authority. Genworth should provide the Commissioner with the appointment status of each producer cited in the examiners' field inquiries.

## APPENDIX A – REPLACEMENT ERRORS

### 1. Failure to Notify Existing Insurer of Replacement within Five Business Days – 12 Files in Error

<u>Contract #</u>	<u>Application Receipt Date</u>	<u>Notice Date</u>	<u>Days &gt;5</u>
43A114867	9/30/2011	10/10/11	1
TN4081102	5/7/2007	5/15/2007	1
GA0013741	10/21/2011	11/1/2011	2
430783974	2/4/11	2/16/11	3
43A104845	3/22/11	4/21/11	17
43A114229	9/21/11	9/29/11	1
430529762	3/31/11	4/19/11	8
GLA106459	8/30/11	9/8/11	1
GLA106010	7/29/11	8/23/11	12
GLA103330	10/29/11	11/9/11	3
TN4085632	12/20/07	No Notice	
43A113801	9/15/11	No Notice	

### 2. Failure of Appointed Agents to Submit Sales Illustrations along with Annuity Applications that Replaced Existing Contracts, and Failure to Maintain System of Supervision on Replacements – 6 Files in Error

#### Contract Number

43A104372	T08034163
43A111922	T06443145
TAA102905	T06442625



## APPENDIX B – Annuity Suitability Errors

### 1. Failure to Demonstrate Compliance of Suitability Requirements – 8 Files in Error

#### Inforce Contract Numbers

43A100004  
431811953  
43A113778

#### New Business Contract Numbers

<u>Contract Number</u>	<u>Contract Number</u>	<u>Contract Number</u>
GLA103584	TAA101393	GAO009777
GAO009911	GA0013741	

### 2. Failure to Advise Annuitant that DOBI has Regulatory Oversight on the Solicitation, Negotiation and Sale of Annuities Concerning Suitability – 21 Files in Error (Improper General Business Practice)

<u>Contract Number</u>	<u>Contract Number</u>	<u>Contract Number</u>	<u>Contract Number</u>
43A109112	43A112205	43A105055	GLA106149
43A113685	GLA104989	43A111922	43A105065
43A114958	431061970	431202027	43A113973
43A110324	430753851	43A113238*	43A104372*
43A109718*	GA0013607*	GLA106010*	GLA103330*
GLA106459*			

\* = New Business Contracts

## APPENDIX C – ADVERTISING and FORM ERRORS

### 1. Failure to Include Liabilities when Utilizing Advertisements that State Assets - 4 Errors

<u>Form Number</u>	<u>Effective Date</u>
48563	07/28/2011
48563B	08/01/2011
48563A	11/03/2011
48563P	11/03/2011

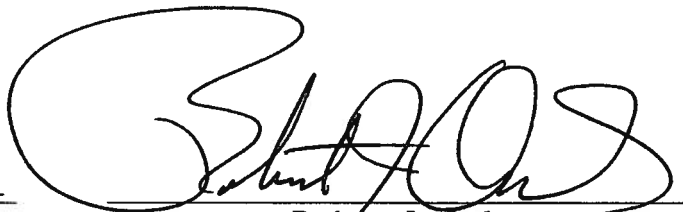
## VIII. VERIFICATION PAGE

I, Robert J. Only, am the Examiner-in-Charge of the Market Conduct Examination of Genworth Life Insurance Company and Genworth Life and Annuity Insurance Company conducted by examiners of the New Jersey Department of Banking and Insurance. This verification is based on my personal knowledge as acquired in my official capacity.

The findings, conclusions and recommendations contained in the foregoing report represent, to the best of my knowledge, a full and true statement of the Market Conduct examination of Genworth Life Insurance Company and Genworth Life and Annuity Insurance Company as of May 7, 2012.

I certify that the foregoing statements are true. I am aware that if any of the foregoing statements made by me is willfully false, I am subject to punishment.

October 17, 2012  
Date

A large, stylized handwritten signature in black ink, appearing to read 'Robert J. Only', written over a horizontal line.

Robert J. Only  
Examiner-In-Charge  
New Jersey Department  
of Banking and Insurance