



COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION
DIVISION OF INSURANCE

REPORT OF EXAMINATION OF THE
BERKSHIRE LIFE INSURANCE COMPANY OF AMERICA

Pittsfield, Massachusetts

As of December 31, 2020

NAIC GROUP CODE 0429

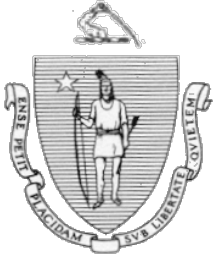
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BERKSHIRE LIFE INSURANCE COMPANY OF AMERICA

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COMMONWEALTH OF MASSACHUSETTS
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GARY D. ANDERSON
COMMISSIONER OF INSURANCE

June 3, 2022

The Honorable Gary D. Anderson
Commissioner of Insurance
Commonwealth of Massachusetts
Division of Insurance
1000 Washington Street, Suite 810
Boston, MA 02118-6200

Honorable Commissioner:

Pursuant to your instructions and in accordance with Massachusetts General Laws, Chapter 175, Section 4, an examination has been made of the financial condition and affairs of the

BERKSHIRE LIFE INSURANCE COMPANY OF AMERICA

The Company's home office located 700 South Street, Pittsfield, Massachusetts 01201. The Examination was conducted remotely. The following report thereon is respectfully submitted.

SCOPE OF EXAMINATION

Berkshire Life Insurance Company of America (“BLICOA” or the “Company”) was last examined as of December 31, 2015 by the Massachusetts Division of Insurance (“Division”). The current examination was also conducted by the Division and covers the five-year period from January 1, 2016 through December 31, 2020, including any material transactions and/or events occurring subsequent to the examination date and noted during the course of this examination.

The examination was conducted in accordance with standards and procedures established by the National Association of Insurance Commissioners (“NAIC”) Financial Condition (E) Committee and prescribed by the current NAIC Financial Condition Examiners Handbook (“Handbook”), the examination standards of the Division and with Massachusetts General Laws. The Handbook requires that we plan and perform the examination to evaluate the financial condition and identify current and prospective risks of the Company by obtaining information about the Company, including corporate governance, identifying and assessing inherent risks within the Company, and evaluating system controls and procedures used to mitigate those risks.

All accounts and activities of the Company were considered in accordance with the risk-focused examination process. This may include assessing significant estimates made by management and evaluating management’s compliance with Statutory Accounting Principles. The examination does not attest to the fair presentation of the financial statements included herein. If, during the course of the examination an adjustment is identified, the impact of such adjustment will be documented separately following the Company’s financial statements.

This examination report includes significant findings of fact, as mentioned in the Massachusetts General Laws, Chapter 175, Section 4, and general information about the insurer and its financial condition. There may be other items identified during the examination that, due to their nature (e.g., subjective conclusions, proprietary information, etc.), are not included within the examination report but separately communicated to other regulators and/or the Company.

The Company is audited annually by PricewaterhouseCoopers, LLP (“PwC”), an independent certified public accounting firm. The firm expressed unqualified opinions on the Company’s financial statements for the calendar years 2016 through 2020. A review and use of the Certified Public Accountants’ work papers were made to the extent deemed appropriate and effective.

Representatives from the firm Baker Tilly US, LLP (“Baker Tilly”) were retained by the Division to assist in the examination by performing certain examination procedures at the direction of and under the overall management of the Division’s examination staff. The assistance included a review of accounting records, information systems, investment and actuarially determined loss and loss adjustment expense reserves, as well as other significant actuarial estimates.

SUMMARY OF SIGNIFICANT FINDINGS OF FACT

There were not significant findings as a result of our examination.

COMPANY HISTORY

General

BLICOA is a wholly owned subsidiary of Guardian Life Insurance Company of America (“Guardian”) which is a New York domiciled mutual life insurance company headquartered in New York, NY. The Company operates as the individual disability insurance business unit of Guardian, selling individual disability income insurance and administering all disability income products of the Guardian group.

The Company was previously known as Healthsource Insurance Company. On July 1, 2001, Berkshire Life Insurance Company, a Massachusetts domiciled mutual insurance company that wrote life and annuity business as well as disability insurance, consummated a statutory merger with Guardian, whereby Guardian was the surviving entity. In connection with this transaction, the Company was renamed to BLICOA and re-domesticated as a Massachusetts stock insurer. Guardian contributed \$267.5 million in capital to the Company in addition to executing a 100% coinsurance treaty in which Guardian would cede and the Company would assume all individual disability income business written by Guardian and the previously merged Berkshire entity.

Dividends

In 2016, the Company returned \$20,000,000 in capital to its parent, Guardian, via a stockholder dividend for this amount in cash.

MANAGEMENT AND CONTROL

Board of Directors Minutes

The minutes of meetings of the Board of Directors and its Committees for the period under examination were read and they indicated that all meetings were held in accordance with the Company’s bylaws and the Laws of the Commonwealth of Massachusetts. Activities of the Committees were ratified at meetings of the Board of Directors.

Article of Incorporation and Bylaws

The articles of organization and bylaws of the Company were reviewed. The bylaws provide guidance related to corporate governance, including the roles and responsibilities of the Board of Directors (“Board”) and officers of the Company.

Board of Directors

According to the bylaws, the corporate powers of the Company shall be vested in the Board and, to the extent the Board may empower, by such officers, committees and agents as the Board may elect or appoint from time to time. The Board may adopt such rules and regulations as it shall deem necessary or convenient for the proper conduct of such business and affairs.

Berkshire Life Insurance Company of America

The Board of Directors shall consist of at least five directors elected by a majority of the shareholders, of which a majority shall be citizens of the United States. The President of the Company will be a member of the Board and unless the Board elects a chairman, presides at all meetings. The Company's Board of Directors consisted of the following individuals:

<u>Name of Directors</u>	<u>Title</u>
Lawrence S. Hazzard	President, BLICOA
Roberto C. Ecker	SVP, CFO of Enterprise Business and Technology Services, Guardian
Michael N. Ferik	EVP, Individual Markets, Guardian
Leyla Lesina	SVP, Head of Agency Distribution, Guardian
Kevin Molloy	EVP, Chief Financial Officer, Guardian
Michael Slipowitz	SVP, Chief Actuary & Chief Risk Officer, Guardian

In 2021, Kevin Molloy resigned his role and was replaced on the Board by Frederic Simard, VP, CFO & Chief Actuary of Group Benefits for Guardian.

Officers

Officers of the Company as of December 31, 2020, were as follows:

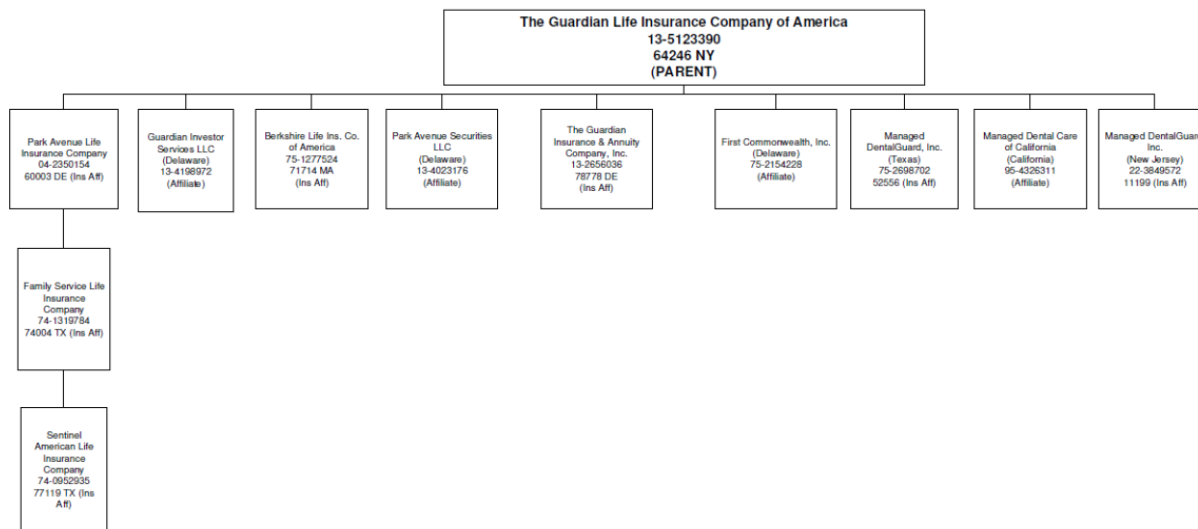
<u>Name of Officer</u>	<u>Title</u>
Lawrence S. Hazzard	President
Carl Desrochers	VP, Chief Financial Officer
Richard Pollard	VP, Pricing & Underwriting
Sean D. Quinn	VP, Lead Counsel & Corporate Secretary
Jeffrey Turcotte	VP, Appointed Actuary
Robin L. MacPherson	VP, New Business Operations
Brian Cunningham	Second VP, Claims

Affiliated Companies

As stated in the Insurance Holding Company System Form B as filed with the Division, the Company is a member of a holding company system and is subject to the registration requirements of Massachusetts General Laws, Chapter 175, Section 206C and 211 Code of Massachusetts Regulations ("CMR") 7.00.

Berkshire Life Insurance Company of America

Organizational Chart



Transactions and Agreements with Subsidiaries and Affiliates

Administrative Services Agreements

Effective July 1, 2001, BLICOA executed an Administrative Services Agreement with Guardian. This agreement was executed in conjunction with the Coinsurance Agreement effective as of the same date. Under the terms of the agreement, BLICOA is established as the service provider for the reinsured policies, performing services related to Policy Services and Administration, Claims Administration, Data Processing Support, Financial and Actuarial. The parties agree that expenses will be allocated between the parties in accordance with the methodology deemed appropriate by Guardian's cost accounting department in consultation with the Company and adjusted from time to time. These expenses are to be submitted and shall be allocated no less than quarterly and settlement shall be made within 30 days of the end of the quarter.

Amended and Restated Agreement for Services and Reimbursement

Effective December 31, 2007, Guardian and its Subsidiaries, for which the Company is one executed an Amended and Restated Agreement for Services and Reimbursement. The Agreement establishes provision of services and reimbursement therefor and is intended to supersede all of the prior agreements for the provision of services and the reimbursement therefor entered into by the parties, and establishes services to be performed by Guardian, such as office space and salaries of employees, as well as services that may be performed by subsidiaries such as policy, consulting, and advisory services, to GLIC or another Subsidiary.

Tax Sharing Agreement

Effective March 3, 2018, the Company executed a Tax Sharing Agreement with Guardian establishing the terms for the two entities to file consolidated federal income tax returns along with other entities of the holding company. The agreement, which was approved by the Board of

Berkshire Life Insurance Company of America

Directors, details the manner in which the total combined income tax is allocated to the parties; which is on a separate return basis.

Investment Management Agreement

The Company's investments are managed by the investment department of Guardian. Annually, investment authorizations are presented to the Board of Directors for approval. The authorizations include general and specific provisions governing certain limitations of investment classes as well as citing the investment provisions of Massachusetts General Law, Chapter 175, Section 63.

In December 2021, the Company filed an Investment Management Agreement with Park Avenue Institutional Advisors, LLC, an affiliated investment advisor. See "Subsequent Events" section of this report.

TERRITORY AND PLAN OF OPERATION

The Company is licensed in all 50 states and the District of Columbia. As the disability insurer within the Guardian group, the Company sells, through the Guardian Career Agency System as well as through independent brokers, individual disability insurance and multi-life disability insurance products. Prior to 2012 the Company sold a long-term care product which has been discontinued and is now considered a closed block. The long-term care business is reinsured and managed by third-party administrator.

Treatment of Policyholders – Market Conduct

During the course of the examination, a general review was made of the manner in which the Company conducts its business practices and fulfills its contractual obligations to members and claimants. This review was limited in nature and was substantially narrower than a full scope market conduct examination.

REINSURANCE

The Company mitigates certain risks associated with its policies through the use of reinsurance.

The universal and term life insurance is reinsured through a combination of coinsurance, modified coinsurance and quota share treaties with Guardian as well as third-party reinsurers. The universal life business is reinsured with affiliate, Guardian, through a 90% modified coinsurance agreement with a \$1 million maximum retention. The term life insurance is reinsured with third-party reinsurers: Munich American Re, Scottish Re, Transamerica Financial, Employers Reassurance Corporation ("ERAC") and Reinsurance Group of America ("RGA"). This coverage varies in reinsurer participation and coinsurance percentage, either 90% or 76.5%, depending on the term of the policies (5 to 10 year, 15 to 30 year, 30+) and year of policy issuance (2005, 2004, Prior).

BLICOA cedes, on a 80% coinsurance basis, the individual disability income insurance coverage, individual and multi-life, to Guardian. This Coinsurance Agreement is effective January 1, 2014. In addition, the Company also has reinsurance coverage with Munich American Re, General Re

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Life Corporation, and Lincoln National for its individual disability income insurance products. Munich Re and the Company have an excess coinsurance agreement with retention limits between \$4,000 and \$10,000 as well as a quota share agreement establishing first dollar coinsurance between 15% and 50% depending on the product. General Re Life Corporation provides an excess coinsurance agreement with retention of \$5,000 as well as a quota share agreement establishing first dollar coinsurance at 20%. Finally, Lincoln National coverage is for the Extended Wait (long term disability) product that has been closed and in run-off. The coverage establishes a retention of the first \$750,000 on an individual claim with coinsurance in excess of \$4,000 per month.

Finally, the Company's long-term care products, run-off block of business, is reinsured with either ERAC or RGA. ERAC covers policies with issue dates before July 1, 2008 on a 90% coinsurance basis; while RGA covers, on a 90% coinsurance basis, policies with issue dates after June 30, 2008.

The Company has an established Counterparty Credit Policy that assesses reinsurance counterparties based on A.M. Best Ratings and assigns tiers with associated exposure limits and coverage limitations. Our review indicated that the Company is in compliance with this Credit Policy. Further, all reinsurance agreements in effect were executed prior to the fieldwork date of this examination.

FINANCIAL STATEMENTS

The following financial exhibits are based on the statutory financial statements prepared by management and filed by the Company with the Division and present the financial condition of the Company for the period ending December 31, 2020. The financial statements are the responsibility of Company management.

Statement of Assets, Liabilities, Surplus and Other Funds as of December 31, 2020

Statement of Income for the Year Ended December 31, 2020

Reconciliation of Capital and Surplus for Each Year in the Five-Year Period Ended December 31, 2020

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Statement of Assets, Liabilities, Surplus and Other Funds
As of December 31, 2020

ASSETS	Per Annual Statement
Bonds	\$ 4,061,885,406
Mortgage loans on real estate	42,780,282
Properties occupied by the company	14,471,260
Properties held for the production of income	1,506,102
Cash, cash equivalents and short-term investments	13,343,747
Contract loans	1,401,211
Other invested assets	175,034,641
Receivables for securities	133,057
Subtotals, cash and invested assets	<u>4,310,555,706</u>
Investment income due and accrued	54,045,878
Uncollected premiums and agents' balances	(2,988,641)
Deferred premiums	4,097,429
Amounts recoverable from reinsurers	9,079,063
Other amount receivable under reinsurance contracts	12,956,626
Current federal and foreign income tax recoverable	2,142,411
Net deferred tax asset	18,675,663
Guaranty funds receivable or on deposit	2,118,893
Receivables from parent; subsidiaries and affiliates	455
Health care and other amounts receivable	2,762
Aggregate write-ins	97,593
Total assets excluding separate accounts	<u>4,410,783,838</u>
Total Assets	<u>\$ 4,410,783,838</u>

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Statement of Assets, Liabilities, Surplus and Other Funds (Continued)
As of December 31, 2020

	Per Annual Statement
LIABILITIES	
Aggregate reserve for life contracts	\$ 41,122,639
Aggregate reserve for accident and health contracts	887,537,628
Contract claims: Life	98,168
Contract claims: Accident and health	11,305,121
Policyholders' dividends/refunds to members	(26,529)
Policyholders' dividends/refunds to members apportioned	589,879
Premiums and annuity considerations received in advance	1,499,213
Other amounts payable on reinsurance	23,330,398
Interest maintenance reserve	4,367,001
Commissions to agents due or accrued	276,346
Commissions payable on reinsurance assumed	37,797
General expenses due or accrued	10,688,239
Taxes, licenses and fees due or accrued	1,395,934
Amounts withheld as agent or trustee	211,313
Remittances and items not allocated	471,840
Asset valuation reserve	31,162,787
Payable to parent, subsidiaries and affiliates	7,266,080
Funds held under coinsurance	3,175,960,911
Aggregate write-ins	500,826
Total liabilities excluding Separate Accounts	<u>4,197,795,591</u>
Total Liabilities	<u>4,197,795,591</u>
 SURPLUS	
Common capital stock	3,198,000
Gross paid in and contributed surplus	208,369,928
Unassigned funds (surplus)	1,420,319
	<u>209,790,247</u>
Total capital and surplus	<u>212,988,247</u>
 Total Liabilities, Surplus and Other Funds	 <u><u>\$ 4,410,783,838</u></u>

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Summary of Operations For the Year Ended December 31, 2020

	Per Annual Statement
Premiums and annuity considerations	\$ 139,122,141
Net investment income	208,420,457
Amortization of Interest Maintenance Reserve	2,382,720
Commissions and expense allowances on reinsurance ceded	256,790,926
Reserve adjustments on reinsurance ceded	(620,891)
Aggregate write-ins for miscellaneous income	(4,942,801)
Total	601,152,552
Death benefits	1,921,600
Disability benefits and benefits under A&H contracts	69,083,460
Surrender benefits and withdrawals for life contracts	22,958
Interest and adjustments on contract	4,024
Increase in aggregate reserves	42,791,705
Total	113,823,747
Commissions on premiums	94,548,400
Commissions and expense allowances on reinsurance assumed	29,441,731
General insurance expenses	162,247,971
Insurance taxes, licenses and fees, excluding federal taxes	24,813,726
Increase in loading on deferred and uncollected premiums	233,250
Aggregate write-ins for deductions	155,884,897
Total	580,993,722
Net gain from operations before dividends to policyholders and federal income taxes	20,158,830
Dividends to policyholders	318,013
Net gain from operations after dividends to policyholders and before federal income taxes	19,840,817
Federal and foreign income taxes incurred	3,908,638
Net gain from operations after dividends to policyholders and federal income taxes and before capital gains (losses)	15,932,179
Net realized capital gains (losses)	(581,489)
Net income	\$ 15,350,690

Berkshire Life Insurance Company of America

Reconciliation of Capital and Surplus
For Each Year in the Five-Year Period Ended December 31, 2020

	2020	2019	2018	2017	2016
Surplus as regards policyholders, December 31, prior year	\$ 219,889,612	\$ 192,658,737	\$ 189,096,958	\$ 201,638,797	\$ 207,942,489
Net income/(loss)	15,350,690	83,618,451	(13,252,540)	10,154,197	17,770,171
Change in net unrealized capital gains or (losses) less capital gains tax	(47,714)	76,865	(23,580)	(173,963)	157,455
Change in net unrealized foreign exchange gain (loss)					
Change in net deferred income tax	4,451,996	(15,369,983)	10,423,145	(30,429,492)	2,024,419
Change in non-admitted assets	(6,850,807)	6,811,281	(7,251,288)	11,240,137	(674,350)
Change in reserve on account of change in valuation basis	(15,607,808)	(39,926,680)	-	-	(2,066,384)
Change in asset valuation reserve	(4,197,721)	(7,979,058)	13,666,041	(3,827,458)	(3,515,003)
Surplus Adjustment: Paid in					(20,000,000)
Aggregate write-ins for gains and losses in surplus	-	-	-	494,739	-
Change in surplus as regards policyholders for the year	(6,901,364)	27,230,875	3,561,779	(12,541,839)	(6,303,692)
Surplus as regards policyholders, December 31, current year	<u>\$ 212,988,247</u>	<u>\$ 219,889,612</u>	<u>\$ 192,658,737</u>	<u>\$ 189,096,958</u>	<u>\$ 201,638,797</u>

ANALYSIS OF CHANGE IN FINANCIAL STATEMENTS RESULTING FROM THE EXAMINATION

There were no changes in the financial statements resulting from the examination.

COMMENTS ON FINANCIAL STATEMENT ITEMS

Services provided by Baker Tilly to the Division for this examination included the services of Baker Tilly Actuaries (“Examination Actuary”) to perform a detailed review of the Company’s actuarial items, reserves and claims liability.

The Examination Actuary reviewed PwC’s assessment of the reasonableness of the reported statutory reserve calculations for BLICOA. The Examination Actuary is comfortable with the results of the PwC independent recalculation of reserves against the Company’s booked reserves.

The PwC actuarial team independently calculated a sample of disability reserves, which resulted in a 0.3% difference on reviewed reserves. Hence, the reserves held by the Company for these policies appeared to be reasonable. The Examination Actuary applied this maximum difference to the disability reserves held by BLICOA at December 31, 2020 to develop the low and high range of reasonable reserves. No adjustments to reserves or surplus were indicated as a result of the actuarial portion of the examination. The Examination Actuary also reviewed the actuarial reports prepared by BLICOA. The assumptions used were generally found to be reasonable and met the requirements of the insurance laws and regulations of the state of Massachusetts.

Additionally, the Examination Actuary reviewed the Company’s liabilities related to long-term care reserves, in order to assess that the run-off business was adequately priced and the long-term risks are properly managed. The PwC actuarial team independently calculated a sample of disability reserves, which resulted in a 0.1% difference on reviewed reserves. Hence, the reserves held by the Company for these policies appeared to be reasonable. The Examination Actuary reviewed the Company’s long-term care actuarial reports, in order to determine the reasonableness of the assumptions and methodologies utilized. BLICOA performed cash flow testing on a stand-alone basis, with their analysis demonstrating that under certain scenarios negative surplus develops during the projection period. Regardless, This business is 90% reinsured and the Examination Actuary is satisfied with the overall results of the testing, and that the assumptions and methodologies utilized are reasonable.

SUBSEQUENT EVENTS

In March 2020, the World Health Organization declared Coronavirus disease (COVID-19) a pandemic. As of the date of this report, there was significant uncertainty on the effect that the pandemic would have on the insurance industry, economy, and society at large. Any impact to the Company will take time to assess and will be specific to the class and mix of business it underwrites. The Division will continue to monitor how the pandemic might impact the Company.

In December 2021, the Company filed a Form D with the Division for the approval of an Investment Management Agreement between BLICOA and Park Avenue Institutional Advisors,

Berkshire Life Insurance Company of America

LLC (“PAIA”). The terms of this Investment Management Agreement will establish PAIA as the registered investment advisor for the Company. This Form D filing was approved by the Division.

SUMMARY OF RECOMMENDATIONS

No significant recommendations were identified during the examination that should be noted in this report.

SIGNATURE PAGE

Acknowledgement is made of the cooperation and courtesies extended by the officers and employees of the Company during the examination.

The assistance rendered by Baker Tilly in this examination is acknowledged.

John Curran

John M. Curran, CFE
Supervising Examiner and EIC
Commonwealth of Massachusetts
Division of Insurance