



NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Maria T. Vullo
Superintendent

July 13, 2016

Lisbeth Landsman-Smith, Chair
Unclaimed Benefits Model Drafting (A) Subgroup
c/o Jolie H. Matthews
Senior Health and Life Policy Counsel
National Association of Insurance Commissioners
Hall of the States Building, Suite 700
444 North Capitol Street, N.W.
Washington, DC 20001-1512

RE: Draft Unclaimed Life Insurance and Annuities Model Act –
Comments of the New York State Department of Financial Services

Dear Chairperson Landsman-Smith:

In preparation for discussions on the next meeting which is scheduled on July 15, 2016, the State of New York has the following comments for the Draft Unclaimed Life Insurance and Annuities Model Act revised as of June 3, 2016 (“Model Act”).

1. We compared the Model Act to Section 3240 of the New York Insurance Law (“NYIL”) and Department Regulation 200 (collectively “New York statutes”) and found differences that we believe would have a major impact on the unpaid benefits recovered as a result of conducting the Death Master File (“DMF”) searches. While participating on the Unclaimed Benefits Model Drafting Subgroup call, New York voted for the Model Act being applied on a retroactive basis. However, there are differences between the retroactive applicability contained in the New York statutes and the Model Act. The New York statutes require the DMF searches to include all life insurance policies, annuity contracts issued as well as retained asset accounts (“accounts”) established by a domestic insurer, or delivered or issued for delivery in this state by an authorized foreign insurer as well as accounts established by an authorized foreign insurer except a) where benefits were previously paid or rescinded with all premiums returned, b) where the policy is

returned under a free-look provision with all premiums returned, c) the insurer has novated the policy, d) the insurer does not maintain or control the records under the group policy, and e) the policy was terminated or lapsed with no benefits payable where a cross check was conducted within 18 months preceding the effective date of the statutes or a cross check was conducted more than 18 months prior to the most recent cross-check conducted by the insurer (Section 226.4(h) of Insurance Regulation 200). Under Sections 3N Drafting Note, 4A and 5A of the Model Act, insurers are only required to conduct DMF searches on all in-force policies, annuity contracts and retained asset accounts as of the effective date of the Model Act as well as policies, contracts and retained asset accounts that are issued and inforce after the effective date of the Model Act, and policies that have lapsed within 18 months prior to the effective date of the Act for both initial and subsequent searches. As such, the Model Act would exclude policies that lapsed more than 18 months prior to the effective date of the Act and those policies that lapsed after the effective date of the Act (policies that lapse or terminated prior to 2015 and after 2016, for example).

The exclusion of such lapsed or terminated policies would not address one of the primary concerns in establishing this Model Act. In particular, there may be instances where a death has occurred and no claim has been filed, but premiums continue to be deducted from the account value or cash value until the policy lapses, or expired in cases where the extended term non-forfeiture option was selected by the insured.

In addition, by only including in-force and future policies, annuity contracts and retained asset accounts as of the effective date of the Model Act and policies that have lapsed within 18 months prior to the effective date of the Act for the initial searches, the Model Act would be excluding policies that terminated prior to 2015 if the Model Act was promulgated this year. Since a lot of these policies are older policies (especially those that are issued in the 1980s or earlier), the chance of death occurring are much higher than the policies that the Model Act will cover. The following paragraphs provide a background of the initiative that New York State undertook prior to the promulgation of the statutes and the results of such initiative in covering these older policies.

On July 5, 2011, New York issued a letter authorized under Section 308 of the New York Insurance Law requiring all New York licensed insurers to perform cross-checks on life insurance policies, annuity contracts, and retained asset accounts covering the period as far back as the life insurer's electronic records will permit to the date of the letter. The insurers were also required to perform such cross-checks using common variations. The purpose of the letter was for all licensed insurers to identify policies, contracts or accounts that have lapsed or terminated due to the death of insured, to ensure benefits be paid instead of remaining dormant after death, to prevent the insurers from stopping payments on an annuity contract holder but not identifying the policies or

accounts to which benefit payments are due, and to ensure procedures are in place to locate the beneficiaries and process the death claims. The New York licensed insurers were required to provide an initial report with monthly updates on the results of such cross-checks.

At the completion of this initiative in June 2013, more than \$1.1 billion was recovered in unpaid life insurance benefits for consumers nationwide, including \$386 million for New Yorkers (from all New York licensed insurers) and \$426 million for consumers in other states (from insurers domiciled in New York); and the remainder of \$339 million for funds identified as “escheatment.”

We learned from discussions with insurers that the electronic records were maintained as far back as the 1980s. The \$1.1 billion recovered represents additional benefits to consumers and funds available for escheatment if the extent of the retroactive basis is to cover a span of 30 more years. By including only the in-force policies, contracts and accounts in the Model Act, there will be a large population of beneficiaries who will not receive benefit payments that they deserve on policies that were improperly lapsed or expired.

In addition, the promulgation of the New York statutes for the subsequent DMF searches takes into account the lapsed and terminated policies that have not been searched in prior cross-checks. Conversely, the Model Act does not take into account policies that have lapsed or terminated during and after the year of its adoption. This would have a significant impact on the unclaimed benefits being recovered since there will be an infinite number of future years where numerous policies would lapse or expire under extended term insurance for which death occurred but was not reported.

2. Another major difference that may have a major impact on the unclaimed benefits recovered in conducting the DMF searches is exemption due to hardship. Under Section 226.4(b)(1) of Regulation 200, an insurer may request for exemption in performing quarterly cross checks with the superintendent’s approval upon demonstration of hardship but in no event shall cross checks be performed less frequently than semi-annually. Section 5B(1)(a) of the Model Act states an insurer may be exempt from the DMF comparisons if the insurer demonstrates to Commissioner’s satisfaction that compliance would result in financial hardship to the insurer or not cost effective. Section 5B(1)(b) also states that the Commissioner, among other things, may consider the number of policies involved, the costs of conducting a retroactive search in relation to the collected premiums for those policies, whether the policy information is stored electronically

and whether the insurer previously has engaged in the use of the DMF for its annuity contracts, but not for its life insurance policies.

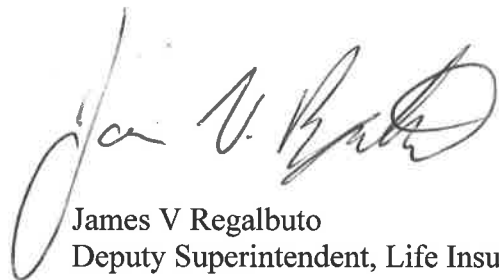
The main difference between the New York Statutes and the Model Act is that the Model Act allows for total exemption in performing the DMF cross checks whereas New York would allow for such cross checks to be performed on a semi-annual basis instead of a quarterly basis. By allowing certain insurers to be exempt for performing the DMF cross checks in its entirety, it will be contrary to the primary purposes for which the Model Act is established - to ensure benefits be paid instead of remaining dormant after death, and to ensure procedures are in place to locate the beneficiaries and process the death claims. In addition, the industry may argue that it is not fair or equitable for some insurers to be exempt from such practice. While criteria are established in the Model Act to allow such exemption, it is noted that since the promulgation of the New York statutes, there has not been a request for exemption in performing the quarterly cross checks. As of this date, no insurers have indicated to the Department that this practice would create financial or other hardship, or that the costs are excessive in performing the DMF cross checks. In fact, cost effectiveness or cost in relation to collected premiums should not be included as a factor in the exemption since the beneficiaries should receive death benefits that they are entitled to and for which are due to them. As mentioned previously, the earliest time period for maintaining electronic data is in the 1980s and based on the response to the July 5, 2011 letter, all New York licensed insurers are maintaining electronic data at least in the 1990s. As such, exemption on the Model Act should be granted in terms of the frequencies in performing the DMF cross checks and not to exempt companies from such searches in its entirety. Such exemption should be based on documented reasons for hardship and the phrase "cost effective" or similar language should be removed in determining such exemptions. If a Company is licensed in New York they should already be performing the cross-checks so they should not be claiming a hardship in their domiciled state.

3. Section 5A(4)(a) of the Model Act does not include [common] nicknames while Section 226.4(e)(1) of Regulation 200 contains nicknames in conducting searches using common variations. We believe that it's not uncommon for nicknames to be used on either the DMF or the Company records. Based on the fuzzy match review and the resulting statistics provided by the Vermont State Treasurer, Beth Pearce, on a Memorandum dated March 18, 2016; mismatched first name accounts for 35% of the total fuzzy matches where the Company agreed that a benefit was due and unpaid based on a DMF match and there was not an exact match for either the insured's SSN or the insured's first and last name and date of birth. Nicknames such as Jim (for James),

Tony (for Anthony) or Sam (for Samantha, Sammy) to name a few are common names that some people will use as first names on their official documents. Not including these nicknames will exclude a large population in the DMF searches that could result in positive identified matches. This is especially true for older policies (especially those that were issued prior to 1980) where the Company may only maintain limited information on the insured, account holder, or annuitant and the social security numbers may not be readily available, the use of common variations or fuzzy matches would be most helpful in identifying a large pool that would ultimately lead to positively identified matches.

In summary, New York would recommend the following changes to the Model Act: a) delete the word “in-force” and include policies that have lapsed or terminated with no benefits payable on the cross-checks without any limitations (unless they have been cross-checked previously) under Sections 3N Drafting Note, 4A and 5A, b) exemption should be applied only to the frequencies of performing cross checks instead of total exemption in performing the DMF cross checks and “cost effective” should be deleted as one of the factor in considering the exemption, and c) include [common] nicknames under Section 5A(4)(a). At a minimum, the word “in-force” should be bracketed with an option for states to adopt a time period for which the companies should search for all policies, contracts and accounts that were issued or lapsed (i.e. prior to a certain date); and an exemption should be applied in considering the frequencies of performing DMF without considering the cost effectiveness of such searches. We look forward to the Subgroup’s discussion in the upcoming conference call. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "James V. Regalbuto". The signature is fluid and cursive, with a large initial "J" and "R".

James V Regalbuto
Deputy Superintendent, Life Insurance