UNCLAIMED LIFE INSURANCE BENEFITS AND POLICY IDENTIFICATION

I, Benjamin M. Lawsky, Superintendent of Financial Services, pursuant to the authority granted by Sections 202 and 302 of the Financial Services Law and Sections 301, 316, 1102, 1104, 2601, 3240 (Unclaimed benefits), 4521, and 4525 and Article 24 of the Insurance Law, do hereby promulgate, as an emergency measure, Part 226 of Chapter IX of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Insurance Regulation 200), to take effect upon publication in the State Register, to read as follows:

(ALL MATTER IS NEW)

Section 226.0 Purpose

(a) Beginning in 2011, the Department conducted an investigation into how life insurance companies and fraternal benefit societies track life insurance policyholders. The Department’s investigation found that many insurers had been regularly using lists of recent deaths from the social security administration to promptly cease making annuity payments. However, most insurers had not been using the lists to determine whether death benefits were payable to beneficiaries.

(b) The public needs to know that insurers are taking reasonable steps to ensure that policyowners and policy beneficiaries are provided with all of the life insurance benefits for which they have paid and to which they are entitled. 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 existing policy values until the policy lapses. In other instances, the policies or accounts may simply remain dormant after death. In these instances, a valid death benefit is either not paid or distributed or is delayed.

(c) To ensure that policyowners and policy beneficiaries are provided with all of the benefits for which they have paid and to which they are entitled, this Part was promulgated on an emergency basis. Subsequently, the Legislature enacted Insurance Law section 3212-a, which was renumbered as section 3240, to address the issues that the Department had observed.

(d) This Part requires insurers to implement reasonable procedures to identify unclaimed death benefits, locate beneficiaries, and make prompt payments. In addition, to further ensure payment of unclaimed benefits, this Part requires insurers to respond to requests from the superintendent to search for policies insuring the life of, or owned by, decedents and to initiate the claims process for any death benefits that are identified as a result of those requests.

Section 226.1 Definitions

(a) Account means:
(1) any mechanism, whether denoted as a retained asset account or otherwise, whereby the settlement of proceeds payable to a beneficiary under a policy is accomplished by the insurer or an entity acting on behalf of the insurer placing the proceeds into an account where the insurer retains those proceeds and the beneficiary has check or draft writing privileges; or

(2) any other settlement option relating to the manner of distribution of the proceeds payable under a policy.

(b) Death index means the death master file maintained by the United States social security administration or any other database or service that is at least as comprehensive as the death master file maintained by the United States social security administration and that is acceptable to the superintendent.

(c) Insured means an individual covered by a policy or an annuitant when the annuity contract provides for benefits to be paid or other monies to be distributed upon the death of the annuitant.

(d) Insurer means a life insurance company or fraternal benefit society.

(e) Lost policy finder means a service made available by the Department of Financial Services on its website or otherwise developed by the superintendent either on his or her own or in conjunction with other state regulators, to assist consumers with locating unclaimed life insurance benefits.

(f) Policy means a life insurance policy, an annuity contract, a certificate under a life insurance policy or annuity contract, or a certificate issued by a fraternal benefit society, under which benefits are to be paid upon the death of the insured, including a policy that has lapsed or been terminated.

Section 226.2 Applicability

(a) This Part shall apply to a policy that is:

(1) issued by a domestic insurer and any account established under or as a result of such policy; or

(2) delivered or issued for delivery in this state by an authorized foreign insurer and any account established under or as a result of such policy.

(b) Notwithstanding subdivision (a) of this section, with respect to a policy delivered or issued for delivery outside this state, a domestic insurer may, in lieu of the requirements of this Part, implement procedures that meet the minimum requirements of the state in which the insurer delivered or issued the policy, provided that the superintendent determines that such other requirements are no less favorable to the policyowner and beneficiary than those required by this Part.

Section 226.3 Multiple policy search procedures

(a) Upon receiving notification of the death of an insured or account holder or in the event of a match made by a death index cross-check pursuant to section 226.4 of this Part, an insurer shall search every policy or account subject to this Part to determine whether the insurer has any other policies or accounts for the insured or account holder.
(b) An insurer that receives a notification of death of an insured or account holder, or identifies a death index match, shall notify each United States affiliate, parent, or subsidiary, and any entity with which the insurer contracts that may maintain or control records relating to policies or accounts covered by this Part of the notification or verified death index match. An insurer shall take all steps necessary to have each affiliate, parent, subsidiary, or other entity perform the search required by subdivision (a) of this section.

Section 226.4 Standards for investigating claims and locating claimants under policies and accounts

(a)(1) Except as set forth in paragraph (2) of this subdivision, at no later than policy delivery or the establishment of an account and upon any change of insured, owner, account holder, or beneficiary, an insurer shall request information sufficient to ensure that all benefits or other monies are distributed to the appropriate persons upon the death of the insured or account holder, including, at a minimum, the name, address, date of birth, social security number, and telephone number of every owner, account holder, insured and beneficiary of such policy or account, as applicable.

(2) Where an insurer issues a policy or provides for an account based on information received directly from an insured’s employer, the insurer may obtain the beneficiary information described in paragraph (1) of this subdivision by communicating with the insured after the insurer’s receipt of the information from the insured’s employer.

(b)(1) An insurer shall use the latest available updated version of the death index to cross-check every policy and account subject to this Part, except as specified in subdivision (h) of this section. The cross-checks shall be performed no less frequently than quarterly. An insurer may submit a request to the superintendent for the insurer to perform the cross-checks less frequently than quarterly, but in no event shall the cross-checks be performed less frequently than semi-annually. The superintendent may grant such a request upon the insurer’s demonstration of hardship.

(2) The cross-checks shall be performed using:

(i) the insured or account holder’s social security number; or

(ii) where the insurer does not know the insured or account holder’s social security number, the name and date of birth of the insured or account holder.

(3) An insurer may comply with the requirements of this subdivision by using the full death index once annually and using the death index update files for the remaining cross-checks in that year.

(c) If an insurer uses a resource instead of or in addition to a death index in order to terminate benefits or close an account, the insurer shall also use that resource when cross-checking policies or accounts pursuant to subdivision (b) of this section.

(d) If an insurer uses a resource more frequently than quarterly in order to terminate benefits or close an account, the insurer shall use that resource with the same frequency when cross-checking policies or accounts pursuant to subdivision (b) of this section.
(e) Every insurer shall implement reasonable procedures to account for common variations in data that would otherwise preclude an exact match with a death index, including:

1. nicknames, initials used in lieu of a first or middle name, use of a middle name, compound first and middle names, and interchanged first and middle names;

2. compound last names, and blank spaces or apostrophes in last name;

3. incomplete date of birth data, and transposition of the “month” and “date” portions of the date of birth;

4. incomplete social security number; and

5. common data entry errors in name, date of birth and social security data.

(f) If an insurer only has a partial name, social security number, date of birth, or a combination thereof, of the insured or account holder under a policy or account, then the insurer shall use the available information to perform the cross-check pursuant to subdivision (b) of this section, which may be accomplished by using the procedures outlined in subdivision (e) of this section.

(g) Every insurer shall establish reasonable procedures to locate beneficiaries and shall make prompt payments or distributions in accordance with Part 216 of this Title (Insurance Regulation 64).

(h) This section shall not apply to any policy or any account:

1. where the insurer has fully satisfied all obligations under the policy or account prior to the date that the cross-check is performed;

2. where the insurer has paid full death benefits on all insureds under the policy, or where the remaining obligations have been transferred to one or more new policies or accounts providing benefits of any kind in the event of the death of the insured or account holder;

3. where the insurer has paid full surrender benefits on the policy, including a policy that is replaced after full surrender;

4. where the policy has been rescinded and the insurer has returned all paid premiums;

5. where the policy has been returned under a free-look provision and the insurer has returned all paid premiums;

6. where the insurer has paid full maturity benefits under the policy;

7. where the insurer does not maintain or control the records containing the information necessary to comply with the requirements of this section under a group policy administered by the group policyholder;
(8) where all monies due under the policy or account have escheated in accordance with state unclaimed property statutes;

(9) where the insurer has novated the policy;

(10) where the policy is a group annuity contract that funds employer-sponsored retirement plans and the insurer is not obligated by the terms of the contract to pay death benefits directly to the plan participant’s beneficiary;

(11) where the insurer receives payroll deduction contributions for either a group or individual policy and a payment has been made in the 90 days prior to a cross-check;

(12) except as to retired employees, where premiums are wholly paid by an employer on an individual or group policy; or

(13) where a policy has lapsed or terminated with no benefits payable that was cross-checked with a death index within the 18 months preceding the effective date of this Part or that was cross-checked with a death index more than 18 months prior to the most recent cross-check conducted by the insurer.

Section 226.5 Lost policy finder application procedures

(a) An insurer shall:

(1) upon receiving a request forwarded by the superintendent through a lost policy finder, search for policies, excluding group policies administered by group policyholders where the insurer does not maintain or control the records containing the information necessary to comply with the requirements of section 226.4 of this Part, and any accounts subject to this Part that insure the life of, or are owned by, an individual named as the decedent in the request forwarded by the superintendent;

(2) report to the superintendent through a lost policy finder:

(i) within 30 days of receiving the request, or within 45 days of receiving the request where the insurer contracts with another entity to maintain the insurer’s records, the findings of the search; and

(ii) where the search reveals that benefits may be due, within 30 days of the final disposition of the request, the benefit paid and any other information requested by the superintendent; and

(3) within 30 days of receiving the request, or within 45 days of receiving the request where the insurer contracts with another entity to maintain the insurer’s records, for each identified policy and account insuring the life of, or owned by, the named decedent, provide to:

(i) a requestor who is also the beneficiary of record on the identified policy or account all items, statements and forms that the insurer reasonably believes to be necessary in order to file a claim; or

(ii) a requestor who is not the beneficiary of record on the identified policy or account the requested information to the extent permissible to be disclosed in accordance with Part 420 (Insurance
Regulation 169) of this Title and any other applicable privacy law, and to take such other steps necessary to facilitate the payment of any benefit that may be due under the identified policy or account.

(b)(1) An insurer shall establish procedures to electronically receive the lost policy finder request from, and make reports to, the superintendent as provided for in subdivision (a) of this section. When transmitted electronically, the date that the superintendent forwards the request shall be deemed to be the date of receipt by the insurer; provided however that if the date is a Saturday, Sunday or a public holiday, as defined in General Construction Law section 24, then the date of receipt shall be as provided in General Construction Law section 25-a.

(2) An insurer required to electronically receive and submit pursuant to this Part may apply to the superintendent for an exemption from the requirement that the submission be electronic by submitting a written request to the superintendent for approval.

(3) The insurer’s request for an exemption shall specify whether it is making the request for an exemption based upon undue hardship, impracticability, or good cause, and set forth a detailed explanation as to the reason that the superintendent should approve the request.

(4) The insurer requesting an exemption shall submit, upon the superintendent’s request, any additional information necessary for the superintendent to evaluate the insurer’s request for an exemption.

(5) The insurer shall be exempt from the electronic submission requirement upon the superintendent’s written determination so exempting the insurer. The superintendent’s determination will specify the basis upon which the superintendent is granting the request and for how long the exemption applies.

(6) If the superintendent approves an insurer’s request for an exemption from the electronic submission requirement, then the insurer shall make a physical submission in a form and manner acceptable to the superintendent.

Section 226.6 Report to the comptroller

An insurer subject to this Part shall include in the report required under Abandoned Property Law section 703 any information on unclaimed benefits due pursuant to this Part and the number of policies and accounts that the insurer has identified pursuant to section 226.4 of this Part for the prior calendar year under which any outstanding monies have not been paid or distributed by December thirty-first of such year, except potential matches still being investigated pursuant to section 226.4 of this Part. A copy of the report also shall be filed with the superintendent.
I, Benjamin M. Lawsky, Superintendent of Financial Services, do hereby certify that the foregoing is the new Part 226 of Title 11 NYCRR (Insurance Regulation 200), signed by me on January 27, 2014, pursuant to the authority granted by Sections 202 and 302 of the Financial Services Law and Sections 301, 316, 1102, 1104, 2601, 3240 (Unclaimed benefits), 4521, and 4525 and Article 24 of the Insurance Law, to take effect upon publication in the State Register.

Pursuant to the provisions of the State Administrative Procedure Act, prior notice of the proposed rule was published in the State Register on October 30, 2013. No other publication or prior notice is required by statute.

Date: January 27, 2014