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## The New York Department of Financial Services Announces Emergency Promulgation of Insurance Regulation 200 on Unclaimed Life Insurance Benefits

On May 14, 2012, the New York Department of Financial Services (the NYDFS) announced the emergency promulgation of [Insurance Regulation 200](#). The emergency regulation requires all life insurers doing business in New York to immediately begin implementing significant new procedures to identify unclaimed death benefits and locate beneficiaries so that prompt payments of benefits can be made. Regulation 200 will become effective June 14, 2012, which is 30 days after it was filed with the Secretary of State, and it remains in effect for 90 days thereafter.

Last July, the NYDFS had issued a letter to insurers pursuant to New York Insurance Law § 308 (the 308 Letter). The New York 308 Letter required life insurance companies and fraternal benefit societies doing business in New York (insurers) to conduct a cross check of their entire block of business against the U.S. Social Security Administration's Death Master File (DMF), or another comparable database, using "exact" match criteria. Every life insurance policy and annuity contract (together, a policy), and retained asset account (account) issued by a New York domestic insurer or delivered or issued for delivery in New York by an authorized foreign insurer since 1986 was subject to the requirement, with certain exceptions. Insurers were required to pay any unpaid death benefit payments that may have been due under the policies and accounts and to submit monthly reports to the NYDFS on their progress in bucketing, paying and/or escheating amounts due and payable with regard to valid matches against the DMF.

Now Regulation 200 has expanded, rather severely and without providing an opportunity for notice and comment, the scope of the procedures that insurers must immediately undertake to identify valid death claims and pay beneficiaries. Regulation 200 also significantly changes the scope of retained asset accounts of foreign insurers that are subject to the regulation from that contained in the 308 Letter (i.e., accounts delivered or issued for delivery in New York) to "any account established under or as a result of" a life insurance policy or annuity contract delivered or issued for delivery in New York. The emergency regulation's key requirements that go into effect on June 14 are as follows:

- Prior to issuing a policy or establishing an account, insurers must request detailed information regarding each owner, annuitant, insured and/or beneficiary of a policy or account. At a minimum, the insurer shall request names, addresses, social security numbers and telephone numbers.
- Insurers must conduct **quarterly** cross checks against the DMF (or a comparable database) of every policy and account using the criteria set forth in the 308 Letter.
- Insurers must implement "reasonable" matching procedures to account for common variations in data that would otherwise preclude an exact match with a death index. In other words, insurers are required to use an algorithm when cross checking the DMF that will generate **fuzzy matches**. This provision raises significant interpretative and systems issues.
- Insurers must establish "reasonable" procedures to locate beneficiaries and must make prompt payments or distributions of benefits.

- Upon receipt of notification of a death or identification of a death using the DMF, insurers must search every policy or account subject to Regulation 200 to determine whether the insurer has **any other policy or account** for the insured or account holder.
- Upon receipt of notification of a death or identification of a death using the DMF, the insurer must also **notify each life insurer in its holding company system** of the death notice, regardless of the location of the other insurer. This provision raises significant jurisdictional, notice and compliance issues.
- Insurers must respond to requests from the NYDFS Superintendent to search for policies insuring the life of, or owned by, decedents, and to initiate the claims process for any death benefits that may be identified as a result of the requests received through the new Lost Policy Finder system.
- Insurers must submit a report to the Office of the State Comptroller, by February 1 of each year, specifying the number of policies and accounts identified as having unpaid benefits as of December 31 of the prior year.

Many other aspects of Regulation 200 are troublesome for insurers, including whether the NYDFS has the authority to impose the regulation's requirements. Further, the 30-day time frame for implementing most of the procedures required by Regulation 200, such as the requirement to search for multiple policies and accounts, is highly problematic, especially when insurers have had no advance notice or opportunity to comment on procedures that go well beyond those required by the 308 Letter. While Regulation 200 gives insurers an additional 150 days from the effective date to implement fuzzy match procedures, the additional time is hardly sufficient for many insurers that do not have these procedures in place and whose systems currently do not support "fuzzy" match searches. There is also the potential for extra-territorial application of several aspects of Regulation 200.



*If you have any questions about this Legal Alert, please feel free to contact any of the attorneys listed below or the Sutherland attorney with whom you regularly work.*

<a href="#">Marlys A. Bergstrom</a>	404.853.8177	<a href="mailto:marlys.bergstrom@sutherland.com">marlys.bergstrom@sutherland.com</a>
<a href="#">Ellen M. Dunn</a>	212.389.5071	<a href="mailto:ellen.dunn@sutherland.com">ellen.dunn@sutherland.com</a>
<a href="#">James R. Dwyer</a>	212.389.5046	<a href="mailto:james.dwyer@sutherland.com">james.dwyer@sutherland.com</a>
<a href="#">Stephen E. Roth</a>	202.383.0158	<a href="mailto:steve.roth@sutherland.com">steve.roth@sutherland.com</a>
<a href="#">Cynthia R. Shoss</a>	212.389.5012	<a href="mailto:cynthia.shoss@sutherland.com">cynthia.shoss@sutherland.com</a>
<a href="#">W. Mark Smith</a>	202.383.0221	<a href="mailto:mark.smith@sutherland.com">mark.smith@sutherland.com</a>
<a href="#">Phillip E. Stano</a>	202.383.0261	<a href="mailto:phillip.stano@sutherland.com">phillip.stano@sutherland.com</a>
<a href="#">Steuart H. Thomsen</a>	202.383.0166	<a href="mailto:steuart.thomsen@sutherland.com">steuart.thomsen@sutherland.com</a>
<a href="#">Mary Jane Wilson-Bilik</a>	202.383.0660	<a href="mailto:mj.wilson-bilik@sutherland.com">mj.wilson-bilik@sutherland.com</a>
<a href="#">Wilson G. Barmeyer</a>	202.383.0824	<a href="mailto:wilson.barmeyer@sutherland.com">wilson.barmeyer@sutherland.com</a>
<a href="#">Tracey K. Ledbetter</a>	404.853.8123	<a href="mailto:tracey.ledbetter@sutherland.com">tracey.ledbetter@sutherland.com</a>