



NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Maria T. Vullo
Superintendent

**Individual Life Insurance Application Outline
(Last Updated October 10, 2017)**

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**Individual Life Insurance Application Outline
(Last Updated October 10, 2017)**

This outline is current as of October 10, 2017. Subsequent changes to statutes, regulations, circular letters, etc., may not be reflected in the outline. In case of any doubt, please contact the Life Bureau.

I) Scope

This product outline applies to all applications for individual life insurance policies delivered or issued for delivery in New York. This Outline replaces the document entitled “Individual Life Insurance Application Outline (Last Updated June 10, 2014)”.

An application is any form signed by an applicant that is used to obtain information from the applicant for use in determining acceptance or rejection of the request for insurance or for determining premium class of the proposed insured, regardless of whether the form is described as an application, a health/lifestyle questionnaire, a preliminary application, a trial application, a preliminary inquiry, an agent’s preliminary report, an informal inquiry, a request for information or something similar. Circular Letter No. 2 (1975). If an insurer has any doubt about whether a particular form constitutes an application, the insurer should contact the Department.

II) Submission Letter Requirements**II.A) General Information****A.1) Prior Approval Requirement**

Section 3201(b)(1) provides that no policy form shall be delivered or issued for delivery in this state unless it has been filed with and approved by the Superintendent as conforming to the requirements of the Insurance Law (standard and generally applicable provisions) and not inconsistent with law (federal and state statutory, regulatory and decisional law).

A.2) Discretionary Authority for Disapproval

Sections 3201(c)(1) and (2) permit the Superintendent to disapprove any policy form that contains provisions that are misleading, unfair, unjust, or inequitable or if its issuance would be prejudicial to the interests of policyholders or members. See also Sections 2123 and 4224.

A.3) No filing fee required.**II.B) Types of Filings****B.1) Prior Approval**

Application forms submitted under Section 3201(b)(1) of the Insurance Law are subject to the submission rules noted herein, especially Circular Letter Nos. 6 (1963) and 14 (1997).

B.2) Alternative Approval Procedure

- (a) Section 3201(b)(6) and Circular Letter No. 2 (1998) provide for an expedited approval procedure designed to prevent delays by deeming forms to be approved or denied if the Department or insurer fails to act in a timely manner.
- (b) Circular Letter No. 2 (1998) provides that the certification of compliance should make reference to any law or regulation that specifically applies or is unique to the type of policy form submitted. An alternative would be to submit a certification of compliance with the applicable laws and regulations cited in this Outline. A statement that the filing is in compliance with all applicable laws and regulations is not acceptable.

B.3) Prior Approval with Certification Procedure

- (a) Circular Letter No. 6 (2004) provides for an expedited approval procedure based on an appropriate certification of compliance signed by an officer of the insurer in the format provided by Circular Letter No. 6 (2004). Certifications that have altered or otherwise modified the language of the certification will not be accepted.
- (b) The original signed certification must be provided. The form number of each form and the memorandum of variable material for each form must be listed in the body of the certification, rather than in an attached list. For a certification pertaining to a large number of forms, the list may begin in the body of the certification and continue in list form on the second page.
- (c) The submission letters for paper submissions and the Filing Description for submissions made via the State Electronic Rate and Forms Filing system (SERFF) must comply with applicable circular letter and Outline guidance.
- (d) Substitution filings/follow-up correspondence with post-approval form changes requested prior to initial issuance of forms will not be permitted for Circular Letter No. 6 (2004) filings.

B.4) Filing of Non-English Versions of Forms

- (a) The English version of the form must be approved before the non-English version can be approved. The submission letter must identify, by form number, date of approval and Department file number, the previously approved form that is being translated into a non-English version.
- (b) The non-English version must have a different form number to distinguish it from the English version (e.g., the Spanish version of form App-123 could be App-123-S).
- (c) An original certification by a translator must be provided indicating that the text of the form is an accurate and complete translation of the English version of the form. The certification must reference the specific form numbers of both the English and non-

English forms and must reference the memorandum of variable material. The certification should not use qualifying language such as “to the best of my knowledge and belief.”

- (d) An original certification by an officer of the insurer must be provided indicating that the officer has exercised due diligence in choosing a competent translator or translation service. The certification must reference the specific form numbers of both the English and non-English forms. The certification must state that the underlying English language policy form achieves a minimum Flesch score of 45 in accordance with Section 3102(c)(1)(D). Section 3102(b)(H)(3).
- (e) If the approval of the English version of the form was subject to any conditions or limitations, then the non-English language version of the form will be subject to the same conditions or limitations.
- (f) If the non-English version of the form contains variable material, a memorandum of variable material must be provided. The exact language of any non-English alternate text must be set forth.

II.C) Preparation of Forms

C.1) Duplicates

Except for SERFF submissions, filings must be made in duplicate. Section I.E.7 of Circular Letter No. 6 (1963).

C.2) Form Numbers

Form numbers must appear in the lower left corner of the first page of the application. Section I.D of Circular Letter No. 6 (1963). The lower left corner of the subsequent pages of the application should either contain the same form number as the first page or should be left blank. The subsequent pages should not contain form numbers that differ from the form number on the first page.

C.3) Hypothetical Data

Completion of the application form with hypothetical data is not required. Section I.E.1 of Circular Letter No. 6 (1963).

C.4) Final Format

Application forms submitted for approval should be submitted in the form intended for actual issue. Section I.F.1 of Circular Letter No. 6 (1963). Revisions to font style, paper, weight and ink color are permitted provided that the forms continue to comply with all applicable laws, including but not limited to Sections 3102 and 3201(c)(4).

C.5) Submissions Made on Behalf of the Insurer

If the filing is made on behalf of the insurer by another party, a letter authorizing the third party to act on behalf of the insurer must be provided. The letter must be:

- (a) on company letterhead or include the company name in the subject line of the letter;
- (b) specifically addressed to the New York State Department of Financial Services;
- (c) properly executed by an authorized officer of the insurer;
- (d) dated; and
- (e) either
 - (i) specific to the file submitted for approval by including form number(s); or
 - (ii) generally applicable to all policy forms filed on behalf of the insurer as long as copy of such authorization is included in each submission.

It is the insurer's responsibility to ensure that their authorizations are accurate and reflect their current relationship with the third party filer.

C.6) Circular Letter No. 14 (1997)

Filings which are incomplete or do not comply with laws and regulations will be returned. See Circular Letter No. 14 (1997). Note that if an application does not comply with a specific requirement of this Outline, or is considered substantively non-complying with applicable law, then the file may be closed.

II.D) Submission Letter Requirements/SERFF Submissions

For SERFF submissions, the Life Bureau no longer requires that a separate signed cover letter be included with submissions. Instead, any information that would ordinarily be included in the signed cover letter must be in the Filing Description under General Information. Inclusion of "please see cover letter" or phrases of similar intent will not meet this requirement.

Note: References in this outline to submission letter content requirements are also requirements for SERFF General Information unless otherwise noted.

D.1) Caption Requirement

For paper filings, the "re" or caption of the submission letter must identify each of the forms that is being submitted for approval or filed for informational purposes and must be in compliance with Circular Letter No. 8 (1999). Section 3201(b)(6) ("Deemer") filings must be identified in the "re" or caption. Circular Letter No. 6 (2004) filings must be identified in bold

print in the "re" of the submission letter. Please see the guidance for SERFF filings available on the Department's website at <http://www.dfs.ny.gov/insurance/serflife.htm>.

D.2) Submission Letter Requirements

- (a) Identify any special markets where the application will be used including but not limited to employer-employee payroll deduction, senior citizen, juvenile, military, mail-order, COLI, BOLI, pre-need and private placements. Advise whether the application will be used for fully underwritten, simplified issue or guaranteed issue products.
- (b) State whether the application will be completed by telephone, on the internet or by other electronic means (e.g. agent's laptop) or will employ telephonic voice signatures or electronic signatures. If so, please see Sections II.E.4 and V of this Outline.
- (c) If electronic signatures or telephonic voice signatures will be used, the insurer must confirm compliance with New York's Electronic Signatures and Records Act and the federal Electronic Signatures in Global and National Commerce Act as well as Circular Letter No. 33 (1999).
- (d) If HIV testing or genetic testing will be required in conjunction with the application, this must be stated in the submission letter. See Section VI of this Outline.
- (e) If payment is accepted at the time of application, provide the form number and approval date of the conditional receipt or temporary insurance agreement that will be used in conjunction with the application. If the conditional receipt or temporary insurance agreement is pending approval, provide the Department file number.

D.3) Compliance with Section I.G. of Circular Letter No. 6 (1963)

- (a) Submit in duplicate, except for SERFF filings.
- (b) The submission letter must be signed by a representative of the insurer authorized to submit forms for filing or approval for the insurer.
- (c) Identify form number of each form submitted.
- (d) Indicate whether (1) the form is replacing a previously approved form (provide the form number and date of approval); (2) the form will be issued in addition to other similar forms (provide form numbers and dates of approval); or (3) the form is a new form unlike any previously approved form.
- (e) Provide the form numbers of the policy form or forms with which the submitted application will be used. Provide the corresponding approval dates, Department file numbers and a brief description of the type of products (e.g. whole life, universal life).

Please note these forms in particular must be approved by the Department and the above information must be provided for each:

- Conditional receipts or temporary insurance agreements (Section IV.B),
 - Statements of good health (Section IV.A),
 - MIB and Fair Credit Reporting Act notices (Section IV.C),
 - Questionnaires used with the application, and
 - Forms used to amend the application
- (f) If a form is intended to replace a very recently approved form because of an error found in the approved form, the insurer must:
- (i) If the approved form has not been issued, return the approved form with a statement in the submission letter that the form has not been issued. The insurer may, under these circumstances, use the same form number on the corrected form being submitted.
 - (ii) If the form has been issued, the insurer must place a new form number on the corrected form and need not return the previously approved form.

Note: The substitution process is not available for policy forms approved under the Circular Letter No. 6 (2004) procedure. Any change to a form previously approved under the Circular Letter No. 6 (2004) procedure requires a separate new filing.

Note: The corrected form must be submitted using the regular prior approval process and the submission must identify the changes made to correct the form.

Note: The above requirements regarding the return of a previously approved form do not apply to those forms previously approved in SERFF.

D.4) Explanation of Unique Features and Markets

- (a) Submission letters must identify any special market intended. See Section II.D.2(a).
- (b) Submission letters must fully explain any feature that has not been previously approved by the Department for the insurer or is new to the marketplace in New York.
- (c) When applicable, state whether the application will be used in a field issue or instant issue situation.

D.5) Extension of Approval

- (a) If an insurer intends to use a form in a manner that was not originally approved, the extension of approval must be submitted by the insurer in a new file. An extension of approval is only available when there are no changes to the originally approved form.

- (b) An extension of approval filing does not require a new form number.
- (c) Use of a previously approved application in a non-paper format is considered an extension of approval when there are no changes to the paper application, but an electronic signature, including voice, is obtained or when the application will be used in a different electronic manner (e.g., changing from completion on an agent's laptop computer to use for internet sales). A submission seeking the extension of approval for this purpose must address the information required at Section V as applicable.
- (d) If an approved form is simply displayed and completed on a computer screen in an agent's presence, with no changes to the form, and a wet signature is obtained from the applicant, no additional approval or filing is necessary.

D.6) Resubmissions

If the form has been previously submitted to the Department and the file was closed, any resubmission of the form to the Department must reference the file number of the previously closed file and address all outstanding issues in the new submission letter. The submission must be complete in and of itself and may not incorporate previously submitted material by reference.

D.7) Noncompliance Explanation

If the application form does not comply with a specific provision of this Outline, the submission letter must identify the provision and provide a complete explanation of the insurer's position on the issue. Such submissions may not be submitted through the Circular Letter 6 (2004) certified process unless the Department has given permission.

II.E) Attachments

E.1) Readability Certification

- (a) Provide a Flesch score certification signed by an officer of the insurer in accordance with Section 3102. The Flesch score must be at least 45. Please refer to the Department's February 18, 1982 letter, available on the Department's website, for a sample certification at <http://www.dfs.ny.gov/insurance/life/product/3102Intro.doc>
- (b) The application may be scored in conjunction with the policy to achieve a score of 45. Section 3102(c)(5).

E.2) Variable Material

The submission must include a separate detailed memorandum of variability for any variable material. The memorandum of variability is subject to approval and must comply with the filing guidance on the Department's website.

E.3) Screen Shots

- (a) If a previously approved application will be completed and signed electronically, provide screen shots of the application for informational purposes. Include any pop-ups, drop downs, FAQs, or linked material that could appear in the application process either within the screen shots or as a supporting document provided for informational purposes.
- (b) If an insurer is seeking approval of an application not previously approved that will only be available in an electronic format (i.e., will be completed and signed electronically) and there is no corresponding paper application, then screen shots must be submitted for approval as the application form. In this case, the screen shots must contain a distinct form number in the lower left corner in accordance with Section I.D. of the Department's Circular Letter No. 6 (1963) and must comply with all applicable requirements of this Outline. Reflexive material, including drop down options, must be submitted for approval in a corresponding Memorandum of Variable Material. Include any FAQs, pop-ups, or linked material that could appear in the application process as a supporting document provided for informational purposes.

E.4) Electronic/Telephonic Procedures

If the application is for use electronically (internet or on screen) or telephonically, then the exact use must be described. General descriptions, such as use in "an electronic format," are not sufficient. The insurer's procedure for collecting, transmitting, storing and protecting electronic information must be provided. See Section V of this Outline.

II.F) Key References

- F.1) Insurance Law: Sections 321, 403(d), 2611, 2612, 3201, 3203(a)(4), 3204, 3209, 3111, 3211, 4224 and Article 78.
- F.2) Other New York Law: General Obligations Law § 5-701 and 15-301, Executive Law § 296(16), Public Health Law § 2782, General Business Law § 380-c, State Technology Law § 309.
- F.3) Regulations: Regulation 19 (11 NYCRR § 45), Regulation 60 (11 NYCRR § 51), Regulation 62 (11 NYCRR § 52), Regulation 74 (11 NYCRR § 53), Regulation 77 (11 NYCRR § 54), Regulation 152 (11 NYCRR §243), Regulation 169 (11 NYCRR § 420), Regulation 200 (11 NYCRR § 226).
- F.4) Circular Letters: CL 4 (1963), CL 6 (1963), CL 2 (1975), CL 5 (1997), CL 14 (1997), CL 2 (1998), CL 8 (1999), CL 33 (1999), CL 2 (2001), CL6 (2004).
- F.5) Federal Law and Regulation: Internal Revenue Code Section 403(b), 15 U.S.C. §7001, 42 U.S.C. § 290dd-2(b), 45 C.F.R. § 164.508(a)(2) and (b)(3).

III) Individual Life Insurance Applications

III.A) Format

A.1) Insurer Name

- (a) The name of the licensed New York insurer must appear on the top portion of the application and be prominently displayed. The insurer's name must be at least as prominent as any marketing name or logo used on the application. See Section 3201(c)(1).
- (b) If the application will be used for two or more affiliated licensed New York insurers, the names of all licensed insurers may appear on the application form with a check box next to each insurer's name to designate the issuing insurer. The check box should appear on each form making up the application. Note: Insurer names may not be variable.
- (c) Marketing names, corporate logos, trademarks or affiliations on an application may not be used if they would have a tendency to mislead or deceive as to the true identity of the insurer, or create the impression that someone other than the insurer would have any responsibility for the financial obligations under the policy. Section 3201(c)(1). A marketing name may be used in the application form only if it appears in addition to a generic description of the policy.
- (d) No unlicensed insurer name can appear anywhere on the form. Section 3201(c)(1).

- A.2) A form identification number (consisting of numerical digits, letters, or both) must appear in the lower left corner in accordance with Section I.D of the Department's Circular Letter No. 6 (1963).
- A.3) A single application may not be used to apply for both individual life insurance products and group life insurance products.
- A.4) The use of bar codes is permitted provided that the bar code does not appear in the body of the form or in the lower left corner of the form.

III.B) Questions Personal/Health

- B.1) Questions must comply with Section V of Circular Letter No. 4 (1963).
- B.2) The phrase "to the best of your knowledge and belief" must qualify questions requiring applicant's opinion regarding the past or present health of the applicant or any person proposed for coverage. Section V.B.2 of Circular Letter No. 4 (1963).
- B.3) If the applicant is requested to provide additional details about a question relating to the health of the proposed insured, there must be language stating that an additional sheet of paper may be attached if necessary.

- B.4) If an application has questions or provides testing to determine an applicant's cognition, an insurer must be prepared to demonstrate how each such test or question produces a clear, consistent and specific basis for refusal, limitation or rate differential based on mortality risks. Section 4224.
- B.5) Questions concerning an applicant's past lawful travel history are prohibited. Section 2614.
- B.6) An insurer may inquire about a past conviction or a pending legal matter, but may not ask about a past arrest, plea or imprisonment. See Executive Law § 296(16).
- B.7) See Section VII of this Outline for guidance relating to an applicant's source of financing the premiums for the applied for policy.
- B.8) Questions pertaining to AIDS/HIV
 - (a) Any question pertaining to past or future testing (blood or diagnostic) must specifically exclude HIV tests. Section 3201.
 - (b) The application may not ask if the applicant has tested positive for HIV. Section 3201.
 - (c) Questions about AIDS or HIV infections are permissible only if phrased to ask if the applicant has ever been diagnosed or treated for AIDS and/or HIV infection by a licensed member of the medical profession. Section 3201.
- B.9) Prior to a policy's issuance, the insurer must request the information necessary to ensure that all benefits will be distributed to the beneficiary upon the death of the insured, including, at a minimum, the name, address, social security number, and telephone number of every owner, insured and beneficiary of the policy applied for. Section 226.4 (a) of Regulation 200. The application may contain this information.
- B.10) The application may contain a question to determine if premium due notices are to be mailed to a person other than the policyowner and if so the name and address of the person so designated. Section 3211(b)(1).

III.C) Application Statements Regarding the Insurance Product

- C.1) Questions and election of features must not be phrased to require the negative consent of the applicant.
- C.2) Questions about replacement of existing insurance policies in accordance with Regulation 60 must inquire about applicant's intent to replace an existing policy.
- C.3) All currently available plans of insurance must be set forth on the application or in the corresponding Memorandum of Variable Material (for example: 10-year term, 15-year term, 20-year pay whole life, etc). Section 3201.

- C.4) Only available riders may appear on the application. A rider is not available if it has not yet been approved. It is permissible to provide a space to write in the rider(s) selected by the applicant; however, all possible choices of riders must appear on the memorandum of variable material.

Note: If a rider is submitted for approval with an application and is approved at the time the application is approved, then the rider is considered an approved rider that may appear on the application.

- C.5) A question regarding an automatic premium loan must be asked with a “yes” or “no” response or an affirmative election to choose the automatic premium loan feature. An automatic premium loan may not be a default option.
- C.6) Questions pertaining to the use of dividends for participating policies must set forth all available options for selection by the applicant. Section 4231.
- C.7) If a policy offers a choice between a fixed interest rate and an adjustable loan interest rate, the choice must be provided on the application. Section 3201.
- C.8) The application may not make any references to policy forms that have not been approved (including riders).

Note: If a policy form is submitted for approval with an application and is approved at the time the application is approved, then the policy form is considered an approved form that may appear on the application.

- C.9) If the application/policy change form will be used to apply for, increase or add coverage for minors, include a question regarding the amount of insurance in force on the minor and the amount in force on the applicant to ensure compliance with the monetary limitations of Section 3207.

C.10) Riders

(a) New Issues

If there is no separate premium charge or cost of insurance charge for attachment of a rider to a policy, then the rider must be made available to all new issues of the policy or automatically attached at issue of the policy, if eligibility requirements are met. If the rider is not automatically attached to the policy, the rider must be listed in the application as available for election and there should be disclosure provided to the applicant indicating there is no charge for the rider. The written disclosure may appear on the application form or may be separately provided to the applicant.

(b) In Force Business

- (i) If there is no separate premium charge or cost of insurance charge for attachment of a rider to a policy, then the rider must be made available to all existing policy owners of that policy form, if eligibility requirements are met. If no underwriting is required, the insurer must either automatically send the rider to all existing policy owners of that policy form or provide written notification of the availability of the rider, including disclosure that there is no charge for the rider, to all existing policy owners of that policy form. If additional underwriting is required for a rider, then written disclosure of the availability of the rider, including disclosure that there is no charge for the rider, should be sent to all existing policy owners of that policy form.
- (ii) If there is a separate premium charge or cost of insurance charge for a rider, the rider may be offered to all existing policy owners by written notification, including disclosure of the charge for the rider. Written acceptance by the policy owner is required for all riders that have a separate charge or cost of insurance charge.
- (iii) Exclusion and limitation riders such as aviation limitation riders, military and naval limitation riders and special hazard exclusion riders are not subject to Section III.C.10.

III.D) Disclosure Requirements

D.1) War Exclusion

If the product applied for includes an exclusion from coverage in the event of war, the exclusion must be disclosed in the application. Regulation 19.

D.2) Accelerated Death Benefit

If the product applied for includes an accelerated death benefit, the application must include the disclosures required by Section 3230(a) and Regulation 143.

D.3) Waiver of Specified Premium

If a flexible premium product applied for includes a waiver of specified premium in the event of disability, notice must be provided with or in the application that the policy may lapse despite this benefit. If the notice is separately provided at the time of application it must be submitted for approval as a separate form.

D.4) Indeterminate Premium

An application for a policy with an indeterminate premium must include language to the effect that the initial or current premiums may change and the maximum guaranteed

premiums can be charged. If the language does not appear in the application, a separate signed notice can be used. The notice must be submitted for approval. Section 3201(c)(2).

D.5) Endowment

If an endowment policy does not qualify as life insurance under the Internal Revenue Code the following language should appear directly above the signature line in bold print:

IMPORTANT: The increase in cash value of this endowment policy will eventually create annual taxable income for the policy owner.

D.6) Graded Death Benefit Life Insurance

Applications for insurance with a graded death benefit issued between ages 50 and 75 must have a prominent notice on or with the application containing the following or substantially similar language approved by the Superintendent:

Since this policy is issued with minimal or no medical underwriting, the premium rate charged includes an extra mortality risk charge. If you are healthy enough to qualify as a "standard" risk, premiums would likely have been lower if you had applied for a fully underwritten policy.

This notice may be included as part of a sales illustration summary if the summary is used in place of preliminary information. Sections 53-2.3(a)(1) and (2) of Regulation 74.

D.7) Universal Life

- (a) The initial premium amount and the planned premium amount must appear on the application. Section 3201.
- (b) The available death benefit options must be set forth on the application. Section 3201.
- (c) If the applicant may choose between the guideline premium test and the cash value accumulation test, the options must be set forth on the application. Section 3201.

D.8) Variable Life

- (a) The following prominent statements must appear on the application for variable products as applicable:
 - (i) The amount or duration of the death benefit may vary under specified conditions.
 - (ii) Policy values may increase or decrease in accordance with the experience of the separate account.

- (iii) In the case of a variable endowment policy, the amount of the endowment payable at maturity is not guaranteed but is dependant upon the cash surrender value (subject to any specified minimum guarantees).
- (iv) A notice must appear in the application that the following are available upon request: Illustrations of benefits, including death benefits, policy values and cash surrender values. Such illustrations shall be in a form and content acceptable to the Superintendent.

Section 54.10 of Regulation 77.

(b) Investment options/list of funds

- (i) The investment options of a separate account initially listed in the application or application supplement are subject to approval. Investment options may be variable. The submission letter must state whether or not the plan of operations has been approved or, if awaiting approval, the date filed. If the plan of operations is not yet approved, the submission letter must state that the investment options will not be implemented until the plan of operations has been approved by the New York City office of the Life Bureau.
- (ii) Any change in the investment options must be filed for informational purposes. This filing must be made no later than 60 days after the amended plan of operations for the separate account. Section 3201(b)(7)(A). A plan of operations must be approved before filing a fund change only submission. See filing guidance on Department's website.

III.E) Authorizations/Agreements

- E.1) The application may not include fraud statements or warnings unless the application is also used to apply for accident and/or health insurance in which case the fraud statement or warning must specifically state that it does not apply to the life insurance portion of the application (or that it only applies to the accident and/or health portion of the application). Section 403(d). Such fraud statements or warnings may also appear if the application is used in states in addition to New York as long as the statement or warning specifically states that it does not apply to applicants in New York.
- E.2) If the release of mental health records is sought, the authorization should specifically exclude psychotherapy notes from the release. Such notes may only be released by a separate specific authorization. See 45 CFR § 164.508(a)(2) and (b)(3).
- E.3) The authorization may not include authorization for release of substance abuse diagnosis and treatment records unless the language pertaining to the release of the substance abuse diagnosis and treatment records complies with 42 U.S.C. § 290dd-2 and 42 C.F.R. § 2.31. See Circular Letter No. 8 (2017).

- E.4) The authorization must include the additional authorization required by Section 380-c(a)(2) of the New York General Business Law if an investigative consumer report is required as part of the application process.
- E.5) An authorization for the release of medical records must specify a length of time, no longer than 24 months, for which the authorization shall remain valid. The authorization must also state that it may be revoked at any time, and must state the procedure for making a revocation. Sections 420.18(a)(5) and (b) of Regulation 169.
- E.6) Reference to the insurer's liability in the event of disagreement is not permitted.
- E.7) The signature of any proposed insured over the age of majority is required if the release of medical records, personal information or authorization of an investigative consumer report is sought.
- E.8) All statements made by, or by the authority of the applicant for the issuance, reinstatement or renewal of a life insurance policy are deemed representations and not warranties. Section 3204(c).
- E.9) The application may not contain a statement regarding the health of the proposed insured between the time the application is signed and the time the policy is delivered unless a statement of good health is provided at the time of policy delivery. See Section IV.A of this Outline.
- E.10) The application must be signed by any proposed insured over the age of 14 ½ unless specifically excepted by Section 3205(c).
- E.11) Any certification with respect to the Taxpayer Identification Number (TIN) and backup withholding must be clearly stated. If there is a separate signature line just for the certification then the requirement that the certification be clearly stated is satisfied. If a single signature line is used for the certification and other provisions in the application, then the certification must be highlighted, boxed, printed in bold-face type, or presented in some other manner that causes the language to stand out from all other information contained on the application. Section 3201(c)(1). See also IRS Instructions for Substitute Form W-9.

III.F) Entire Contract

- F.1) If a copy of the application will be attached to the policy when it is issued, there must be language in the application to the effect that the application is to be attached to and made part of the policy. Sections 3203(a)(4) and 3204. Information provided by an applicant in the application cannot be used to contest the policy unless the application is attached at issue.
- F.2) No changes or corrections may be made to a signed application except administrative insertions may be made by the insurer only in such manner as to indicate clearly that the insertions are not to be subscribed to the applicant. Section 3204(d). Any other changes must

be made using a signed application supplement or application change form that has been approved by the Department.

IV) Attachments/Ancillary Forms

IV.A) Statement of Good Health

If the applicant is required to report changes in the health of the proposed insured between the date of application and policy delivery, or to certify to the health of the proposed insured at the time of policy delivery, the insurer must provide a statement of good health at the time of delivery. The statement of good health form must be submitted for approval. The following requirements apply:

- A.1) The statement must be made to the best of applicant's knowledge and belief.
- A.2) The statement of good health must be signed by the applicant.
- A.3) A statement of good health may not be used when a conditional receipt has been issued.

IV.B) Conditional Receipts/Temporary Insurance Agreements

- B.1) If payment is accepted with an application that requires evidence of insurability, the insurer must issue a conditional receipt or temporary insurance agreement ("TIA") to the applicant.
- B.2) A conditional receipt must comply with Section VI of Circular Letter No. 4 (1963). See Circular Letter No. 3 (1969).
- B.3) Although only required for health insurance products, guidance for TIAs may be found at Regulation 62 (11 NYCRR § 52.53).
- B.4) An insurer may only require a maximum of two medical exams at the time of application when a conditional receipt or TIA is issued.
- B.5) No conditional receipt or TIA is required for mail order situations.
- B.6) The conditional receipt will provide for coverage subject to a monetary limit specified in the receipt, contingent upon insurability as a condition precedent. The monetary limit may not consider any insurance coverage already in force, but may refer to pending applications.
- B.7) If a conditional receipt is used with an application the insurer may not use a statement of good health, and there may not be a statement on the application certifying to the applicant's health at the time of policy delivery or requiring that the applicant report changes in health after application and before policy delivery.

IV.C) Fair Credit Reporting Act and MIB Notices

If an insurer utilizes MIB, Inc, (formerly known as the Medical Information Bureau) or conducts an investigation pursuant to the Fair Credit Reporting Act (“FCRA”) in connection with an application for insurance, statutory notices must be provided to the applicant at the time of application. Any affirmation signed by the applicant must prominently note that the applicant has read and received a copy of the notices.

- C.1) The Fair Credit Reporting Act notice must include the language required by Section 380-c (b) of the New York General Business Law.
- C.2) MIB Notices
 - (a) The MIB notice must include the language required by Section 321 of the New York Insurance Law, as well as the language set forth in MIB General Rule C.3.
 - (b) The MIB’s toll free telephone number must appear on the notice form effective December 1, 2004.
 - (c) The address to which consumers may write to request copies of their MIB file must be set forth in the Notice as 50 Braintree Hill Park, Suite 400, Braintree, MA. 02184-8734.
 - (d) The MIB, Inc. requests that the authorization forms include the language “I authorize XYZ insurance companies or its reinsurers to make a brief report of my personal health information (or protected health information for member companies that are HIPAA covered entities) to MIB, Inc.(or “MIB” or Medical Information Bureau” for insurers that have not updated their forms to reflect MIB, Inc.).
- C.3) Detachable FCRA and MIB notices require separate and distinct form numbers from the application form and must be submitted for approval.

IV.D) Producer Compensation Disclosure

If the disclosure required to be provided at or prior to the time of application by Section 30.3 of Regulation 194 is included in the application form, the following language is acceptable:

The agent represents Blank Insurance Company in connection with the placement of insurance policies and services provided on behalf of Blank Insurance Company. For selling insurance policies, the agent will receive compensation from Blank Insurance Company based in whole or in part on the insurance contract the agent sells. This compensation may vary depending on a number of factors, including the type and amount of the insurance contract and the overall volume of business placed by the agent. The applicant may obtain information about the compensation expected to be received based in whole or in part on the sale of this policy or others shown, by requesting such information from the agent.

V) Non-Paper ApplicationsV.A) Disclosures and Notices

The disclosures required by Section 3209, Regulation 74 and Regulation 60 as well as FCRA and MIB notices must be provided to all applicants at or prior to the time of application. Insurers must be able to demonstrate how they meet these requirements upon request.

- A.1) The insurer must be able to show that the applicant agreed to receive disclosures in the manner chosen or that the applicant acknowledged receipt of the material. All procedures used by the insurer must be auditable.
- A.2) If a wet signature is used, then disclosures and notices may be provided in paper format along with the application at the time of signature.
- A.3) If an electronic or voice signature is used, this information may be provided as follows:
 - (a) During the interview via email or online; or
 - (b) Halting the interview while information is provided via regular mail, facsimile or email.
- A.4) A completed “Definition of Replacement” form must be signed by the applicant and obtained with or as part of each application. Section 51.5 of Regulation 60. Even if a policy will not be issued in replacement situations, this document is required and must be signed by the applicant. The insurer must advise the New York City office of the Life Bureau when notices are provided in a non-paper format.

V.B) Telephone ApplicationsB.1) Procedures

If a telephone interview is used in the application process, the submission must include a detailed description of the process. The description must be a stand-alone document in a paper filing or attached as a Supporting Document in a SERFF filing. The description must include the following:

- (a) Whether the telephone interview will be conducted by a licensed agent. Any questions involving the type and amount of insurance must be asked by an agent licensed in New York. Follow-up questions or questions in a “Part B” consisting of only medical questions need not be asked by a New York licensee.
- (b) The criteria used to determine which, if not all, applicants receive a telephone interview in conjunction with a written application and confirmation that such criteria and the questions asked of each applicant are non-discriminatory in accordance with Section 4224.

- (c) Whether or not the applicant's responses obtained in the telephone interview will be made part of the application and used to contest the policy.
 - (d) Whether or not a script is used during the telephone interview. See Section V.B.4 of this Outline for requirements if a script is used.
 - (e) Confirmation that any questions asked during a telephone interview that do not appear on a signed application form will not be used to contest the policy.
 - (f) Confirmation that if questions other than those that appear on the application form are asked during the telephone interview process and coverage is denied or rated other than as applied for due to those responses, that the applicant will be provided with a copy of the questions asked and the responses provided and the opportunity to correct.
 - (g) Advise how questions asked and responses to the telephone interview are maintained by the insurer (i.e., recorded or otherwise).
 - (h) The process by which the applicant is given an opportunity to review and revise answers prior to signature.
 - (i) How and when the applicant's signature is obtained on the completed application.
- B.2) All questions asked of the applicant in a telephone interview must be in compliance with all applicable statutes, regulations and circular letters. Questions that would be prohibited on an application may not be asked in the telephone interview, whether or not the responses become a part of the application.
- B.3) If a follow-up telephone call in conjunction with the application (including paper applications) may occur, the application must so state.
- B.4) Scripts Used With Telephone Interviews
- (a) When scripts are used to request information of an applicant on the telephone, and the responses to the questions are not signed by the applicant and are not made a part of the application form, the scripts need not be filed with the Department for approval. In this case, information obtained from the applicant pursuant to the telephone script cannot be used to contest coverage. Telephone scripts must be maintained by the insurer along with the policy form identification numbers of each application that will be used in conjunction with the script and must be available upon Department request. Insurers are required to maintain all information necessary for reconstructing the underwriting of the policy pursuant to Section 243.2(b)(1)(iv) of Regulation 152.
 - (b) If a script is not used, but an applicant is interviewed via telephone, the insurer must nonetheless comply with the record retention requirements of Section 243.2(b)(1)(iv) of Regulation 152.

- (c) When scripts are used that elicit information from an applicant which is made a part of the application form, the scripts are subject to the Department's prior approval. The telephone script must have a separate form identification number in the lower left hand corner. Such telephone scripts when submitted for approval must be accompanied by a certification of compliance signed by an officer of the insurer that to the best of the officer's knowledge and belief the telephone script complies with all applicable statutes, regulations and circular letters. The Department will rely entirely on the certification of compliance for the approval of the telephone script.

V.C) Electronic Applications

C.1) Types of Filings

(a) No Filing Required

If an application that has previously been approved in paper format is populated electronically by an agent based on answers being received from an applicant, the application is printed out in the exact form of the approved paper application, and a wet signature is obtained (the applicant is not directly interacting in any way with the electronic system), neither an extension of approval nor policy form filing is needed. However, if an electronic signature will be obtained, see Section V.C.1(b)(i) below.

(b) Extension of Approval Filing

If an insurer intends to use an electronic version of an application that does not vary in any way from the previously approved or pending paper application form (other than electronic formatting), the insurer must submit a request for extension of approval (see Section II.D.5 of this Outline) and provide screenshots of the application process as it appears on screen (see Section II.E.3(a) of this Outline). A new form number is not required. Some examples of where an extension of approval would be needed include where the application would be:

- (i) populated electronically by an agent based on answers being received from an applicant, and an electronic signature is obtained; or
- (ii) completed electronically by the applicant, and either signed electronically or printed out and a wet signature is obtained; or
- (iii) accessed and printed from the internet by the applicant, and a wet signature is obtained;

(c) Policy Form Filing

If an insurer is seeking approval of a new electronic application, which does not have a corresponding paper application or differs from any approved paper application and will

only be in an electronic format (i.e., will be completed and signed electronically), the insurer must submit the screen shots of the electronic application as the form, with a distinct form number. The screenshots, which are the policy form, must comply with all applicable requirements of this Outline. See Section II.E.3(b) of this Outline.

- C.2) For all electronic application submissions, include a separate document, attached as supporting documentation, which describes the electronic application process in detail. Information that should be included in this document includes the following:
- (a) Describe in detail how the application is completed (i.e., the agent populates the applicant's answers on a computer; the applicant fills out the application on a computer; the applicant receives an e-mail link to the application or accesses the application over the internet; the applicant communicates with the agent by telephone and the agent fills in the applicant's answers, etc.)
 - (b) Describe the process by which the applicant is given an opportunity to review and revise the answers prior to signature (i.e., the questions and answers are read back to the applicant by the agent; the applicant has to click through review screens showing all the questions and answers before proceeding to the signature, etc.)
 - (c) Describe how and when the applicant's signature is obtained on the completed application.
- C.3) For applications that are accessed, completed and/or submitted by an applicant to the insurer via the internet, in addition to the information required for all electronic applications, include the following information in the electronic process document:
- (a) The process whereby the applicant accesses the insurer's website. For example: the webpage for the application is linked to a banner advertisement, the page comes up as a result of a search, or the internet application is only provided to an applicant on request.
 - (b) Whether assistance is available to the applicant as the application is completed. If so, describe in detail how assistance is accessed and who provides assistance. For example: links to FAQs and explanations of terms, live chat, telephone help line.
 - (c) Whether any information is obtained in the application process that does not become part of the application.
 - (d) Describe any questionnaires or other ancillary material that may be accessed on the application website.
 - (e) How the internet application record is stored.
 - (f) Any other process involved in creating and maintaining electronic communications relating to the applicant or application. For example, if the insurer creates a web based 'account' for information or documents pertaining to the application, how is it accessed?

VI) Testing

VI.A) HIV Testing

- A.1) The insurer must create, follow and retain objective criteria that will be used to determine which applicants are subject to testing. Section 4224.
- A.2) The insurer must create, follow and retain written procedures to ensure the confidentiality of HIV testing. Section 3201.
- A.3) The insurer must create, follow and retain a consent form that is in compliance with Section 2611 of the Insurance Law.
- A.4) Urine testing may be used to detect HIV antibodies for insurance underwriting purposes in accordance with Circular Letter No. 2 (2001) if the requirements of Section 2611 of the Insurance Law and Section 2782 of the Public Health Law are met.
- A.5) Oral fluid testing may be used to detect HIV antibodies for insurance underwriting purposes in accordance with circular Letter No. 5 (1997) if the requirements of Section 2611 of the Insurance Law are met.

VI.B) Genetic Testing

- B.1) The insurer must create, follow and retain objective criteria to determine which applicants are subject to testing. Section 4224.
- B.2) The insurer must create, follow and retain written procedures to ensure confidentiality of genetic testing.
- B.3) The insurer must create, use and retain a consent form that is in compliance with Section 2615.

VII) Life Settlement Issues

VII.A) Section 7812 permits the following to appear in life insurance applications:

- A.1) The insurer may inquire as to whether the proposed owner intends to pay premiums with the assistance of financing from a lender that will use the policy as collateral to support the financing. Section 7812(a).
- A.2) The insurer may include the following notice to the applicant and the insured, or other notice acceptable to the superintendent, on the application or as an amendment thereto: "If you enter into a loan arrangement where the policy is used as collateral, and the policy changes ownership at some point in the future in satisfaction of the loan, then the following may be true: (1) a change of ownership may lead to a person unknown to you owning an interest in the insured's life; (2) a change of ownership may limit your ability to purchase insurance in

the future on the insured's life because there is a limit on how much coverage insurers will issue on one life; (3) if ownership of the life insurance policy changes, and you wish to obtain more insurance coverage on the insured's life in the future, the insured's higher issue age, a change in health status, and/or other factors may reduce the ability to obtain coverage and/or may result in significantly higher premiums; and (4) you should consult a professional advisor, since a change in ownership in satisfaction of the loan may result in tax consequences to the owner." Section 7812(b).

VII.B) Insurable Interest

Life insurance applications may also include questions to ascertain whether or not an insurable interest exists at the time of policy issuance as required by Sections 3205 and 7815. The following are examples of application questions that are generally permissible:

- B.1) Whether the proposed insured or policyowner has entered or has made plans to enter into a non-recourse or other type of premium financing agreement or arrangement in conjunction with the policy being applied for.
- B.2) Whether the proposed insured or the policyowner has entered or has made plans to enter into a contract, agreement or arrangement to sell, transfer or assign the ownership of or a beneficial interest in the policy being applied for to an unrelated third party.
- B.3) Whether the proposed insured or the policyowner has obtained or has made plans to obtain a loan secured by the life insurance policy being applied for as collateral.
- B.4) Whether the proposed insured or the policyowner was offered "free insurance" in connection with the policy being applied for.
- B.5) Whether the proposed insured or the policyowner is applying for this policy as a result of a solicitation to obtain life insurance for the purpose of selling or assigning the policy.
- B.6) Whether any financing arrangement or pending financing arrangement grants a creditor, investor, lender or other person an interest in the death benefit of the policy that is greater than the amount loaned plus applicable interest and charges.
- B.7) Whether there are existing life insurance policies on the life of the proposed insured and the amount(s) of any such policies.
- B.8) Whether the proposed insured or policyowner has sold, transferred, assigned or settled any life insurance policy or beneficial interest in a life insurance policy.
- B.9) Whether the proposed insured or policyowner was offered, has received or plans to receive any inducement, money or other consideration in connection with the life insurance application.

- B.10) Whether the proposed insured or policyowner has ever received any inducement, fee or compensation in connection with the application for or purchase, sale, transfer or assignment of a life insurance policy or a beneficial interest in a life insurance policy.
- B.11) Whether the life insurance premiums for the policy being applied for will be paid by any individual or entity other than the proposed insured or policyowner, his or her employer or immediate family members.
- B.12) Whether the beneficiary has an insurable interest in the proposed insured.