

**THE INSURANCE FILINGS
MODERNIZATION INITIATIVE**

REPORT TO THE SUPERINTENDENT OF INSURANCE

(December 2, 2010)

EXECUTIVE SUMMARY

The New York State Superintendent of Insurance (“Superintendent”) commenced the Insurance Filings Modernization Initiative (“Initiative”) in February, 2010. The Initiative was designed to streamline the New York State Insurance Department’s process for the review of rate, policy, license and other industry filings (the “Rate and Form Filing Process”). The Initiative was grounded in the precept that a more efficient and focused Rate and Form Filing Process would better protect consumers, help enhance competition in the insurance industry, and reduce unnecessary costs and burdens on regulated entities.

The Initiative was conducted by six committees that were each composed of industry representatives, with support from staff of the New York State Insurance Department (“Department”), and chaired by an industry representative (the “Committees”).¹ The Committees were: (1) Life; (2) Personal Lines; (3) Property; (4) Licensing; (5) Health; and (6) Transactional. The Committees met on numerous occasions during the year to identify ways to improve the Department’s Rate and Form Filing Process. In addition, the Department held a public hearing in June, 2010 for further industry and consumer input.

The Initiative has culminated in the development of this report, which contains a series of recommendations for the Superintendent’s consideration. Nine of the Committee’s recommendations are germane to all lines of insurance or segments of the insurance industry. The Superintendent should consider implementing these nine “universal” recommendations now as they are relatively easy to implement and would have an immediate and tangible benefit to the Rate and Form Filing Process. These recommendations are designed to: (1) enhance communication between the Department and industry participants; (2) increase the use of checklists and outlines to help industry participants more fully understand the Department’s requirements for the review and approval of filings; (3) promote the use of electronic systems to gain filing efficiencies; and (4) ensure that the Department retains resources sufficient to accomplish its core mission.

The Committees made twenty-eight additional recommendations that are more specific to certain lines of insurance or segments of the insurance industry. These recommendations include: (1) standardizing various filings to avoid unnecessary delays in the approval process; (2) increasing the number of filings permissible for speed-to-market methods (*e.g.* “file and use”) to allow new products to reach the market in a more timely fashion; (3) allowing for greater efficiencies in the rate-setting process by encouraging the Department to keep certain ratemaking information on file; and (4) requiring the Department to issue guidance to clarify its position on filing requirements for certain types of transactions. Before implementing these recommendations, the Superintendent may wish to consider the cost, policy and legal implications of doing so.

¹ Appendix A sets forth a list of the Committee members.

I. INTRODUCTION

The Department's regulatory duties include approving and reviewing the prices and contents of insurance policies and issuing licenses to producers and companies. Rate and form review is one of the first steps in protecting insurance consumers. The Rate and Form Filing Process permits the Department to screen insurers, producers and insurance products before they enter the market. The Department also examines an insurance policy's price, terms, and conditions to make sure they comply with New York law.

In 2009, the Department supervised over 1,280 insurance industry entities.² These supervised entities include: (1) 133 life insurance companies (81 domiciled in New York and 52 foreign companies) licensed to transact business in New York; (2) 1,050 property/casualty entities; and (3) 104 health insurers, Health Maintenance Organizations ("HMOs"), and other managed care organizations.³ Given the number of supervised entities, the Department manages a large volume of rate, form and other transactional filings.

For example in 2009, the Department issued or renewed approximately 100,000 producer licenses. This figure includes independent agents, who sell and service insurance policies for at least two insurance companies, agents, who sell and service insurance policies for specific companies, and brokers, who represent buyers rather than companies. In addition to licensing producers, the Department issued or renewed approximately 900 insurance company licenses in 2009. All of the licensing of producers and insurance companies requires review by the Department.

The life insurance industry submitted to the Department's Life Bureau 1,893 policy form submissions, consisting of 7,054 life insurance, annuity, funding agreement and other policy forms offered by life insurance companies, fraternal benefit societies, charitable annuity societies, and life settlement companies. Approximately 60% of the 7,054 policy forms were submitted through a speed-to-market or expedited approval process pursuant to the Department's Circular Letter No. 6 (2004) ("CL6 Process"). The life insurance industry submitted approximately 40% of the form filings under the normal non-expedited prior approval review process.

Similarly, the property/casualty industry submitted to the Department's Property Bureau 6,897 filings involving changes in rates, rating rules, policy forms, rate classifications, and rating territories submitted by rate service organizations, such as the New York Compensation Insurance Rating Board ("CIRB") and the Insurance Services Office ("ISO"). Approximately 4% of the 6,897 files submitted to the Department were submitted using speed-to-market pathways available to property/casualty insurance products. The property/casualty industry submitted approximately 96% of the submissions

² This figure excludes insurance producers.

³ The Life Bureau supervised approximately 530 organizations as of December 31, 2009. These organizations consist of: 133 licensed insurance companies; 38 fraternal benefit societies; 12 retirement systems; 9 governmental variable supplements funds; 267 charitable annuity funds; 24 employee welfare funds; 8 viatical settlement companies; and 39 accredited reinsurers. The Property Bureau supervised property and casualty insurers, accredited reinsurers, advanced premium co-operatives, assessment co-operatives, associations, risk pools, insurance syndicates, captive insurers, financial guaranty insurers, mortgage guarantee insurers, the New York Property Insurance Underwriting Association, title insurers, and United States branches of alien insurers.

under the normal non-expedited prior approval review process. The health insurance industry submitted to the Department's Health Bureau 2,469 filings, containing rates and forms. Approximately 19% of the 2,469 filings were submitted through a speed-to-market or expedited approval process available to health insurance filings.

The Committees' recommendations are intended to make the Rate and Form Filing Process more effective and efficient by, among other things, streamlining the process, reducing the overall number of filings, clarifying filing requirements, increasing the use of technology, and improving the level of communication between industry and the Department.

II. SYNOPSIS OF THE UNIVERSAL RECOMMENDATIONS

The Committees urge the Superintendent to implement the following nine recommendations now as they are relatively easy to put into practice and would have an immediate and tangible benefit to the Rate and Form Filing Process. These recommendations are "universal" because they impact operations across Bureau lines and were made by multiple Committees. They are:

1. Overhaul the Department's website to make it more organized, useful, and informative, to increase the Department's operational efficiencies and allow industry to access necessary information without the direct involvement or assistance of Department staff;
2. Increase the use of new and updated product outlines – Department guidance regarding product requirements, limitations, and permissible elements – to help the regulated community understand the applicable regulatory parameters before making a filing with the Department to decrease the number of non-compliant filings;
3. Increase the use of new and updated checklists – Department documents designed to help insure compliance of rates and forms;
4. Construct a comprehensive triage system within the Department for rate and form filings to streamline the Rate and Form Filing Process by systematically evaluating the complexity of filings, prioritizing the review of filings based upon complexity and importance, assigning filings to the appropriate staff for review, and granting approval authority to staff that is commensurate with the files they are assigned;
5. Expand the use of electronic filing through the existing System for Electronic Rate and Form Filing ("SERFF") – a national electronic filing and review system developed by the National Association of Insurance Commissioners ("NAIC") and the insurance industry – to lower the cost and amount of time required to address a filing by both industry and the Department;
6. Encourage pre-filing meetings between Department staff and representatives from the filing entity in an effort to address issues with complex or significant filings before they are filed with the Department;

7. Provide meaningful feedback to the management of companies that routinely have difficulty with filings so that errors are not repeated;
8. Conduct supervisory symposia between Department staff and personnel from the insurance industry on a regular basis to educate the industry about significant filing requirements and issues; and
9. Make all feasible efforts to maintain adequate funding for the Department to allow it to carry out its regulatory functions with the appropriate technology and amount of personnel.

III. SYNOPSIS OF THE COMMITTEE-SPECIFIC RECOMMENDATIONS

The Committees also made recommendations specific to certain lines of insurance or areas of the industry. The Superintendent may wish to consider the cost, policy, and legal implications of these recommendations before implementation. The recommendations, by each Committee, are:

a. Life

1. Support the adoption of the Interstate Insurance Product Regulation Compact, an interstate compact that provides for a single point of filing and approval of products by a commission established by the compact, so that approved products may be sold in New York without the need to make the corresponding filings with the Department;
2. Employ “Six Sigma”, a business management strategy designed to improve internal processes by identifying and removing defects and inefficiencies, to help the Department improve workflow and increase the speed of the Rate and Form Filing Process;
3. Study the feasibility of amending the rules and regulations that mandate retrospective changes to rates and forms that entered the market through speed-to-market methods but are thereafter found to be non-compliant during a post approval review (“PAR”) to allow for prospective revisions instead. Prospective revisions would decrease industry concerns over market disruptions and increased costs associated with amending rate revisions and policy forms previously approved pursuant to the CL6 Process;⁴
4. Revise the Department’s filing guidance on name and address changes to limit the necessity of refiling previously approved policy forms for review and approval;

b. Personal Lines

5. Develop a standardized data format for rate and form filings for homeowners’ insurance, allowing for a more efficient analysis of rate support data by the Department’s actuarial staff;
6. Require additional and more useful detail in the filing memoranda for personal lines of insurance so that Department staff can more effectively focus on the key components of the filing and avoid wasting time on non-substantive elements;

⁴ The Property Committee also made a similar recommendation.

7. Standardize, as much as possible, the automobile flex rate filings to reduce the time and effort committed by the Department to review private passenger automobile flex rate filings;
8. Increase the level of disclosure around filings that duplicate previously approved filings made by different companies (referred to as “me too” filings) and require assurances from the filing company that its book of business supports the adoption of the rating plan and rate filing;
9. Increase the universe of filings that are permissible under speed-to-market mechanisms (like the “file and use” method) to allow more innovative insurance products to reach the New York market in a more timely fashion;

c. Property

10. Allow property/casualty companies to leave on file with the Department a “loss cost multiplier” – a factor used by insurance companies to compute a rate for certain types of insurance – for automatic application to an underlying loss cost filing made by a rate service organization to reduce the number of loss cost multiplier filings;
11. Review and amend Regulation 86 (Special Risk Insurance) to increase the number of special risks that are considered large or exotic in nature so that they may be written, free of filing rates or policy forms, in the “Free Trade Zone” pursuant to Article 63 of the Insurance Law;
12. Expand the types of commercial insurance that are free from rate and form filing under Article 23 of the Insurance Law, which applies to property/casualty insurance rates;
13. Reverse the Department’s current position barring the use of catastrophic modeling in ratemaking for homeowners and commercial lines of insurance;
14. Modernize Regulation 121 (Claims-Made Policies; Scope and Application; Minimum Standards) to allow for more types of claims-made policies beyond those currently permitted to be written on that basis in New York;

d. Licensing

15. Implement technology enhancements enabling licensees to be more self sufficient with greater access to important information decreasing the need for help or input from Department staff;
16. Redesign the electronic licensing system to allow for one license to cover multiple lines of authority rather than requiring multiple licenses, saving time and resources of the Department and producers;

e. Health

17. Allow health insurers and HMOs to change premium rates, which may have otherwise been required to stay in effect for a certain length of time, when there is a new regulatory mandate and the insurance policy specifically permits the change in the rates;
18. Develop model or standardized contractual language for particular aspects of health insurance coverage to minimize the time required to review contractual language;

19. Increase the amount of time insurers have to respond to the Department's comments on a filing from fifteen days to fifteen business days to help reduce the number of requests for extensions;
20. Eliminate the requirement that an officer of an insurance company sign a certification regarding the "readability" level of insurance policies because the existing readability calculation methods are outdated and create inaccurate results;
21. Allow health insurers to apply a higher percentage of the cost for advanced radiologic services, such as magnetic resonance imaging and computerized axial tomography scans, to policyholders than would be applied to less advanced radiologic services, such as x-rays;

f. Transactional

22. Amend Regulation 44 (Sale of Insurance Securities) to exempt any insurance policy or contract and any funding agreement, other than funding agreements to organize, finance or acquire an insurer, from the provisions of Insurance Law §1204;
23. Issue official guidance on surplus or capital note transactions involving third party investors so that insurance companies are better informed about the Department's standards and requirements for surplus and capital notes;
24. Confirm that underwriters and brokers are not required to file an Insurance Law §1501(c) application for a determination of non-control under certain circumstances;
25. If legally possible, alleviate the need for each insurer subject to registration pursuant to Insurance Law §1503 to file both an annual report and the Holding Company Form 1 Registration Statement ("HC-1 Registration Statement");
26. Amend Regulation 52, which governs controlled insurers, holding company filings and transactions, to eliminate the outdated and repetitive filing format requirements set forth in subsections (b) and (c);
27. Amend Article 15 of the Insurance Law to impose a materiality threshold on affiliated reinsurance and service agreements that insurers must file with the Department for approval to lower the total number of such filings with the Department; and
28. Consider deleting paragraph six, which imposes certain requirements derived from Insurance Law §1505(c) and (d), from the Special Commitment sought from applicants for determinations of non-control under Insurance Law §1501(c) and to using it (or some variant) only in those circumstances where there is reason for the Department to be concerned about the possibility of affiliated-like transactions between the New York insurer and a disclaiming investor.

IV. DETAILS REGARDING ALL OF THE RECOMMENDATIONS

This section of the Report provides more details regarding the recommendations of the Committees.

a. Details Concerning the Universal Recommendations

i. Overhaul the Department's Website

The Committees recommended that the Department overhaul its website to make it more “user-friendly” with relevant information organized in a more logical fashion. This would make the website easier to navigate and minimize the number of selections necessary to reach important information. In addition, the Licensing Committee compiled a list of more specific recommendations for the website as provided below:

1. Uncluttered home page;
2. Minimal wasted space;
3. Avoid distracting animations, flash applications, and overly technical page layout;
4. Allow for a logical, step-by-step or hierarchical categorization of information with the website subdivided into groups like consumers, agents and brokers, insurers, and seniors;
5. Place information relevant to particular user groups physically located within those user groups on the main page of the website;
6. Provide constant access to website navigational sidebar;
7. Maintain individual button links to information that a user can find by following the categorical listings; and
8. Maintain links to specific sections and subsections of the law.

The Licensing Committee also suggested that the website provide a link to the Consumer Services Bureau (“CSB”), with a menu option to query the status of a filed complaint. The Licensing Committee suggested that such an addition would eliminate the need for complainants to call Department staff to obtain this information. Finally, the Licensing Committee suggested more effective use of the website to educate producers on the topics of maintaining a New York resident license, excess lines licensing requirements and reciprocity, fees schedules, licensing of business entities, appointments, continuing education requirements, sublicense requirements, and renewal application dates.

ii. Develop New or Update Existing Product Outlines

Some of the Committees recommended that the Department develop new and update existing product outlines to help the regulated community adhere to the product requirements of the Department. The Committees also recommended that the current or existing product outlines eliminate “unnecessary” product requirements that have accumulated over time. The Committees recommended that the Department seek to identify and reduce the stated requirements that no longer provide useful oversight value or that the Department no longer requires. They recommended that the product outlines contain all of the Department's existing requirements.

The Life Committee recognized that updating the twenty-six existing product outlines applicable to the life insurance industry is a large undertaking. However, the Committees are convinced that the up-front time and energy spent revising or creating product outlines will lead to a much larger resource savings once the product outlines are completed. In addition to certifying compliance with the applicable laws, regulations, and Circular Letters, the Life Committee discussed the possibility of requiring insurers to certify compliance with the product outlines for Circular Letter 6 filings – filings made pursuant to speed-to-market process for life insurance companies set forth in the Department’s Circular Letter No. 6 (2004) – once the Department updates the product outlines and puts in place a procedure to keep the product outlines current.

iii. Increase the Use of Up-to-Date Checklists

Another recommendation by the Committees concerned increasing the use of product checklists. The product checklist recommendations presuppose that the Department will regularly and appropriately update the checklists so that their use continues to be beneficial, mooted issues before they arise. Each of the Committees had slightly differing viewpoints on how best to use new or updated checklists as a tool for improving the Rate and Form Filing Process.

The Department’s Life Bureau generally does not require or use checklists to review policy forms. However, the Life Committee, during the Initiative, developed the Procedural Checklist to Avoid Common Submission Errors When Filing a Memorandum of Variable Material (the “MVM Checklist”). The Life Committee recommended that the Department encourage the industry to use, on a voluntary basis, the MVM Checklist as a guide to help filers avoid common submission errors or problems with their Memoranda of Variable Material.

The Property Committee recommended that the Department redesign its checklists to facilitate electronic completion and filing through SERFF. In addition, the Property Committee noted that redesigned product checklists, whether or not insurance companies are required to file them with the Department, would help industry develop compliant products. To that end, according to the Property Committee, the Department should develop a single streamlined “all lines” checklist with product-specific sub-lists to address product-specific elements.

The Health Committee recommended that the Department update the relevant checklists in order to provide enhanced information about pre-authorization requirements. The Health Committee noted that the checklists are very helpful to the industry for submitting compliant filings and utilizing speed-to-market review procedures.

The Transactional Committee recommended that the Department publish checklists that contain all the relevant requirements relating to the various required transactional filings. For example, the Transactional Committee recommended checklists concerning: (1) minimum required capital investments; (2) investment requirements by type of insurer; (3) standards and guidelines for derivative use plan filings; (4) instructions specifying to whose attention at the Department Article 15 filings should be made and the principal contact for such filings; (5) inter-affiliate service and reinsurance agreements; (6) the materials required to be filed in connection with a filing made in connection with an acquisition of control; (7) the information contained in the New York specific section of the United Certificate of Authority Application; (8) the factors considered in connection with a request for approval to pay extraordinary dividends; (9) the financial, and other, requirements applicable to mutual insurers; (10) the information and documentation necessary to review a request for a

“seasoning” waiver; and (11) the required information with respect to participating/non-participating policy permits.

iv. Develop a Rate and Form Filing Process Triage System for All Lines of Business

The Committees recommended that the Department re-examine its workflow process to develop a more active and effective triage system to handle filings as efficiently as possible. They recommended that any filing triage system should include an up-front evaluation of the complexity of submitted filings, so that the initial filing review could identify those filings that are less complex and can be handled expeditiously rather than put into the regular rate-and-form filing queue. The Committees further recommended that the Department consider the use of checklists as a tool to assist Department staff in assessing the complexity and completeness of submissions and to determine the appropriate level of review required for filings.

As part of this triage system, the Committees recommended that the Department also evaluate the level of approval authority given to Department staff reviewing filings so that the Department can, to the greatest extent possible, assign files to an appropriate reviewer for final approval. For instance, junior level Department staff should be able to approve, with finality, less complex or straightforward rate and form filings. The Department should put in place appropriate safeguards to ensure that filings are elevated to the appropriate staff level for review. More efficient and productive use of junior staff would free up time of more experienced staff to handle more complex filings. Supervisors should have final approval authority for the more complex filings.

The Health Committee specifically recommended that the Department require insurers to flag filings with no rate impact to allow for an expedited review by actuarial staff at the Department. The filing description field in SERFF (or the cover letter in a paper filing) should contain a prominent statement that the filing has no rate impact, and an actuarial certification and justification should be included in the submission. Companies that have no in-house actuary can submit the certification and justification through an officer of the company who is familiar with New York’s laws and regulations, but only for form submissions that are purely administrative in nature and/or necessary to comply with governmental language requirements with no rate impact.

The Personal Lines Committee made a similar recommendation. It recommended that rate filings meeting the specific criteria should be subject to review on an expedited basis. The proposed criteria for qualifying certain filings as “simple” are as follows: (1) Overall rate increases or decreases of no more than 5%; (2) No rate increases or decreases of more than 10% that apply to any one major line of coverage; and (3) No rate increases or decreases that result in more than 30% for any individual policyholder. In addition, the expedited filing rules would apply only to changes within an approved product structure and include rate classification/rule changes that the Department has already approved in some form in either a previous filing or in a competitor’s filing.⁵

The Property Committee recommended that the triage system assign priority status to multi-state program filings made by rate service organizations. The Property Committee reasoned that many property/casualty filings relate to multi-jurisdictional or national

⁵ Department staff recommended one additional element. For a filing to meet the requirements for expedited review, the filer must not have filed for a rate change during the proceeding twelve months.

products where timeliness and interstate consistency are concerns for companies trying to market such products and without a uniform approach in the various jurisdictions, insurers must maintain costly exceptions. In some cases, this puts New York commercial policyholders at a disadvantage in terms of having access to up-to-date and innovative products that become available earlier to competitors operating from a different jurisdiction.

The Property Committee also provided additional input on a triage system. It recommended that: (1) the filer's explanatory memorandum should be reviewed to ascertain whether the filing needs to be referred to another unit; (2) a single coordinator should be appointed for the filing; (3) at the earliest time, the initial reviewer should make the determination as to which units within the Department need to receive the filing; (4) any multi-unit review processes should occur simultaneously to the degree possible rather than on a consecutive basis; and (5) if legal or actuarial issues need to be addressed, resolutions should be sought as soon as practicable.

v. Leverage the Use of SERFF

One of the most notable advances in improving the Rate and Form Filing Process has been SERFF, which offers a standard electronic format for new product filings and enables Department staff to receive, comment on, and approve or reject insurance industry rate and form filings electronically. The Committees universally recommended that the Department and industry review the use of SERFF to identify areas where industry and the Department could more effectively utilize SERFF.⁶ The Committees separately provided their own recommendations to improve the use of SERFF.⁷

The Property Committee made two specific recommendations regarding the improved use of SERFF. First, it recommended that the Department utilize the communication "messaging" features in SERFF to minimize the time devoted to communication between the filer and Department staff. The Property Committee believes that the Department could implement the message features, including message suppression features, in SERFF immediately. Department staff can take advantage of the instructions in the SERFF Users Manual or contact staff at the NAIC for assistance. Department staff and the Property Committee further recommended that filers send an email to the file reviewer as a temporary or back-up measure. The Property Committee and Department staff also recommended that Department contact information for the reviewing examiner/actuary be provided in SERFF as a resource for insurers.

⁶ Most of the Committees suggested that the Department mandate the use of SERFF. This recommendation would require regulatory change and other considerations may not permit the adoption of SERFF data management features as the sole repository of Department filing records. The Department's Office of General Counsel would need to examine this particular component of the SERFF related recommendations before the Department could pursue it further.

⁷ Department staff notes that Insurance Law § 316 states that the Superintendent may promulgate regulations to require an insurer or other person or entity making a filing or submission with the Superintendent pursuant to this chapter to submit the filing or submission to the Superintendent by electronic means. Should the Superintendent require that a filing or submission be made by electronic means, an insurer or other person or entity affected thereby may submit a request to the Superintendent for an exemption from the electronic filing requirement upon a demonstration of undue hardship, impracticability, or good cause, subject to the approval of the Superintendent. The Department is currently drafting such a regulation.

The Property Committee's second SERFF-related recommendation concerned the electronic filing process. It recommended that the Department modernize the filing submission process by redesigning, in a user-friendly electronic format ("wizard"), the preparation of filings. The wizard format redesign would enable a filer to save a basic checklist for a particular product and use that checklist repeatedly rather than having to complete it from scratch with each new filing. The NAIC considers electronically completed checklists to be a best practice. Also, Department staff would benefit from this electronic enhancement because it would allow examiners to focus their reviews on particular elements of the filing, locate them more easily, and approve or disapprove of them more quickly.

The Health Committee also made a specific recommendation to more fully utilize SERFF. The Health Committee recommended that the Department develop the means to deliver stamped "approved" policy forms through SERFF. Approved policy forms are currently hand stamped and sent by regular mail, sometimes resulting in a delay of several days from receipt of the electronic disposition in SERFF which provides notification of the approval. Also, in an effort to save the cost of storing paper, insurers are storing their documents electronically and the electronic transfer of a stamped form via SERFF would avoid handling paper documents. The benefits to the Department of an improved electronic process include the elimination of support staff resources needed to print, hand stamp, scan, and mail final policy forms, and a cost savings for postage. In addition, the approved version of the policy forms will be identified more clearly for future preparers, reviewers, and examiners who access the filing in SERFF.

The Transactional Committee suggested that the Department expand the use of SERFF to include transactional and related filings so that insurance companies and the Department may realize efficiencies and cost savings with transactional and related filings as well.

vi. Encourage Pre-Filing Meetings

Department staff is uniquely situated to provide valuable insight and guidance on achieving a successful filing outcome. Currently, many insurers arrange for pre-filing meetings with the appropriate members of Department staff. However, such pre-filing meetings are held on an ad hoc basis. The Committees suggested that the Department make clear that pre-filing meetings on complex or innovative filings is the Department's preferred first step in the Rate and Form Filing Process.

vii. Provide Feedback Regarding the Quality of Filings

Multiple Committees recommended that the Department work to identify entities that routinely make inaccurate or incomplete filings. The Property Committee recommended that Department staff use this data to inform management of the companies identified as having consistent issues with filings in an effort to improve the quality of the filings. The Life Committee took this basic idea further with respect to filings made under the CL6 Process and recommended that the Department institute measures, including prohibiting companies from utilizing the CL 6 Process, to encourage improvement in the quality of filings. However, the Life Committee cautioned that the Department should consider the specific facts creating the problem before imposing remedial measures. In addition, the Department should consider the potential impact on the filer before it determines the appropriate action to take.

viii. Conduct Rate and Form Filing Review Process Training

The Committees recommended that there be more formal interaction between the Department filing review staff and industry filing personnel. Specifically, interactive seminars would provide a path toward understanding the filing process and the thought processes that go into the Department's decision-making. Accordingly, the Committees recommended that the Department hold educational seminars on a quarterly, but no less frequently than semi-annual, basis.

ix. Work to Maintain Department Resources

It is imperative that the Department maintain an adequate workforce to manage the large volume of filing submissions, handle complaints and issue or renew licenses. When available, the Department should use its financial resources to hire and train appropriate staff to allow the Department to more effectively fulfill its core missions of protecting consumers and regulating insurers.

b. Details Concerning Committee-Specific Recommendations

i. Life

Many of the specific recommendations of the Life Committee are addressed by prior sections of this report, including the Life Committee's recommendations regarding product outlines, checklists, triage systems, and maintaining the Department's resources. However, the Life Committee made the following four additional recommendations:

- Support the adoption of the Interstate Compact. The Interstate Compact, created by the NAIC, permits life insurance companies to file certain types of life insurance products with a commission established by the Compact ("Compact Commission"). The member-states of the Interstate Compact authorize the Compact Commission to approve products, based upon uniform product standards adopted by the Commission, on their behalf. According to the Life Committee, thirty-six states have joined the Interstate Compact and the Compact Commission has approved over fifty product standards for use by the Compact Commission in reviewing product filings. Joining the Interstate Compact would reduce the volume of life insurance product filings because the Compact Commission would address filings rather than the Department.⁸
- Investigate the adoption of rules that permit insurance companies to make prospective (rather than retrospective) changes to policy form filings that are found to contain errors during a post approval review by the Department if the errors are based on a new position or legal interpretation by the Department that occurred after the CL6 Process approval of the form filings. The Life Committee raised the concern that insurers who rely in good faith on product outlines or other guidance when they make their CL 6 filings are then requested to make costly revisions to in-force policies. The possibility of having to make revisions to in-force policies causes some insurers to avoid use of the CL 6 process and other speed-to-market processes.

⁸ This recommendation does not address direct ways to improve the Department's Rate and Form Filing Process but rather suggests that the Department cede the process to the Compact Commission. In any event, the Department has significant concerns with New York joining the Interstate Compact and the issue requires further study.

The Life Committee's recommendation reinforces the need for the Department to have up to date product outlines for use by insurers.

- Apply Six Sigma principles to the Life Bureau's procedures for the review of filings made by insurance companies on a prior approval basis, speed-to-market basis (i.e., expedited approvals based upon the filing of certifications under the CL6 process), or post approval to test the existing Rate and Form Filing Process and make improvements. The Life Committee suggested that industry could assist the Department in obtaining the necessary training of its staff in Six Sigma principles.
- Reconsider the Department's current guidance on name change and merger filings to see if re-filing of previously approved policy forms for review and approval is necessary under all circumstances. Insurers consider this second approval process unnecessarily burdensome. However, the Committee acknowledged that analysis will be necessary to address some difficult issues. For example, the previously approved policy forms may no longer be in compliance if the law or regulations have changed. Also, if the Department does not have on file the current version of policy forms, that may create problems with examinations and with the ability to respond to freedom of information ("FOIL") requests and complaints.

ii. Personal Lines

The specific recommendations of the Personal Lines Committee are:

- Develop a standardized data format for insurers to utilize when submitting rate and form filings for homeowners insurance. A standardized data format would permit a more efficient analysis of rate support data by the Department's actuarial staff.
- Require that the filing memorandum submitted by the filer provide detail on the proposed changes contained in the rate and form filing, including a description of all rate and rule changes along with references to the supporting exhibits. The Personal Lines Committee also recommended that the memorandum, to the greatest extent possible, include the following: (1) the product line of business; (2) the specific forms, rating classifications and product introductions included in the filing; (3) the Department file number for any referenced previously approved filings; (4) the rate impact (if applicable) and the reference to rate histograms contained in the filing; (5) the forms amended or added (if applicable) and reference to side-by-side comparisons of amended filings; and (6) bookmarked PDF files to aid the reviewer in locating required exhibits, side-by-sides, histograms, forms and rate manual pages. A more detailed and useful filing memorandum should enable Department staff to more quickly review the filing and allow for a more focused review.
- Streamline the private passenger automobile flex rate filings by standardizing, as much as possible, the components of the filings. The Department could significantly reduce the time and energy devoted to private passenger auto flex rating filings if the Department standardized the filings. More specifically, insurers should include with each flex filing the underlying ratemaking components to allow for more junior Department staff to assist in the development of rate indications. The Department should develop an input form and instruction sheet for distribution to insurers that will supply the required information with their flex rate filings.

- Require filings that copy components of previously approved filings to exactly match the approved components and be in compliance with existing laws and regulations. If the filings do not match exactly, the insurer’s filing must note any differences in the filing memorandum and provide a side-by-side comparison of the previously approved filing to the filing under review. Insurers must also assure the Department that the proposed filing is reasonable for the insurer’s own book of business. For rate filings, the insurer should provide a narrative to compare its underwriting, expenses and claims handling with the “me too” insurer’s to help the Department reach a conclusion more quickly about the appropriateness of the filing for the filing insurer.
- Provide up-to-date guidance on the Department’s position as to which lines of business are subject to the Department’s speed-to-market process and increase the number of filings that qualify for speed-to-market treatment. The Personal Lines Committee believes that the Department removes too many filings from the speed-to-market pipeline. According to the Personal Lines Committee, Department staff has indicated that the appropriate filings for the speed-to-market process are form filings that adopt revisions filed by rate service organizations, “me too” submissions, forms that provide for broadened coverage, and simple non-auto rate filings that include across-the-board rate changes. The Personal Lines Committee recommends that the Department expand the universe of permissible speed-to-market filings to include: Commercial Multiple Peril, Commercial and Personal Umbrella when there are no changes to optional Supplementary Uninsured/Underinsured Motorist (SUM) Coverage, Inland Marine (including hull coverage on boats) and Watercraft Liability. The recommendation that the Department improve the level of communication about what lines of business are permitted under the speed-to-market process is highlighted by the fact that the Department has always encouraged the use of speed-to-market, even for those filings that the Personal Lines Committee has recommended be allowed to be submitted using speed-to-market procedures. Increasing the number of filings that the Department permits under the speed-to-market mechanisms will provide policyholders with the most up-to-date coverage available and the most innovative products in a shorter amount of time.

iii. Property

The specific recommendations of the Property Committee are:⁹

- Allow property/casualty companies to adopt the “on file multiplier” option for filings that include adoption of rate service organization loss cost filings. The Property Committee believes that this recommendation, if implemented, would reduce the number of filings that are unnecessary from a regulatory standpoint and focus the Department’s resources on more complex or substantive matters.
- Review and amend Regulation 86, which concerns the types or nature of insurance that may be written free of rate and form filing in the Free Trade Zone established by Article 63 of the Insurance Law, to (i) increase the number of commercial policies

⁹ Department staff notes that some of the specific recommendations of the Property Committee would require amendments to Articles 23 and 63 of the Insurance Law.

that qualify for special risk treatment, (ii) expand the capacity and competitiveness of New York authorized insurers to write in the Free Trade Zone, and (iii) reduce the number of filings made for standard commercial lines. The Property Committee specifically recommended that the Department amend Regulation 86 to: (1) eliminate the 25% cap on Special Risk Insurance premium; (2) expand the class 1 definition to a single line eligibility of a billed annual premium of at least \$100,000 per policy; and (3) eliminate the \$200,000 per risk limitation. Increasing the number of special risks that may be written, free of filing rates or policy forms, in the “Free Trade Zone” pursuant to Article 63 of the Insurance Law will decrease the total number of rates and forms filed with the Department for review.

- Add certain lines of insurance to the category of insurance lines that do not require the filing of forms and rates for the Superintendent’s prior approval. The Property Committee specifically requested that the Department consider waiving the filing requirements for the forms and rules filings for commercial (1) fidelity and burglary & theft, (2) boiler & machinery including mechanical breakdown, (3) manufacturers and commercial output, and (4) highly protected risks. The Department notes that the implementation of this recommendation involves a public hearing under Section 2311(a) of the Insurance Law.
- Revise the Department’s current position barring the use of catastrophe modeling in ratemaking for homeowners and commercial lines property rates (*see* Circular Letter No. 7 (1998)).
- Review and revise the requirements of Regulation 121, which governs the use of and requirements for claims-made policies, to allow “standard” general liability and liquor law liability claims-made policies. According to the Property Committee, the Department promulgated Regulation 121 during a capacity crunch for liability insurance in the 1980s. The Department implemented subsequent restrictions due to the concern at that time that the market would move inappropriately to claims-made liability policies. Several states implemented restrictive regulations similar to New York. Most of those states have now significantly reduced or revised their claims-made restrictions. Just over the past few years, Texas, Nebraska and Vermont have changed their position prohibiting claims-made coverage forms. Currently, Massachusetts is the only state that still has restrictions that preclude standard Comprehensive General Liability and liquor liability claims-made forms. Countrywide, approximately 2% of general liability policies (*i.e.*, premises/operations, products/completed operations and composite rated risks) are written on a claims-made basis. The Property Committee concluded that the market is appropriately self-regulating these forms and there is no need for the claims-made restrictions. The Property Committee also noted that certain provisions of Regulation 121 are particularly problematic. First, the definition of “termination of coverage” triggers too broad a need for extended reporting periods. Second, the basic extended reporting period is required to be 60 days, rather than the industry-standard 30 days. Third, once established, a retroactive date may not be changed, although there are circumstances when such a change is both necessary and pro-policyholder. Fourth, the 15% increase cap on a voluntarily quoted extended reporting period at the beginning of the policy deters insurers from making such voluntary offers.

iv. Licensing

The specific recommendations of the Licensing Committee are:

- Implement technology enhancements enabling licensees to be more self-sufficient. The proposed technology improvements would benefit the industry by allowing the industry more access to information on-line. Specifically, the Licensing Committee recommended that the Department:
 - Provide access to more on-line information;
 - Permit on-line producer searches without requiring confidential information. Search results would display at a minimum: name, address, date of birth, active lines of authority, license status, carrier appointments, previous license periods and designated responsible person/sublicensees for insurance agencies. This functionality would eliminate the need for a FOIL request for licensing information;
 - Modify the customer service telephone system to provide a clear prompt to speak with a representative;
 - Establish an on-line method to keep track of continuing education for licensees and allow for automatic input of the information for renewals;
 - Enable insurance producers to print their own Department-issued licenses;
 - Allow entity licenses to be correctly issued in first then last name format, to prevent the need for licensees to make “doing business as” filings in other states;
 - Impose a requirement for licensed producers to maintain accurate and current email contact information with the Department;
 - Improve data exchange with the National Insurance Producer Registry (“NIPR”) in order to:
 - Resolve rejection of appointments and license terminations;
 - Modify NIPR applications to allow for business entity licensing;
 - Immediately update NIPR with renewal dates; and
 - Allow for surplus lines licensing;
 - Ensure that all agency appointment information is accessible on-line in a more timely fashion; and
 - Improve the Department’s communication with applicants who have answered affirmatively to two or more of the administrative questions on the producer license application to allow for a quicker review of their license applications.
- Re-design its licensing system to allow for one license to cover multiple lines of authority. The Licensing Committee reasoned that it would be easier for producers and regulators to have one license with a capability of adding additional lines of authority. Currently, many business entities and producers in New York hold more than one license. The Department already ties these licenses together by the same license number. Having all the lines managed on one license would save time and resources.

v. Health

The specific recommendations of the Health Committee are:

- Allow health insurers and HMOs to change premium rates, which may have otherwise been required to stay in effect for a certain length of time, when there is a new regulatory mandate and the insurance policy specifically permits the change in the rates.
- Develop model contract language regarding certain subjects to facilitate the Department's review. The Health Committee compiled a list of contractual terms that are suitable for standardization of health insurance contracts or model language: (1) External Appeal Rights and Rare Disease Coverage; (2) Coordination of Benefits; (3) Pre-existing Condition Limitation Clause; (4) New York State Continuation of Coverage Provisions; (5) Age 29 Young Adult Option Coverage Provisions; (6) Workers' Compensation Exclusion; (7) Same Sex Marriage Spouse Eligibility; (8) Domestic Partner Eligibility; (9) Dependent Incapable of Self Sustaining Employment Eligibility; and (10) Direct Payment Conversion.
- Increase the amount of time for the industry to respond to comments on a filing from the fifteen calendar days currently set forth in Circular Letter Number 18 (1999), to fifteen business days to help reduce the number of extension requests made to the Department.
- Amend and modernize the "readability" requirements for health insurance policies and coordinate those efforts with the NAIC's efforts on the same subject. The Health Committee noted that removing the requirement for an officer's signature on a readability certification would necessitate a statutory change. The Health Committee indicated that it is impractical and unnecessary to continue requiring an officer's signature on readability certifications, and that the existing readability calculation method may be outdated and create inaccurate results. The Health Committee did not object to maintaining minimum readability standards, but would like the Department to eliminate the need for officer certification of "readability" scores. There may also be improved or alternate commercial readability scoring methods that may be better for use in readability scoring or at least should be available for use as an alternative to the current legally required method. The Health Committee compiled a survey of how other states handle the certification of readability, in order to compare New York's requirement to requirements of other jurisdictions. The results are as follows:
 - 22 states do not have a readability law;
 - 2 states do not require an officer's signature for the readability certification;
 - 15 states require an officer's signature for readability certification;
 - 6 states require an officer's signature for a certification of compliance; and
 - 2 states require an officer's name but no signature (filer would sign).
- Allow health insurers to apply a higher percentage of the cost for advanced radiologic services, such as magnetic resonance imaging and computerized axial

tomography scans, to policyholders than would be applied to less advanced radiologic services, such as x-rays.¹⁰

vi. Transactional Committee

The specific recommendations of the Transactional Committee are:

- Amend Regulation 44, which deals with the sale of insurance securities, to specifically exempt any insurance policy or contract (whether fixed or variable) and any funding agreement (other than funding agreements used to organize, finance or acquire an insurer) from the provisions of Section 1204 of the Insurance Law. Under the Department's interpretation of Insurance Law §1204, insurance securities filings are not required for the sale of insurance policies and contracts – whether fixed or variable – or for funding agreements (other than funding agreements used to organize, finance or acquire an insurer). However, unlike variable annuity contracts and other annuities subject to Insurance Law §4240 (which are exempted pursuant to Insurance Law §1204(f)(1), which was enacted in 1969 before the Insurance Law permitted the issuance of variable life insurance policies), variable life insurance policies and fixed annuity contracts and funding agreements are not specifically exempted under Insurance Law §1204 or Regulation 44. The Transactional Committee noted that under Insurance Law §1204(f)(2), the Superintendent may by order or regulation exempt any other security or class of securities from all or part of §1204 if the Superintendent finds its application is not necessary to protect the public.
- Issue official guidance applying to surplus or capital note transactions involving third party investors (such as note offerings under Rule 144A). The guidance should confirm the Department's practice in such transactions, indicating procedures for seeking and obtaining approval on the basis of preliminary or draft documents that do not contain final pricing terms or otherwise remain subject to revision based on market conditions.
- Confirm that underwriters and brokers are not required to file an Insurance Law §1501(c) application under certain circumstances. The Transactional Committee recommends that the Department publish guidance (possibly in the form of an OGC Opinion) to the effect that a party need not file a §1501(c) application, a §1502(b) exemption request or a §1506(a) application under the following circumstances: when the party is acting as an underwriter in connection with a securities offering and temporarily "holds" or "owns" 10% or more of the voting securities of a domestic insurer, or the holding company of a domestic insurer, when the party acquires such securities solely for the purpose of offering them for sale to the public and with no intention to retain 10% or more of such voting securities and with no practical power to vote them because of the anticipated disposition of all of the securities so acquired. The Department should also make it clear, through legislative or regulatory amendments, that a "person" that might otherwise be viewed as a "controlling" person of a domestic insurer "shall not include any securities broker

¹⁰ The Department has received similar requests over the past several years and had concerns with those requests based on Section 52.16(c) of Regulation 62 which does not permit insurers to single out specific procedures or services within a class of service for different cost-sharing treatment. In any event, this recommendation requires further study to delineate legal and public policy issues.

performing no more than the usual and customary broker's functions" (*see, e.g.*, Ala. Ins. Code § 27-29-1(6)).

- Alleviate the need for each insurer subject to registration pursuant to Insurance Law §1503 to file an annual report at the same time as, and in addition to, the Form HC-1 Registration Statement. If legally possible, the Transactional Committee recommends that the Department require only one filing – an annual report *or* a HC-1 Registration Statement – not both. The Department could amend Regulation 52 so the New York registered insurers could combine into a single filing the information required annually from them.
- Amend Regulation 52 to eliminate the format requirements in subsections (b) and (c) because the format requirements are outdated and inefficient (*e.g.*, restrictions on paper size, margins, binding placement, and use of color).
- Impose a materiality threshold on affiliated reinsurance and service agreements that filers must file with the Department for approval. A materiality threshold could conserve Department resources for more significant transactions. In addition, it may be helpful for the Department to provide additional guidance regarding the filing requirements for non-material amendments to previously filed affiliated agreements.
- Deleting paragraph six, which imposes certain requirements derived from Insurance Law §1505(c) and (d), from the Special Commitment sought from applicants for determinations of non-control under Insurance Law §1501(c) and to using it (or some variant) only in those circumstances where there is reason for the Department to be concerned about the possibility of affiliated-like transactions between the New York insurer and a disclaiming investor.¹¹

V. CONCLUSION

The Committees devoted considerable time and effort to studying the current Rate and Form Filing Process to identify areas for possible improvement. The Superintendent may implement some of the recommendations made by the Committees with relative ease, while implementing others would require the expenditure of valuable Department resources. Moreover, some of the recommendation may implicate significant policy and legal issues such that they will require careful consideration and analysis prior to implementation. The Committees recommend that the Superintendent should, using a cost-benefit analysis, develop a plan to implement those recommendations that provide significant and meaningful improvement to the Rate and Form Filing Process for the industry, consumers, and the Department.

¹¹ While Department staff agreed to examine this issue in more detail, more study of this recommendation is required before the Superintendent should consider it for implementation.

**APPENDIX A
(COMMITTEE MEMBERS)**

1. Marcia Alazraki	Manatt, Phelps & Phillips
2. Jeffrey Angelo	Mutual of America
3. Bob Babarowicz	Balboa Insurance Company
4. Carole Banfield	Insurance Service Office
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6. Jane Boisseau	Dewey and LeBoeuf, LLP
7. Janessa Calderon	RegEd
8. Martin Carus	American International Group
9. Nicole Chapin	Oxford Health Plans
10. Cailie Currin	Currin Compliance Services
11. Donald DeCarlo (Initiative Chair)	Donald DeCarlo Law
12. Wolcott Dunham, Jr.	Debevoise & Plimpton, LLP
13. Jim Donnellan	Metropolitan Life
14. Mary Gross	Farm Family Life
15. Karen Hamel	Greater New York Mutual
16. Martin Hartley	PURE
17. Warren Heck (Property Committee Chair)	Greater New York Mutual
18. Sanford Herman	Health Net, Inc.
19. Floyd Holloway	State Farm Insurance Company
20. John Hurley	Guardian Life
21. Diana Ivey (Licensing Committee Chair)	Marsh and McLennan
22. Joanne Jenkins	New York Life
23. Karen Johnson	New England Life
24. Susan Kennedy	AFLAC
25. Vincent Laurenzano	Stroock, Stroock & Lavan
26. Adolph Lecuna	Aetna Life Insurance Company
27. Ronald Lovatt	MAPFRE, USA
28. Daniel Maher	Excess Lines Association of New York
29. William Melchionni (Personal Lines Committee Chair)	Nationwide Insurance Company
30. Pauline Micchaud	Sun Life Insurance and Annuity
31. John Miletti	Travelers Insurance Company
32. Martin Minkowitz (Transactional Committee Chair)	Stroock, Stroock, and Lavan
33. Catherine Murphy-Barron	Milliman, Inc.
34. Eugene Nunziata	Excess Lines Association of New York
35. Roger Odle	Allstate Insurance Company
36. Pat O'Malley	Progressive Insurance Company
37. Diane Pappas	Guardian Life Insurance Company
38. Ingrid Pessa (Health Committee Chair)	EmblemHealth, Inc.
39. Jana Lee Pruitt	Life Insurance Council of New York
40. Daniel Rabinowitz	Sullivan & Cromwell
41. Charles Rapacciuolo	Consultant
42. Raul Riviera	Primerica
43. Robert Secovnie	Insurance Training Institute
44. Sandy Smith	Wilson Elser
45. Robert Sullivan	Skadden, Arps, Slate, Meagher
46. Mary Van Sise	Insurance Services Office

The Insurance Department would like to acknowledge the following staff members who provided support and advice to the Committee:

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Peter Dumar
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Pascale Jean-Baptiste
Gail Keren
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