

**PROGRAM DIVISION
BULLETIN**

2005-45

September 7, 2005

DOCUMENTATION MANAGEMENT – NY APPLICATIONS

THIS APPLIES ONLY TO ADMITTED BUSINESS

On July 21, 2005, the Office of the General Counsel of the NYID issued the attached opinion regarding record retention requirements for both authorized insurers and reinsurance intermediaries.

We draw your attention, however, to a requirement that is frequently asked about, and that is the retention of applications where **no policy or contract** was issued.

This Opinion confirms - that such applications must be retained for the longer of (1) six calendar years, or (2) until after the filing of the report on examination in which the record was subject to review.

Applications may be scanned or held electronically.

Please direct any questions to your Program Manager.

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George E. Pataki
Governor

Howard Mills
Superintendent

The Office of General Counsel issued the following opinion on July 21, 2005, representing the position of the New York State Insurance Department.

Re: Record Retention

Questions Presented:

- 1) What are the record retention requirements for authorized insurers?
- 2) What are the record retention requirements for reinsurance intermediaries?

Conclusions:

- 1) The record retention requirements for authorized insurers are contained in N.Y. Comp. Codes R. & Regs. tit. 11, Part 243 (2005) (Regulation 152).
- 2) The record retention requirements for reinsurance intermediaries are contained in N.Y. Comp. Codes R. & Regs. tit. 11, Part 32.2 (Regulation 98).

Facts:

Since these were general questions, no additional facts were furnished.

Analysis:

N.Y. Comp. Codes R. & Regs. tit. 11, Part 243 (2005) (Regulation 152) contains the minimum record retention requirements for an insurer and specifies the following:

1. Policy record for each insurance contract or policy:

Longer of (1) six calendar years after the date the policy is no longer in force, or (2) until after the filing of the report on examination in which the record was subject to review.

1. *An application where no policy or contract was issued:*

Longer of (1) six calendar years, or (2) until after the filing of the report on examination in which the record was subject to review.

2. *A record required under § 218.7 (Reports to Superintendent) of N.Y. Comp. Codes R. & Regs. tit. 11, (Regulation 90):*

Six years after the required report is filed or, if the filing requirement is waived, for six years after the report would have been filed.

3. *Claim file:*

Longer of (1) six calendar years after all elements of the claim are resolved and the file is closed, or (2) until after the filing of the report of examination in which the claim file was subject to review.

4. *Licensing record:*

Six calendar years after the relationship of each Insurance Law licensee is terminated.

5. *Complaint record required to be maintained under Chapter IX of N.Y. Comp. Codes R. & Regs. tit. 11:*

Six calendar years after all the elements of the complaint are resolved and the file is closed.

6. *Financial records necessary to verify the financial condition of an insurer:*

Longer of (1) six calendar years from its creation, or (2) until after the filing of the report on examination in which the record was subject to review.

7. *Any other record:*

(1) Six calendar years from its creation, or (2) until after the filing of a report on examination, or (3) the conclusion of an investigation in which the record was subject to review.

In addition, please note that § 243.2(f) of Regulation 152 provides that an insurer is not precluded from maintaining records for a longer period of time than the period stated

under Regulation 152.

The record retention requirements for reinsurance intermediaries are contained in N.Y. Comp. Codes R. & Regs. tit. 11, Part 32.2 (2005) (Regulation 98), which is entitled "Books and Records of Reinsurance Intermediaries."

The Regulation states that a reinsurance intermediary, for at least 10 years after expiration of the reinsurance contract entered into, shall keep a complete record of each transaction showing:

1. the type of contract, limits, underwriting restrictions, classes of risks and territory;
2. period of coverage;
3. reporting and settlement requirements of balances;
4. rate used to compute the reinsurance premium;
5. names and addresses of insurers;
6. rates of all reinsurance commissions;
7. related correspondence and memos;
8. proof of placement;
9. details regarding retrocessions handled by the intermediary;
10. financial records; and
11. copies of the evidence required under § 32.1 (b)(1) - (2) (Verification of coverage and disclosure) of the Regulation.

Regulation 98 does not preclude reinsurance intermediaries from maintaining records for a longer period of time. In addition, if the reinsurance intermediary acts on behalf of the insurer, then, pursuant to § 243.2(d), the insurer shall require that the reinsurance intermediary comply with the provisions of Regulation 152 in maintaining records that the insurer would otherwise be required to retain.

For further information please contact Principal Attorney Paul A. Zuckerman at the New York City Office.