

§4440. Assessment of member insurers

1. Proportion. The assessments of each member insurer provided for under section 4438 must be in the proportion that the net direct written premiums of the member insurer for the calendar year preceding the assessment on the kinds of insurance in the account bears to the net direct written premiums of all member insurers for the same calendar year on the kinds of insurance in the account, except that assessments to cover a shortfall in any account are determined in accordance with section 4440-A. In the case of a withdrawn insurer, the average of its net direct written premium for the 5 calendar years prior to withdrawal, excluding premium on business written as a workers' compensation residual market servicing carrier for assessments made on or after January 1, 1996, must be used as its assessment base for any year following withdrawal in which the insurer has no net direct written premium.

[PL 1995, c. 289, §16 (AMD).]

2. Notification. Each member insurer shall be notified of the assessment not later than 30 days before it is due.

[PL 1969, c. 561 (NEW).]

3. Limitation; types of assessments. Assessments shall be made as follows.

A. Each member insurer may be assessed in any calendar year on any account an amount up to 2% of that member insurer's net direct written premiums for the next preceding calendar year on the kinds of insurance in the account for purposes of paying claims and expenses of that account. [PL 1989, c. 67, §7 (NEW).]

B. To the extent that the maximum 2% has not been assessed, an assessment of up to that member's proportionate share of the applicable maximum as set forth in this paragraph shall be assessed when immediately necessary for the payment of claims and expenses. Any amount drawn by the association under any line of credit shall be considered a payment toward the member insurer's obligation provided for in this section. The maximum line of credit or preinsolvency assessment for each account shall be as follows:

Account	Maximum
Workers' compensation	\$2,000,000
Automobile	\$1,700,000
All other	\$1,300,000

(1) The association shall obtain a line of credit for the benefit of each account, in an amount not to exceed the applicable maximum to ensure the immediate availability of funds for purposes of future claims and expenses attributable to an insurer insolvency in that account. The line of credit shall be obtained from qualified financial institutions. At no time may a qualified financial institution participate in the line of credit in excess of 20% of its equity capital. The line of credit shall provide for a 30-day notice of termination or nonrenewal to the superintendent and the association and shall provide funding to the association within one business day of receipt of written notice from the superintendent of an insolvent insurer in that account as defined in section 4435, subsection 5. Each member insurer upon receipt of notice from the association shall make immediate payment for its proportionate share of the amount borrowed based on the premium for the preceding calendar year. The line of credit provided for in this paragraph shall be subject to prior review and approval by the superintendent at the time of origination and any subsequent renewal.

(2) If the association cannot obtain a line of credit, a member insurer may obtain a line of credit from a qualified financial institution or may extend a line of credit itself directly to and for the benefit of the member insurer's account by submitting to the association a duly authorized and executed line of credit agreement providing that the member insurer shall provide funding to

the association under the line of credit within one business day of receipt of a written notice from the superintendent of an insolvent insurer as defined in section 4435, subsection 5, and receipt of a written request from the association for a drawdown under the line of credit. The line of credit agreement shall be subject to prior review and approval by the superintendent at the time of origination and any subsequent renewal. It shall include such commercially reasonable provisions as the association or the superintendent may deem advisable, including a provision that the line of credit is irrevocable or for a stated period of time and provides for a 30-day notice to the association and the superintendent that the line is being terminated or not renewed. Any line of credit issued under this paragraph may be replaced with another line of credit and the existing line of credit shall be released by the association once a substitute line of credit has been provided or the assessment provided for in this paragraph has been paid.

(3) If a line of credit is not given as provided for in subparagraph (2), the member insurer shall be responsible for payment of an assessment of up to that member's proportionate share of the applicable maximum as set forth in this paragraph which shall be paid into a preinsolvency assessment fund in each account. Funds in each account shall only be used for the payment of claims and expenses of an insolvent insurer in that account.

(4) All materials and information submitted or considered under this paragraph shall be matters of public record. [PL 1989, c. 67, §7 (NEW).]

[PL 1989, c. 67, §7 (RPR).]

4. Exemptions. The association may exempt or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance. It is a condition of any deferral that during the period of deferment no dividends may be paid by the member insurer to its shareholders or policyholders. A deferred assessment is paid when payment will not reduce capital or surplus below required levels, and the association shall then refund to its other member insurers an amount equal to the deferred assessment in the proportions corresponding to the increases in their assessments by virtue of that deferment.

[PL 1985, c. 279, §6 (AMD).]

5. Set off. Each member insurer may set off against any assessment, authorized payments made on covered claims and expenses incurred in the payment of such claims by the member insurer, if they are chargeable to the account for which the assessment is made.

[PL 1969, c. 561 (NEW).]

6. Delinquency. Delinquent assessments, except as provided in subsection 4, shall bear interest at the rate of 8% per annum, computed from the due date of the assessment.

[PL 1969, c. 561 (NEW).]

SECTION HISTORY

PL 1969, c. 561 (NEW). PL 1985, c. 279, §6 (AMD). PL 1989, c. 67, §§6,7 (AMD). PL 1995, c. 289, §16 (AMD).

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