

R.S. 23:1196

Requirements; excess insurance; administrative and service companies; status; liability; refunds

A. Each fund established pursuant to R.S. 23:1195 shall:

(1) File rates in accordance with R.S. 23:1199 and maintain at least five hundred thousand dollars in direct premium per fund year.

(2)(a) Conduct a premium audit annually and within four months from the termination of any employer's participation in the fund, to be conducted by an independent payroll audit firm approved by the department, or as otherwise may be approved by the commissioner.

(b) If requested, each employer shall submit a copy of state and federal reports of employee income on each employee at the end of each quarter to the fund.

(c)(i) Employers shall make available to the auditor all records necessary for the payroll verification audit, including but not limited to payroll records, accounting records, certificates of insurance maintained by subcontractors, and duties of employees; and permit the auditor to make a physical inspection of the employer's operation.

(ii) If the employer fails to make such records available on the date and time of an audit requested and scheduled by the auditor, and the auditor cannot complete the audit as a result, the fund may charge the employer to pay five hundred dollars to the fund to defray the costs of the audit together with reasonable attorney fees incurred by the fund in collection thereof.

(iii) If, within thirty days from written request of the auditor, the employer fails to provide reasonable access to such records or refuses to allow a physical inspection of the employer's operation, the fund may charge the employer to pay a premium of up to two times the most recent estimated annual premium together with reasonable attorney fees incurred by the fund in obtaining compliance with the required audit or in collecting such premium.

(d) If an employer intentionally understates or conceals payroll, or intentionally misrepresents or conceals employee duties so as to avoid proper classification for premium calculations, the fund may charge the employer to pay the fund an additional premium of up to five times the amount of the difference in premium paid and the amount the employer should have paid together with reasonable attorney fees incurred by the fund in collecting such premium.

(e) A fund may institute a civil action to enforce the obligations of the employer and collect the amount specified in Subparagraphs (b), (c), and (d) of this Paragraph. The fund shall be entitled to proceed by use of summary proceedings. The penalties provided for herein shall not be assessed unless the potential penalty and the method of imposition are disclosed in the written request to the employer required by this Subparagraph.

(3) Deposit with the department a safekeeping or trust receipt from a bank doing business in this state or from a savings and loan association chartered to do business in the state indicating that the fund has deposited one hundred thousand dollars in money or bonds of the United States, the state of Louisiana, or any political subdivision thereof, of the par value of one hundred thousand dollars or post a surety bond issued by a corporate surety authorized to do business within the state, in the amount of one hundred thousand dollars, to secure the obligations of the fund under this Chapter.

(4) Provide statutory workers' compensation benefits.

(5) Maintain at all times, on a fund year basis, a contract or contracts of specific excess insurance of not less than two million dollars per occurrence and aggregate excess insurance of not less than two million dollars. The maximum retention under the excess insurance contracts shall not exceed amounts as may be provided by the department by regulation.

(6)(a) Not permit advance premium discounts to any member in excess of fifteen percent of the gross premium of the member, calculated in accordance with the applicable manual premium rate or rates approved by the department, plus or minus applicable National Council on Compensation Insurance or Insurance Data Resources Statistical Services, Inc. experience modifiers or other experience modifiers approved by the department. A fund which has been in existence for more than three years shall be permitted to establish a schedule rating plan which is subject to approval by the department.

(b) In addition to the maximum discount allowed under Subparagraph (a) of this Paragraph, the fund may utilize a maximum debit of twenty-five percent or a maximum credit of twenty-five percent of premium per member per fund year if the fund shows to the satisfaction of the department that the premium amount, after the application of the allowable twenty-five percent scheduled rating debits or credits for all members on an annualized basis, is not less than ninety percent of the premium amount after the application of the allowable fifteen percent discount, but before the application of the allowable twenty-five percent scheduled rating debits or credits. However, in no event shall the net effect of such maximum debit or credit exceed one-half of the fund year member distributions payable from the most recent filed audited financial statement. Plans based on the following enumerated factors may utilize scheduled debits or credits as follows:

Underwriting Issues	Maximum Credit to Debit
(i) Premises and operation	-10% to 10%
(ii) Classifications, hazards, exposure	-10% to 10%
(iii) Medical facilities	-5% to 5%
(iv) Safety devices; safety procedures	-5% to 5%
(v) Employees-selection, training supervision, turnover	-10% to 10%
(vi) Management - cooperation with insurance carrier	-5% to 5%
(vii) Loss history, loss ratio, large loss experience	-10% to 10%
(viii) Experience modifier	-5% to 5%

(7) Timely file and report employer loss experience to the National Council on Compensation Insurance in accordance with its procedures or as otherwise approved by the department.

(8) File with the department financial statements and reports, including financial statements audited by an independent certified public accountant, and actuarial reports, as may be required by the department through duly promulgated regulations.

B. For any casualty insurance company to be eligible to write excess coverage for the fund, the company shall at all times have on file with the department its current financial statement showing assets, including surplus to policyholders, at least equal to the current requirements by the department for admission of a new company to do business in the state. Contracts or policies for excess insurance coverage written by active underwriters of Lloyd's of London may also be acceptable.

C. Any person, which shall include individuals, partnerships, corporations, and all other entities contracting, either directly or indirectly with a fund, to provide claims adjusting, underwriting, safety engineering, loss control, marketing, investment advisory, or administrative services to the fund or its membership, other than bookkeeping, or auditing, or claims investigation services to a fund shall:

(1) Post with the department a surety bond issued by a corporate surety authorized to do business in the state of not less than fifty thousand dollars or deposit with the department a safekeeping or trust receipt from a bank doing business in this state or from a savings and loan association chartered to do business in the state indicating that the person has deposited fifty thousand dollars in money or bonds of the

United States, the state of Louisiana, or any political subdivision thereof, of the par value of fifty thousand dollars, to secure the performance of its obligations under the contract and under this Chapter.

(2) Place all terms, agreements, fee arrangements, and any other conditions in a written agreement, which shall constitute the entire agreement between the parties, signed by the person and the fund.

D. Any funds under this Subpart shall not be considered a partnership under the laws of the state.

E. The provisions of this Subpart shall not be construed to reduce or limit the rights or obligations of a member with respect to the employees of the member under the other provisions of this Chapter.

F. A fund member shall be liable in solido for liabilities of the fund incurred by the fund after the inception of the fund year in which the employer becomes a member of the fund.

G. Any monies for a fund year in excess of the amount necessary to fund all obligations of the fund may be declared as refundable to the members of the fund by the board of trustees. The board of trustees shall be authorized to distribute the refund at their discretion, in accordance with the agreement establishing the fund and the following limitations:

(1) The amount of the distribution shall not exceed the surplus funds available in the fund year as indicated by the most recently completed audited financial statements of the fund.

(2) The board of trustees shall notify the department in writing of their intent to make a refund to the membership, the fund years to which the distributions apply, and the amount of distribution for each fund year, thirty days prior to distribution.

(3) No distributions shall be paid if an open fund year has a deficit.

H. If a deficit exists in a fund year, the fund shall eliminate the deficit or submit a plan for elimination of the deficit to the department pursuant to regulations promulgated by the department.

I. Any funds which are not guaranteed by a guaranty fund shall give written notice of the lack of a guaranty to the department and the members of the fund.