

Part D. Organization, Licensing and Change of Control of Domestic Insurers

Preamble

The focus of the Part D standards is on strengthening financial regulation and the prevention of unlicensed or fraudulent activities. The scope of this section only includes the licensing of new companies and Form A filings. The section applies to only traditional life/health and property/casualty companies (including risk retention groups organized under a state's property/casualty laws), and this scope is narrower than that of Part B in that it does not include entities such as health maintenance organizations, health service plans, and captive insurers (including captive risk retention groups). These standards only deal with the Department's analysis of domestic companies and does not include foreign or alien insurers. The initial company licensing process does not consider the "multi-state" concept since the company is in its initial licensing phase. The standards regarding Form A filings deal with only filings submitted related to multi-state insurers, as that term is defined in the Part B Preamble.

Additional Part A Standard

Regulatory Authority

State law should provide for a regulatory framework for the organization, licensing and change of control of domestic insurers.

Significant elements:

- a. Require a license from the department prior to transacting an insurance business.
- b. Authority to take enforcement action for unlicensed activities.

Part A standards already include laws & regulations relating to authority to examine and investigate entities that transact the business of insurance; minimum capital & surplus; and change in control, including authority to retain any experts as may be reasonably necessary in reviewing a proposed change of control.

Part D Standards

1. Qualified Staff and Resources

The Department should have minimum educational and experience requirements for licensing staff commensurate with the duties and responsibilities for analyzing company applications. Staff responsible for analyzing applications should have an accounting, insurance, financial analysis or actuarial background.

2. Sufficient Staff and Resources

The Department should have sufficient resources to effectively review applications for primary licensure or Form A filings in a timely manner. The Department should begin its review of applications for new companies and Form A filings quickly upon receipt and observe the following timing guidelines:

- a. The application should be reviewed for completeness within 30 days of receipt. If additional or supplementary information is needed from the insurer based on the initial review for completeness, the insurer should be notified of such within 45 days of receipt of the application.
- b. The review of the primary application or Form A should be completed in accordance with timing requirements mandated by the state's statute or regulation.
- c. For primary applications, if the state's statutes or regulations do not specify timing requirements, the review should be completed within 90 calendar days of receipt. A review of an application is complete once the insurer is notified of approval or denial. If additional information not originally requested in the application is needed to finalize the review of the application, the review may take longer to complete. Once a request for information is made, the timing requirement is suspended until the information is received from the applicant.
- d. If there are extenuating circumstances and the timing guidelines above cannot be met for a particular application, such should clearly be documented in the application file.

3. Scope of Procedures for Primary Applications

The Department should have documented licensing procedures that include a review and/or analysis of at least the following:

- a. Identification and evaluation of the business and strategic plans of the applicant, including pro forma financial projections.
- b. Assessment of the quality and expertise of the ultimate controlling person, proposed officers and directors, appointed actuary and appointed accountant, including use of the NAIC Form A and SAD databases.
- c. Adequacy of proposed reinsurance program.
- d. Adequacy of investment policy.
- e. Adequacy of short-term and long-term financing arrangements:
 - o Initial financing of proposed operations or transaction.
 - o Maintenance of adequate capital and surplus levels.
- f. Biographical affidavits
- g. Related party agreements' compliance with SSAP No. 25

4. Scope of Procedures for Form A Filings

The Department should have documented procedures for the review of Form A filings that include at least the following:

- a. The source, nature and amount of the consideration used or to be used in effecting the merger or other acquisition of control
- b. Fully audited financial information regarding the earnings and financial condition of the ultimate controlling person(s) for the preceding five years. If fully audited financial information is not available, substantially similar information such as compiled financial statements or tax returns, as deemed acceptable to the commissioner, may be reviewed in lieu of fully audited financial information.
- c. Unaudited financial information regarding the earnings and financial condition of the ultimate controlling person(s) as of a date not earlier than 90 days prior to the filing of each statement.

5. Use of the Form A Database

The Department should utilize the Form A Database as a means of obtaining information on prior filings made by the applicant and informing other states of the receipt and status of Form A filings in a timely manner, as follows:

- a. Review the Form A Database for any prior filings made by the Form A applicant and the ultimate outcome of such filing(s).
- b. Pertinent and relevant information from the Form A filing should be manually entered into the Form A database within 10 days of receipt of the Form A.
- c. Any changes to the status of the filing or other data elements should be entered into the Form A database within 10 days.

6. Documentation of Work Performed

The Department's files should include evidence that the Department's procedures were adequately performed and well documented, including a conclusion regarding whether the application or filing is approved or denied.

Scoring on Part D (to be included in the "Scoring Explanation" policy)

No numerical scores will be assigned to the components of Part D. Each component will be evaluated during the on-site review, and any deficiencies will be noted in a management comment letter.