

3. The purpose of, or reason for, the transactions;
4. If applicable, the identity of the replacement reinsurers; and
5. A copy of the revised provisions of the reinsurance agreement.

(d) Insurers shall report all material nonrenewals, cancellations or revisions of ceded reinsurance agreements on a non-consolidated basis unless the insurer is part of a consolidated group of insurers which utilizes a pooling arrangement or 100 percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer ceded substantially all of its direct and assumed business to the pool. An insurer is deemed to have ceded substantially all of its direct and assumed business to a pool if the insurer has less than \$1,000,000 total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than five percent of the insurer's capital and surplus.

**11:1-39.6 Penalties**

Failure to comply with the requirements of this subchapter shall result in the imposition of penalties as authorized by law.

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SUBCHAPTER 40. (RESERVED)

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SUBCHAPTER 41. SURETY BONDS FOR CONTRACTS INVOLVING THE STATE, LOCAL CONTRACTING UNITS, BOARDS OF EDUCATION, STATE COLLEGES AND COUNTY COLLEGES

**Authority**

N.J.S.A. 17:1-8.1, 17:1-15e, and P.L. 1995, c.384.

**Source and Effective Date**

R.1996 d.496, effective October 21, 1996.  
See: 28 N.J.R. 3505(a), 28 N.J.R. 4582(a).

**11:1-41.1 Purpose and scope**

(a) This subchapter implements the Commissioner's responsibilities pursuant to P.L. 1995, c.384, which statute provides standards for acceptable sureties providing payment and performance bonds for contractors on public works projects. This subchapter sets forth the rating companies that may be considered by contracting officers for purposes of determining whether a surety company may be utilized to provide payment and performance bonds for a

public works project pursuant to P.L. 1995, c.384. This subchapter also sets forth the standards for a surety company which does not hold a certificate of authority issued by the United States Secretary of the Treasury to be deemed acceptable by contracting officers to provide payment and performance bonds for a public works project pursuant to P.L. 1995, c.384.

(b) This subchapter shall apply to all surety companies seeking to provide payment and performance bond coverage on a public works project at the expense of the State, contracting unit (as defined in N.J.S.A. 40A:11-2), school district, State college or county college, subject to P.L. 1995, c.384.

**11:1-41.2 Definitions**

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Commissioner" means the Commissioner of the New Jersey Department of Insurance.

"Department" means the New Jersey Department of Insurance.

"NAIC" means the National Association of Insurance Commissioners.

"Treasury listed" means a surety that holds a current certificate of authority issued by the United States Secretary of the Treasury pursuant to 31 U.S.C. § 9305, that is valid in New Jersey as listed annually in the United States Treasury Circular 570.

"Surety" means an insurer authorized or admitted to transact fidelity and surety business in this State pursuant to N.J.S.A. 17:17-10 or 17:32-1 et seq., as applicable.

**11:1-41.3 Rating company**

(a) The following rating companies are nationally recognized as providing ratings regarding the claims paying ability of insurers and may be used to determine whether a surety company is acceptable to provide payment and performance bonds pursuant to P.L. 1995, c.384:

1. A.M. Best Company;
2. Standard and Poor's Insurance Rating Services;
3. Moody's Investors Service, Inc.;
4. Duff and Phelps Credit Rating Company;
5. Weiss Ratings, Inc.; and
6. Fitch Investors Service, L.P.

(b) The three highest rating categories for each of the rating companies in (a) above are set forth in Appendix A to this subchapter incorporated herein by reference.

**11:1-41.4 Treasury listed surety companies and alternative requirements to Treasury listing**

(a) A surety company which is Treasury listed seeking to provide payment or performance bonds as required by P.L. 1995, c.384 may request to be listed by the Department as an acceptable surety for provision of bonds on public works contracts by filing a certification to that effect in the format of Appendix B to this subchapter incorporated herein by reference.

(b) A surety company that is not Treasury listed seeking to provide payment or performance bonds as required pursuant to P.L. 1995, c.384 may request to be listed by the Department as an acceptable surety for provision of bonds on public works contracts by filing a certification in the format of Appendix B to this subchapter incorporated herein by reference, that the surety satisfies the following requirements:

1. The surety shall be authorized or admitted to transact fidelity and surety in this State pursuant to N.J.S.A. 17:17-10 or 17:32-1 et seq., as applicable;

2. The surety shall not have been found to be in a hazardous financial condition by the Commissioner, its domiciliary jurisdiction, and all jurisdictions in which it is licensed, as determined pursuant to N.J.A.C. 11:2-27 or such equivalent requirements in other jurisdictions in which the surety is domicile and admitted;

3. The surety's net premium written to surplus as to policyholders shall not exceed a 3:1 premium to surplus ratio, and loss and loss adjustment expense reserve liability to surplus shall not exceed a 4:1 ratio as of the date of its most recently filed annual statement;

4. The surety shall satisfy, at a minimum, the statutorily prescribed minimum capital and surplus or net cash asset requirements for all lines of insurance that it is authorized to write pursuant to the certificate of authority issued by its domiciliary jurisdiction and all states in which it is licensed to transact business;

5. The surety shall not have received from the NAIC a "first priority" designation for the calendar year ending December 31 immediately preceding its application date;

6. If the surety is a member of an insurance holding company system, its parent or subsidiary shall not have received from the NAIC a "first priority" designation; and

7. The surety shall not have been identified as "second or third priority" and/or failed four or more Insurance Regulatory Information System (IRIS) tests, unless the applicant demonstrates to the Commissioner and its domiciliary jurisdiction that these IRIS test results and/or "priority" identification are not indicative of the applicant being in a hazardous financial condition.

(c) The Department shall publish in the New Jersey Register a list of surety companies that satisfy the requirements set forth in (a) and (b) above in or about September of each year.

(d) A surety seeking to continue to be listed by the Department as having satisfied the requirements set forth in (b) above shall file with the Department a certification in the format of Appendix B to this subchapter no later than August 1 of each year.

(e) Applications and renewal applications to be listed by the Department shall be sent to:

New Jersey Department of Banking and Insurance  
 Attention: Surety Company List  
 20 West State Street  
 PO Box 325  
 Trenton, NJ 08625-0325

Public Notice: List of surety companies acceptable to provide payment or performance bonds.  
 See: 29 N.J.R. 4199(a) 29 N.J.R. 4574(a).

Public Notice: List of surety companies acceptable to provide payment or performance bonds.  
 See: 30 N.J.R. 3554(a).

**11:1-41.5 Penalties**

Failure to comply with the provisions of the subchapter shall result in the imposition of penalties as provided by law.

**APPENDIX A**

<u>Rating Company</u>	<u>Three Highest Rating Categories</u>	<u>Ratings Within Three Highest Categories</u>
A.M. Best Company	Best's Ratings: 1. Superior 2. Excellent 3. Very Good ----OR----	A + +, A + A, A- B + +, B +
	Financial Performance Rating: 1. Strong 2. Above average 3. Average	9, 8 7, 6 5
Standard & Poor's	1. Superior 2. Excellent Financial Security 3. Good Financial Security	AAA AA +, AA, AA- A +, A, A-
Moody's	1. Exceptional 2. Excellent 3. Good	Aaa Aa1, Aa2, Aa3 A1, A2, A3
Duff and Phelps Credit Rating Company	1. Highest claims paying ability 2. Very high claims paying ability	AAA AA +, AA, AA-

Rating Company	Three Highest Rating Categories	Ratings Within Three Highest Categories
	3. High claims paying ability	A+, A, A-
Weiss	1. Excellent 2. Good 3. Fair	A+, A, A- B+, B, B- C+, C, C- (also includes the above ratings with "s" prefix)
Fitch	1. Extremely strong 2. Very strong 3. Strong	AAA AA A

2. The above-referenced surety's capital and surplus or net cash assets, as of December 31 immediately preceding is \$\_\_\_\_\_, as reported in the statutory annual statement for that year. This amount satisfies the statutorily prescribed minimum capital and surplus or net cash asset requirements for all lines of insurance that the surety is authorized to write pursuant to the certificate of authority issued by its domiciliary jurisdiction and all states in which it is licensed to transact business. Yes \_\_\_ No \_\_\_

3. The above-referenced surety been found to be in a hazardous financial condition by the Commissioner, its domiciliary jurisdiction, or any jurisdiction in which it is licensed, as determined pursuant to N.J.A.C. 11:2-27 or such other equivalent requirements in other jurisdictions in which the surety is licensed. Yes \_\_\_ No \_\_\_

If yes, indicate jurisdiction(s) and details regarding such finding below.

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4. The above-referenced surety's premium to surplus ratio as of December 31 immediately preceding is \_\_\_\_\_ and loss and loss adjustment expense reserve liability to surplus ratio for that period is \_\_\_\_\_, as reported in the statutory annual statement for that period.

5. The above-referenced surety received from the NAIC a "first priority" designation for the calendar year ending December 31 immediately preceding its application date. Yes \_\_\_ No \_\_\_

6. If the above-referenced surety is a member of an insurance holding company system, its parent or subsidiary has received from the NAIC a "first priority" designation. Yes \_\_\_ No \_\_\_

7. The above-referenced surety has been identified as "second or third priority" and/or has failed four or more IRIS tests. Yes \_\_\_ No \_\_\_

If yes, provide an explanation that demonstrates that such results are not indicative that the surety is in a hazardous financial condition.

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APPENDIX B

REQUEST FOR LISTING BY NEW JERSEY DEPARTMENT OF INSURANCE AS ACCEPTABLE SURETY FOR PROVISION OF BONDS ON PUBLIC CONTRACTS PURSUANT TO P.L. 1995, C.384

COMPANY NAME \_\_\_\_\_  
 ADDRESS \_\_\_\_\_  
 TELEPHONE NO. \_\_\_\_\_  
 COMPANY NAIC NUMBER \_\_\_\_\_  
 GROUP NAME \_\_\_\_\_  
 GROUP NAIC NUMBER \_\_\_\_\_

I, \_\_\_\_\_, hereby file this certification on behalf of \_\_\_\_\_ in connection with this company's application to be listed by New Jersey Department of Insurance for purposes of providing payment and performance bonds pursuant to P.L. 1995, c.384. I further certify that I am authorized to execute this certified statement on behalf of \_\_\_\_\_.

(Name and Title)

(Name of Surety)

(Name of Surety)

PART I

1. The above-referenced surety is listed in the most recent United States Treasury Circular 570 issued July 1 of each year. Yes \_\_\_ No \_\_\_

If yes, go to Part III; if no, complete Part II.

PART II

1. The above-referenced surety is currently licensed to transact business in the following jurisdictions for the following lines:

Jurisdiction	Line
_____	_____
_____	_____
_____	_____

(Attach additional sheets if necessary)

PART III

Dated and signed this \_\_\_ day of \_\_\_\_\_. I hereby certify that the foregoing statements are true and correct to the best of my knowledge and belief. I further certify that I am aware that the New Jersey Department of Insurance will rely on this certification in connection with its

determination whether the surety satisfies the requirements set forth in N.J.A.C. 11:1-41 for purposes of providing payment and performance bonds pursuant to P.L. 1995, c.384.

I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

\_\_\_\_\_  
(Signature of Affiant)

Administrative correction.  
See: 29 N.J.R. 425(b).

\_\_\_\_\_  
SUBCHAPTER 42. (RESERVED)

\_\_\_\_\_  
SUBCHAPTER 43. UNUSUAL HARDSHIP FOR  
COVERED CLAIMS UNDER THE NEW  
JERSEY PROPERTY-LIABILITY  
INSURANCE GUARANTY ASSOCIATION  
AND NEW JERSEY SURPLUS LINES  
INSURANCE GUARANTY FUND

**Authority**

N.J.S.A. 17:1-8.1, 17:1-15e, 17:22-6.70 et seq., and 17:30A-1 et seq.

**Source and Effective Date**

R.1997 d.512, effective December 1, 1997.  
See: 29 N.J.R. 3765(a), 29 N.J.R. 5065(b).

**11:1-43.1 Purpose and scope**

(a) The purpose of this subchapter is to set forth the circumstances that shall constitute an "unusual hardship" for the purpose of filing a claim by a claimant with the Association or Fund pursuant to N.J.S.A. 17:30A-1 et seq. or N.J.S.A. 17:22-6.70 et seq., as applicable.

(b) This subchapter shall apply with respect to all claims filed with the Association or Fund after the final date set by the court for filing of claims against the liquidator or receiver of an insolvent insurer.

**11:1-43.2 Definitions**

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Association" means the New Jersey Property-Liability Insurance Guaranty Association established pursuant to N.J.S.A. 17:30A-1 et seq.

"Commissioner" means the Commissioner of the New Jersey Department of Banking and Insurance.

"Covered claim" is as defined in N.J.S.A. 17:30A-5 or 17:22-6.72, as applicable.

"Department" means the New Jersey Department of Banking and Insurance.

"Due date" means the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer."

"Fund" means the New Jersey Surplus Lines Insurance Guaranty Fund established pursuant to N.J.S.A. 17:22-6.70 et seq.

"Insolvent insurer" is as defined at N.J.S.A. 17:30A-5 or 17:22-6.72, as applicable.

**11:1-43.3 Unusual hardship**

(a) Pursuant to N.J.S.A. 17:30A-5 and 17:22-6.72, as applicable, a covered claim by the Association or Fund shall not include a claim filed with the Association or Fund, as applicable, after the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer, unless the claimant demonstrates unusual hardship, as determined pursuant to this subchapter, and the Commissioner approves of the treatment of the claim as a covered claim.

(b) For purposes of (a) above, a claimant may show unusual hardship by filing information that demonstrates any of the following:

1. The claimant never received notice of the due date for filing claims;
  - i. The claimant shall be presumed to have received notice if the notice was timely mailed to the claimant's address currently on file with insurer;
2. The mailing address of the claimant in the insurer's records is erroneous, and the claimant demonstrates that he or she notified the insurer or its agent of a change in address;
3. The claimant was incapable of responding to the notice due to an emergent and extreme medical event or similar emergent and extreme circumstance; or
4. The claimant is deceased, and the claimant's estate demonstrates that the death occurred within such a time period that the representative of the claimant's estate did not have sufficient time to advise the insurer or its agent of such circumstance.

(c) Requests for treatment of a claim on the basis of unusual hardship shall contain the following information:

1. The name, address, social security number, telephone number, and date of birth of the claimant making the application;
2. The policy number;

3. The name of the insured, if different than the claimant;

4. A description of the particular reason(s) that constitute unusual hardship as set forth in (b) above; and

5. Copies of all documents required to support the request, including, but not limited to, as applicable:

i. Notice to the insurer or agent of change of address;

ii. Death certificate;

iii. Report from a physician that specifies the type of medical condition or injury that prevented the claimant from filing a timely claim, the date such condition or injury first occurred, the date treatment was initiated, and any other relevant information; and

iv. Any additional information or documentation the Association or Fund, as applicable, or the Commissioner may specifically request from a particular claimant.

(d) Completed requests shall be sent to the Association or Fund at:

New Jersey Property-Liability Insurance Guaranty Association

(or New Jersey Surplus Lines Insurance Guaranty Fund)

Unusual Hardship Request

PO Box 868

466 Southern Blvd.

Chatham, NJ 07928

(e) The Association or Fund, as applicable, shall notify the claimant, or his or her legal representative, by certified mail, return receipt requested, whether it has approved the request for a finding of unusual hardship. The Association or Fund shall concurrently file a copy of its determination with the Department. No determination by the Association or Fund, as applicable, to approve a request for a finding of unusual hardship shall be deemed to constitute acceptance

of the claim otherwise as a covered claim or approval of any payment of the claim.

#### 11:1-43.4 Request for review by the Commissioner

(a) A claimant may request a review by the Commissioner of a determination of the Association or Fund, as applicable, denying a request for a finding of unusual hardship within 20 days of receipt of the Association's or Fund's written decision by submitting to the Commissioner a request for review addressed to:

Office of Financial Solvency

New Jersey Department of Banking and Insurance

20 West State Street

PO Box 325

Trenton, NJ 08625-0325

(b) A request for review shall include those items presented in the initial request, a written statement explaining why the determination of the Association or Fund denying the initial request was incorrect, and any additional documentation in support of the request for review.

1. A copy of the request for review shall be simultaneously filed by the claimant with the Association or Fund, as applicable.

2. The Association or Fund, upon receipt of the request for review, shall forward the claimant's file to the Commissioner for his or her review.

(c) The Commissioner's final decision shall be provided to the Association or Fund, as applicable, and shall be mailed to the claimant or his or her legal representative by certified mail, return receipt requested and by regular mail. The Commissioner's decision shall constitute a final agency decision.

#### 11:1-43.5 Confidentiality

All documents provided by a claimant pursuant to N.J.A.C. 11:1-43.3 shall be confidential and shall not be subject to public inspection or copying pursuant to the "Right-to-Know" law, N.J.S.A. 47:1A-1 et seq.