

§ 58-45-47. Deficit event.

(a) In the event of losses and expenses to the Association exceeding available surplus, reinsurance, and other sources of funding of Association losses, the Association is authorized to issue a nonrecoupable assessment upon its members in accordance with its Plan of Operation. Member assessments shall not exceed one billion dollars (\$1,000,000,000) for losses incurred from any event or series of events that occur in a given calendar year, regardless of when such assessments are actually levied on or collected from member companies.

(b) When the Association knows that it has incurred losses and loss expenses in a particular calendar year that will exceed the combination of available surplus, reinsurance, and other sources of funding, including permissible member company assessments, then the Association shall immediately give notice to the Commissioner that a deficit event has occurred.

(c) Upon a determination by the Association that a deficit event has occurred, the Association shall determine, in its discretion, the appropriate means of financing the deficit, which may include, but is not limited to, the purchase of reinsurance, arranging lines of credit, or other forms of borrowing or financing. If the Association determines that the member companies have paid one billion dollars (\$1,000,000,000) in nonrecoupable assessments for losses and expenses incurred in any given year pursuant to subsection (a) of this section, the Association may, subject to the verification by the Commissioner that the dollar value of losses and expenses has reached the level necessary for a catastrophe recovery charge, authorize member companies to impose a catastrophe recovery charge on their residential and commercial property insurance policyholders statewide. Catastrophe recovery charges shall be charged as a uniform percentage of written premiums as prescribed by the Commissioner and shall not exceed an aggregate amount of ten percent (10%) of the annual policy premium on any one policy of insurance. Catastrophe recovery charges collected under this section shall be transferred directly to the Association on a periodic basis as determined by the Association and ordered by the Commissioner. The Association and the FAIR Plan also shall charge their policyholders a catastrophe recovery charge as provided in this section.

(d) The catastrophe recovery charge shall be clearly identified to policyholders on the premium statement, declarations page, or by other appropriate electronic or written method. The identification shall refer to the post-catastrophe loss for which the charge was imposed. Any such catastrophe recovery charge shall not be considered premium for any purpose, including premium taxes or commissions, except that failure to pay the catastrophe recovery charge shall be treated as failure to pay premium and shall be grounds for termination of insurance. The identified catastrophe recovery charge shall be accompanied by an explanation of the charge and shall appear on the medium by which the charge is conveyed to the policyholder. The explanatory language shall be prescribed by the Commissioner.

(e) The Association shall report quarterly to the Commissioner providing all financial information for each catastrophe recovery charge authorized by this section, including total catastrophe recovery charge funds recovered to date and any information reasonably requested by the Commissioner.

(f) The Association shall recalculate the catastrophe recovery charge amount annually and, subject to procedure approved by the Commissioner, adjust the charge percentage as needed.

(g) The catastrophe recovery charge amount shall continue until financing of the deficit event has been paid in full. Upon order of cessation, any catastrophe recovery charge amounts collected by member companies, the Association or the FAIR Plan that exceed amounts necessary for payment of the debt shall be remitted to the Association and added to the surplus for the purposes of offsetting future Association losses or expenses.

(h) Nothing contained in this section prohibits the Association from entering into any financing arrangements for the purpose of financing a deficit, provided that the pledge of catastrophe recovery charge amounts under such financing agreements shall not result in the actual levying of any catastrophe recovery charge until after the Association has incurred a deficit and until after the Commissioner has approved implementation of the Association's catastrophe recovery charge plan. (2009-472, s. 1.)