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insurance commissioner's requirements for licensed insurance companies, or other State statutory requirements controlling investments of public entities, in the State in which the entity is organized, investing only in assets that qualify as ''admitted assets'';

(v) The entity maintains adequate surplus and reserves for undischarged liabilities of all types, as evidenced by a current audited financial statement and an actuarial review conducted in accordance with paragraph (d) of this section; and

(vi) Upon application for initial approval, the entity has proper organizational documentation, as evidenced by copies of the articles of incorporation, by-laws, business plans, copies of contracts with third party administrators, and an opinion from legal counsel that establishment of the entity conforms with all legal requirements under Federal and State law. Any material changes made to these documents after initial approval must be submitted for review and approval before becoming effective.

(d) *Professional evaluations of performance.* Audits and actuarial reviews are required to be prepared and submitted annually to the HUD Office of Public and Indian Housing, for review and appropriate action, by nonprofit insurance entities that are not insurance companies approved under paragraph (c)(1) of this section. In addition, an evaluation of other management factors is required to be performed by an insurance professional every three years. For fiscal years ending on or after December 31, 1993, the initial audit, actuarial review, and insurance management review required for a nonprofit insurance entity must be submitted to HUD within 90 days after the entity's fiscal year.

(1) The annual financial statement prepared in accordance with generally accepted accounting principles (including any supplementary data required under GASB 10) is to be audited by an independent auditor (see 24 CFR part 44), in accordance with generally accepted auditing standards. The independent auditor shall express an opinion on whether the entity's financial statement is presented fairly in accordance with generally accepted accounting principles. A copy of this audit must be submitted to HUD.

(2) The actuarial review must be done consistent with requirements established by the National Association of Insurance Commissioners and must be conducted by an independent property/casualty actuary who is an Associate or Fellow of a recognized professional actuarial organization, such as the Casualty Actuary Society. The report issued, a copy of which must be submitted to HUD, must include an opinion on any over or under reserving and the adequacy of the reserves maintained for the open claims and for incurred but unreported claims.

(3) A review must be conducted, a copy of which must be submitted to HUD, by an independent insurance consulting firm that has at least one person on staff who has received the professional designation of chartered property/casualty underwriter (CPCU), associate in risk management (ARM), or associate in claims (AIC), of the following:

(i) Efficiency of any Third Party Administrator;

(ii) Timeliness of the claim payments and reserving practices; and

(iii) The adequacy of reinsurance coverage.

(e) *Revocation of approval of a nonprofit insurance entity.* HUD may revoke its approval of a nonprofit insurance entity under this section when it no longer meets the requirements of this section. The nonprofit insurance entity will be notified in writing of: the proposed revocation of its approval, the reasons for the action, and the manner and time in which to request a hearing to challenge the determination. The procedure to be followed is specified in 24 CFR part 26, subpart A.

[41 FR 20276, May 17, 1976, as amended at 61 FR 7969, Feb. 29, 1996; 61 FR 50219, Sept. 24, 1996]

§ 965.215 Lead-based paint liability insurance coverage.

(a) *General.* The purpose of this section is to specify what HUD deems reasonable insurance coverage with respect to the hazards associated with lead-based paint activities that the PHA undertakes, in accordance with

the PHA's ACC with HUD. The insurance coverage does not relieve the PHA of its responsibility for assuring that lead-based paint activities are conducted in a responsible manner.

(b) *Insurance coverage requirements.* When the PHA undertakes lead-based paint activities, it must assure that it has reasonable insurance coverage for itself for potential personal injury liability associated with those activities. If the work is being done by PHA employees, the PHA must obtain a liability insurance policy directly to protect the PHA. If the work is being done by a contractor, the PHA must obtain, from the insurer of the contractor performing this type of work in accordance with a contract, a certificate of insurance providing evidence of such insurance and naming the PHA as an additional insured; or obtain such insurance directly. Insurance must remain in effect during the entire period of lead-based paint activity and must comply with the following requirements:

(1) *Named insured.* If purchased by the PHA, the policy shall name the PHA as insured. If purchased by an independent contractor, the policy shall name the contractor as insured and the PHA as an additional insured, in connection with performing work under the PHA's contract pertaining to lead-based paint activities. If the PHA has executed a contract with a Resident Management Corporation (RMC) to manage a building/project on behalf of the PHA, the RMC shall be an additional insured under the policy in connection with the PHA's contract related to lead-based paint activities. (The duties of the RMC are similar to those of a real estate management firm.)

(2) *Coverage limits.* The minimum limit of liability shall be $500,000 per occurrence written, with a combined single limit for bodily injury and property damage.

(3) *Deductible.* A deductible, if any, may not exceed $5,000 per occurrence.

(4) *Supplementary payments.* Payments for such supplementary costs as the costs of defending against a claim must be in addition to, and not as a reduction of, the limit of liability. However, it will be permissible for the policy to have a limit on the amount payable for defense costs. If a limit is applicable, it must not be less than $250,000 per claim prior to such costs being deducted from the limit of liability.

(5) *Occurrence form policy.* The form used must be an ''occurrence'' form, or a ''claims made'' form that contains an extended reporting period of at least five years. (Under an occurrence form, coverage applies to any loss regardless of when the claim is made.)

(6) *Aggregate limit.* If the policy contains an aggregate limit, the minimum acceptable limit is $1,000,000.

(7) *Cancellation.* In the event of cancellation, at least 30 days' advance notice is to be given to the insured and any additional insured.

(c) *Exception to requirements.* Insurance already purchased by the PHA or contractor and enforced on the day this section is effective which provides coverage for lead-based paint activities shall be considered as meeting the requirements of this section until the expiration of the policy. This section is not applicable to architects, engineers or consultants who do not physically perform lead-based paint activities.

(d) *Insurance for the existence of lead-based paint hazards.* A PHA may also purchase special liability insurance against the existence of lead-based paint hazards, although it is not a required coverage. A PHA may purchase this coverage if, in the opinion of the PHA, the policy meets the PHA's requirements, the premium is reasonable and the policy is obtained in accordance with applicable procurement standards. (See part 85 of this title and §965.205 of this title.) If this coverage is purchased, the premium must be paid from funds available under the Performance Funding System or from reserves.

[59 FR 31930, June 21, 1994, as amended at 64 FR 50228, Sept. 15, 1999]

Subpart C—Energy Audits and Energy Conservation Measures

SOURCE: 61 FR 7969, Feb. 29, 1996, unless otherwise noted.