

§3415. Borrowed capital funds

1. A domestic stock or mutual insurer may borrow money to defray the expenses of its organization, provide it with surplus funds or for any purpose of its business, upon a written agreement that such money is required to be repaid only out of the insurer's surplus in excess of that stipulated in the agreement. The agreement may provide for interest not exceeding, per annum, a rate of 5 percentage points in excess of the then current discount rate of the Federal Reserve Bank, Boston, which interest shall or shall not constitute a liability of the insurer as to its funds other than such excess of surplus as stipulated in the agreement. No commission or promotion expense may be paid in connection with any such loan, except that if sale is made of the loan securities through established securities brokers or by public offering, the insurer may pay the reasonable costs thereof approved by the superintendent.
[PL 1983, c. 709, §4 (RPR).]

2. Money so borrowed, together with the interest thereon if so stipulated in the agreement, shall not form a part of the insurer's legal liabilities except as to its surplus in excess of the amount thereof stipulated in the agreement, or be the basis of any set-off or counterclaim; but until repaid, financial statements filed or published by the insurer shall show as a footnote thereto the amount thereof then unpaid together with any interest thereon accrued but unpaid.
[PL 1969, c. 132, §1 (NEW).]

3. Any such loan is subject to the superintendent's approval. The insurer shall, in advance of the loan, file with the superintendent a statement of the purpose of the loan and a copy of the proposed loan agreement. The loan and agreement must be deemed approved unless within 15 days after date of such filing the insurer is notified of the superintendent's disapproval and the reasons therefor. The superintendent shall disapprove any proposed loan or agreement if the superintendent finds the loan is unnecessary or excessive for the purpose intended, or that the terms of the loan agreement are not fair and equitable to the parties and to other similar lenders, if any, to the insurer, or that the information so filed by the insurer is inadequate.
[RR 2021, c. 1, Pt. B, §278 (COR).]

4. Any such loan to an insurer or substantial portion thereof may be repaid by the insurer when no longer reasonably necessary for the purpose originally intended. No repayment of such a loan, whether heretofore or hereafter outstanding shall be made, other than as provided in the loan agreement, unless approved in advance by the superintendent.
[PL 1973, c. 585, §12 (AMD).]

5. This section shall not apply to other kinds of loans obtained by the insurer in ordinary course of business, or to loans secured by pledge or mortgage of assets.
[PL 1969, c. 132, §1 (NEW).]

6. Loans authorized under this section may be made by domestic insurers as well as by other persons; but such a loan shall not constitute an asset in any determination of the financial condition of the lending insurer.
[PL 1969, c. 132, §1 (NEW).]

SECTION HISTORY

PL 1969, c. 132, §1 (NEW). PL 1969, c. 177, §58 (AMD). PL 1973, c. 585, §12 (AMD). PL 1983, c. 709, §4 (AMD). RR 2021, c. 1, Pt. B, §278 (COR).

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