

§6454. Regulatory action level event

1. Regulatory action level event; defined. "Regulatory action level event" means, with respect to any insurer, any of the following events:

A. The filing of a risk-based capital report by the insurer that indicates that the insurer's total adjusted capital is greater than or equal to its authorized control level risk-based capital but less than its regulatory action level risk-based capital; [PL 1993, c. 634, Pt. A, §1 (NEW).]

B. Provided the insurer does not challenge the adjusted risk-based capital report under section 6457, the notification by the superintendent to an insurer of an adjusted risk-based capital report that indicates the event in paragraph A; [PL 1993, c. 634, Pt. A, §1 (NEW).]

C. If the insurer, under section 6457, challenges an adjusted risk-based capital report that indicates the event in paragraph A, the notification by the superintendent to the insurer that the superintendent has, after a hearing, rejected the insurer's challenge; [PL 1993, c. 634, Pt. A, §1 (NEW).]

D. The failure of the insurer to file a risk-based capital report by the filing date, unless the insurer has provided an explanation for the failure that is satisfactory to the superintendent and has cured the failure within 10 days after the filing date; [PL 1993, c. 634, Pt. A, §1 (NEW).]

E. The failure of the insurer to submit a risk-based capital plan to the superintendent within the time period set forth in section 6453, subsection 3; [PL 1993, c. 634, Pt. A, §1 (NEW).]

F. Provided the insurer has not challenged the determination under section 6457, the notification by the superintendent to the insurer that:

(1) The risk-based capital plan or revised risk-based capital plan submitted by the insurer is, in the judgment of the superintendent, unsatisfactory; and

(2) The superintendent's finding unless vacated or stayed constitutes a regulatory action level event with respect to the insurer; [PL 1999, c. 113, §28 (AMD).]

G. If the insurer, under section 6457, challenges a determination by the superintendent under paragraph F, the notification by the superintendent to the insurer that the superintendent has, after a hearing, rejected that challenge; [PL 1993, c. 634, Pt. A, §1 (NEW).]

H. Provided the insurer has not challenged the determination under section 6457, the notification by the superintendent to the insurer that the insurer has failed to adhere to its risk-based capital plan or revised risk-based capital plan, but only if that failure has a substantial adverse effect on the ability of the insurer to eliminate the company action level event or regulatory action level event in accordance with its risk-based capital plan or revised risk-based capital plan and the superintendent has so stated in the notification; or [PL 1999, c. 113, §28 (AMD).]

I. If the insurer, under section 6457, challenges a determination by the superintendent under paragraph H, the notification by the superintendent to the insurer that the superintendent has, after a hearing, rejected the challenge unless the failure of the insurer to adhere to its risk-based capital plan or revised risk-based capital plan has no substantial adverse effect on the ability of the insurer to eliminate the company action level event or regulatory action level event with respect to the insurer. [PL 1999, c. 113, §28 (AMD).]

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2. Superintendent duties; regulatory action level event. When a regulatory action level event occurs, the superintendent shall:

A. Require the insurer to submit a risk-based capital plan or, if applicable, a revised risk-based capital plan; [PL 1993, c. 634, Pt. A, §1 (NEW).]

B. Perform such examination or analysis as the superintendent considers necessary of the assets, liabilities and operations of the insurer, including a review of its risk-based capital plan or revised risk-based capital plan; and [PL 1993, c. 634, Pt. A, §1 (NEW).]

C. Subsequent to the examination or analysis, issue a corrective order specifying corrective actions that the superintendent considers necessary. [PL 1993, c. 634, Pt. A, §1 (NEW).]
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3. Determination of corrective actions. In determining corrective actions, the superintendent may take into account those factors that the superintendent considers relevant with respect to the insurer based upon the superintendent's examination or analysis of the assets, liabilities and operations of the insurer, including, but not limited to, the results of any sensitivity tests undertaken pursuant to the risk-based capital instructions. The risk-based capital plan or revised risk-based capital plan must be submitted:

A. Within 45 days after the occurrence of the regulatory action level event; [PL 1993, c. 634, Pt. A, §1 (NEW).]

B. If the insurer challenges an adjusted risk-based capital report under section 6457 and the challenge is not, in the judgment of the superintendent, frivolous, within 45 days after the notification to the insurer that the superintendent has, after a hearing, rejected the insurer's challenge; or [PL 1993, c. 634, Pt. A, §1 (NEW).]

C. If the insurer challenges a revised risk-based capital plan under section 6457, within 45 days after notification to the insurer that the superintendent has, after a hearing, rejected the insurer's challenge. [PL 1993, c. 634, Pt. A, §1 (NEW).]

[PL 1993, c. 634, Pt. A, §1 (NEW).]

4. Consultants. The superintendent may retain actuaries, investment experts and other consultants as may be necessary in the judgment of the superintendent to review the insurer's risk-based capital plan or revised risk-based capital plan; examine or analyze the assets, liabilities and operations of the insurer; and formulate the corrective order with respect to the insurer. For insurers offering managed care plans as defined in section 4301-A, the analysis of the insurer's operations may include an analysis of its contractual relationships with providers and the ability of the providers to fulfill their contractual obligations. The fees, costs and expenses relating to consultants must be borne by the affected insurer or such other party as directed by the superintendent.

[RR 2001, c. 1, §38 (COR).]

SECTION HISTORY

PL 1993, c. 634, §A1 (NEW). PL 1999, c. 113, §§28,29 (AMD). RR 2001, c. 1, §38 (COR).

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