

**State of Rhode Island and Providence Plantations  
DEPARTMENT OF BUSINESS REGULATION**

*Division of Insurance*

**1511 Pontiac Avenue, Bldg. 69-2  
Cranston, Rhode Island 02920**

**Public Notice of Proposed Rule-Making**

Pursuant to the provisions of R.I. Gen. Laws § 27-14.5-1, and in accordance with the Administrative Procedures Act Chapter 42-35 of the General Laws, the Department of Business Regulation hereby gives notice of its intent to amend Insurance Regulation 68 – Commutation Plans.

The purpose of this amendment is to update the procedures on the filing of Commutation Plans to implement best practices obtained from implementation of the statute and regulation and to make changes necessitated by amendment of the statute.

The proposed regulation and concise summary of non-technical amendments are available for public inspection at [www.dbr.ri.gov](http://www.dbr.ri.gov), in person at Department of Business Regulation, 1511 Pontiac Avenue, Cranston, Rhode Island 02920, or by email [elizabeth.dwyer@dbr.ri.gov](mailto:elizabeth.dwyer@dbr.ri.gov) or by calling Elizabeth Kelleher Dwyer at (401) 462 9520.

In the development of the proposed amendment consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.

All interested parties are invited to submit written or oral comments concerning the proposed regulations by May 14, 2014 to Elizabeth Kelleher Dwyer, Department of Business Regulation, 1511 Pontiac Avenue, Cranston, Rhode Island 02920, [elizabeth.dwyer@dbr.ri.gov](mailto:elizabeth.dwyer@dbr.ri.gov). A public hearing to consider the proposed amendment shall be held on May 14, 2014 at 10:00 a.m. at 1511 Pontiac Avenue, Cranston, Rhode Island 02920 at which time and place all persons interested therein will be heard.

All are welcome at the Rhode Island Department of Business Regulation ("DBR"). If any reasonable accommodation is needed to ensure equal access, service or participation, please contact DBR at 401-462-9551, RI Relay at 7-1-1, or email [directorofficeinquiry@dbr.ri.gov](mailto:directorofficeinquiry@dbr.ri.gov) at least three (3) business days prior to the hearing.

Paul McGreevy  
Director, Department of Business Regulation

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**Concise Summary of Proposed Non-technical Amendments**  
**to**  
**Insurance Regulation Number 68 – Commutation Plans**

In accordance with the Administrative Procedures Act, Section 42-35-3(a)(1) of the General Laws of Rhode Island, following is a concise summary of proposed non-technical amendments:

1. Section 3 adds a definition of “Petition.”
2. Section 4 is split into five separate sections to clarify the procedures.
3. New section 4 clarifies that the listed items are minimums and that other information may be included in the Plan. New Section C is added to clarify that the Department will engage outside consultants; the procedure if the Department cannot complete the review in 60 days and options if the Department objects to the Plan.
4. New section 5 is a portion of the former section 4 with the addition of some clarifying language and a statement as to when the Motion for the Meeting of Creditors is to be filed.
5. New section 6 is a portion of the former section 4 with some clarifying changes and specification on notice. Also proposed is a new paragraph outlining the timeline for a creditor to object to the Plan; a statement with regard to calculations of value when a letter of credit has been posted and requirements for stenographic recording of the meeting of creditors.
6. New section 7 is a portion of former section 4 with some changes for clarification. It adds a provision specifying the actions to be taken if the Plan is approved or disapproved at the Meeting of Creditors.
7. New section 8 is a portion of former section 4 with only numbering changes.
8. New section 9 is a portion of former section 4 with only numbering changes.
9. New section 10 is a portion of former section 4 with only numbering and grammatical changes.

10. New Section 11 is former section 5. Changes have been made in the fee structure to mirror the statutory changes made to R.I. Gen § 27-14.5-5(c).

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~~233 Richmond Street~~ **1511 Pontiac Avenue**  
**Providence**~~Cranston~~, Rhode Island ~~02903~~**02920**

**INSURANCE REGULATION 68**

**COMMUTATION PLANS**

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**Section 1 Authority**

This Regulation is promulgated in accordance with R.I. Gen. Laws § 27-14.5-6 and 42-14-17.

**Section 2 Purpose**

The purpose of this Regulation is to outline the procedural requirements for insurance companies applying for the implementation of a Commutation Plan pursuant to R.I. Gen. Laws § 27-14.5-1 *et seq.* and related matters.

**Section 3 Definitions**

In addition to the definitions set forth in R.I. Gen. Laws §27-14.5-1, which are incorporated here, by reference, the following definitions shall apply to this Regulation:

- ~~1~~**A.** “Court” shall mean the Business Calendar of the Superior Court or its equivalent in and for the County of Providence, Rhode Island.
- ~~2~~**B.** “Department” shall mean the Insurance Division of the Rhode Island Department of Business Regulation.

C. “Petition” shall mean a Petition for Implementation of the Commutation Plan filed in the Court.

3D. “Meeting of Creditors” shall mean a meeting of Creditors, to consider the Commutation Plan held within ninety (90) days of the date the Applicant’s notice is transmitted to the Court, or as otherwise directed by the Court upon the Applicant’s petition.

4E. “Officer” shall mean such individuals as specified and defined in the Commutation Plan.

5F. “Plan Administrator” shall mean the individual or entity retained by the Applicant for the purpose of administering the Commutation Plan in accordance with its terms.

6G. “Value” shall mean the amount of a claim by a Creditor or Class of Creditors as prescribed in the Commutation Plan.

**Section 4** **Commutation Plan Application Procedures**

~~(a) Application Procedure~~

~~(i)A.~~ Any Applicant that wishes to apply to the Court for an order implementing a Commutation Plan must first submit the Commutation Plan for review by the Department.

~~i.B.~~ The Commutation Plan, submitted for review by the Applicant, should contain all operative provisions. The following items should be included or an explanation provided as to why the particular provision is not included, but not. This list is not exhaustive and other provisions may be included in the commutation plan. be limited to:

1. Explanation of the Plan
2. Plan Administration, including proposed form and manner of Notice
3. Effect on Creditors
4. Meetings of Creditors
5. Determination of Classes of Creditors
6. Claims Procedures
7. Alternative Solutions
8. Financial Position
9. Actuarial Review
10. Enforcement Provisions
11. Determination of Liabilities
12. Dispute Resolution Procedure
13. Payment of Claims
14. Effect of Insolvency
15. Termination of the Commutation Plan

~~(ii)~~C. The Department shall have sixty (60) days from the date of its receipt of the Commutation Plan to provide comment on the Commutation Plan to the Applicant.

1. The Department may engage independent consultants, at the Applicant's expense, as set forth in Section 11(C) below, to assist the Department in its review of the Commutation Plan.
2. If the Department is unable to complete its review within the sixty (60) days it may extend the time by informing the Applicant of the reason for the extension and providing an estimate of the time necessary to complete the review.
3. If the Department determines that it cannot support the Commutation Plan as filed, the Applicant will be so informed and given the opportunity to amend the Commutation Plan to satisfy the concerns of the Department or withdraw the Commutation Plan.

## **Section 5 Application to the Court**

~~(iii)~~A. Once the Department's comments to the Commutation Plan, if any, are resolved to the satisfaction of the Department, or if the sixty (60) day period set forth in ~~s~~Section 4 ~~(a) (ii)~~, above and any extension thereto, has passed and the Department has no comments on the Commutation Plan, the Applicant may apply to the Court for an order with a copy of the Petition being provided to the Department:

B. The application shall be in the form of a Petition for Implementation of the Plan in the Providence County Superior Court.

C. Following the filing of the Petition the Applicant may file a motion on the Business Calendar requesting an order:

i.1. Agreeing upon Establishing the classes of Creditors for the purposes of the Meeting of Creditors.

ii.2. Calling a Meeting of Creditors or class of Creditors.

## **(b)Section 6 Meeting of Creditors**

~~(i)~~A. Within ninety (90) days of the date the ~~Applicant's application is transmitted to~~ Petition is filed with the Court, ~~pursuant to section 4 (a) (iii), above,~~ or as otherwise directed by the Court upon the Applicant's application, a Meeting of Creditors shall be held to consider the Commutation Plan.

~~(ii)~~B. Notice of the Meeting shall be pursuant to the Notice provisions of Chapter 14.5 of Title 27 and shall be designed to provide notice of that date and time of the meeting as well as information concerning voting and proxies.-

~~(iii)~~C. All known Creditors and/or representatives of all Classes of Creditors shall be invited to the Meeting-

D. Any Creditor that objects to the Commutation Plan, or any aspect thereof, including but not limited to, the schedule for the Meeting of Creditors or the designation of classes of creditors should file any such objection with the Court and serve any such objection within sixty (60) days of the date the Applicant transmits notice of the Court's Order setting the date for the Meeting of Creditors

~~(e)~~E. Voting Procedure at the Meeting of Creditors

~~(i)~~(1) To determine whether the requisite statutory majority to approve the Commutation Plan has been achieved at the Meeting of Creditors, votes will be calculated according to the aggregate amount of claims specified against the Applicant in respect of insurance or reinsurance contracts detailed in the voting form.

~~i.~~(2) The Applicant will provide a voting form to all Creditors.

~~ii.~~(3) The Creditor must submit its voting form within the time, date and other requirements of the Commutation Plan.

~~iii.~~(4) Only returned voting forms will be considered in order to determine the value of each Creditor's vote at the Meeting of Creditors.

~~(ii)~~(5) The Value to be attributed to each Creditor's claim, for voting purposes only, will be ~~agreed-determined~~ on the basis of the information provided by the Creditor in its voting form or the information available to the Applicant from its existing records.

~~ia.~~ Account will ~~also~~ be taken of any known set off, or cross claim ~~or security~~ in relation to any particular Creditor. However, a Creditor's claim will not be reduced by the value of any letter of credit or other form of collateral posted by the Applicant to secure its obligation to the Creditor.

~~ib.~~ A secured Creditor, or a holder of a promissory note issued by the Applicant, may vote only in respect of the balance, if any, of his claim after deducting the value of his security.

(iii)(6) If the Applicant agrees on the amount of the Value of a Creditor's claim, for voting purposes only, the amount will be used for the purposes of valuing the relevant Creditor's vote at the Meeting of Creditors.

(iv)F. The Chairman of the Meeting of Creditors

(i)1. The Chairman of the Meeting of Creditors shall be the Plan Administrator unless otherwise selected by Applicant.

(ii)2. The Chairman of the Meeting of Creditors has the power to admit or reject any Creditor's voting form for the purpose of its entitlement to vote and the power is exercisable with respect to all or part of the voting form.

ia. If the Chairman is in doubt whether a voting form should be admitted or rejected, the Chairman shall mark the voting form as objected to but allow the Creditor to vote subject to the vote being declared invalid if the objection is ultimately sustained.

ib. If agreement cannot be reached between the Applicant and any Creditor on the amount of the value of a Creditor's claim, for voting purposes only, the Chairman of the Meeting of Creditors will determine what he considers to be a fair and reasonable value for voting purposes.

ic. Where possible, the Chairman will notify the relevant Creditor of his decision on valuation for voting purposes before the Meeting of Creditors.

id. Any Creditor may appeal the Chairman's decisions to the Court.

ie. If a Chairman's decision is reversed or altered on appeal and the vote is declared invalid, the Court may order a new Meeting of Creditors or such other relief as is appropriate.

G. The Meeting of Creditors shall be stenographically recorded and such recording shall be provided to the Court and the Department in connection with any appeal of a decision at the Meeting of Creditors.

**(e)Section 7. Approval of the Commutation Plan**

(i)A. The Commutation Plan, as presented by the Applicant at the Meeting of Creditors, shall be considered to be approved and binding on all Creditors of the Applicant if fifty percent in number, representing at least three fourths in value of each Class of Creditors, present and voting either in person or by proxy at the Meeting, agree to the terms and conditions of the Commutation Plan.

B. Within thirty (30) days ~~of following~~ the approval of the Commutation Plan at the Meeting of Creditors pursuant to section 4 (d) (i), above, the Applicant ~~must~~ shall file a motion ~~with petition~~ with the Court to requesting:

1. If approved, that the Court enter an order confirming the approval of the Commutation Plan;

2. If disapproved, that:

a. That the Petition be dismissed;

b. The applicant be given leave to file an amended Commutation Plan.

i. If an amended Commutation Plan is filed the Department shall be given an opportunity to review and opine;

ii. If the Department approves the amended Commutation Plan, the Applicant shall proceed to obtain an order from the Court to convene a Meeting of Creditors, as set forth in Section 5, above. If the Court grants approval, the Applicant shall proceed with the Meeting of Creditors, as provided in Section 6, above

#### ~~(f)~~Section 8. Administration of the Commutation Plan

~~(i)~~A. The Applicant, with the approval of the Department, shall appoint such Officers, or a Plan Administrator, as it deems necessary to administer the Commutation Plan.

B. The Applicant, or its agent, shall:

~~1.~~1. Within thirty (30) days of the end of each quarter, make quarterly reports to the Department regarding implementation and administration of the Commutation Plan in a form acceptable to the Department with a copy provided to the Court; and

~~2.~~2. Respond to all inquiries of the Department and the Court.

~~3C.~~3C. All disputes between a Creditor(s) or Class of Creditors and the Applicant will be resolved pursuant to the dispute resolution provisions of the Commutation Plan.

#### ~~(g)~~Section 9 Termination of the Commutation Plan

~~(i)~~A. The Commutation Plan will terminate as provided in the Commutation Plan documents.

~~(i)B.~~ Notice of termination of the Commutation Plan will be transmitted as provided in the Commutation Plan.

~~(i)Section 10~~ **Modification or Waiver**

~~(i)A.~~ If, for good cause shown, the Department determines that any one or more of these requirements should be modified or waived, the Department shall have the ability to approve a plan with such modification or waiver.

~~(i)B.~~ An applicant that wishes to request such a modification or waiver shall make such request in writing no later than the filing of the Commutation pPlan with the Department.

**Section 511** **Fees**

~~(a) Application Fee~~

A. At the time of application, the Applicant shall pay a nonrefundable fee to the Department in the amount of ~~\$125,000-~~ \$10,000 or such lesser amount as the Commissioner shall deem adequate.

B. The applicant shall pay the expenses of the Department and its consultants as set forth in R.I. Gen. Laws § 27-14.5-5(c).

C. ~~Administration Fee~~ The Applicant shall pay the costs of regulatory administration of the Commutation Plan as assessed by the Commissioner pursuant to R.I. Gen. Laws §27-14.5-5(b).

D. Failure to pay any of these fees shall be grounds for the Department to request that the Court dismiss the Petition for approval of the Commutation Plan prior to final order.

**Section 612** **Severability**

If any section, term, or provision of this Regulation should be adjudged invalid for any reason, that judgment should not affect, impair, or invalidate any remaining section, term, or provision, which shall remain in full force and effect.

**Section 713** **Effective Date**

This Regulation shall be effective as indicated below.

EFFECTIVE DATE: September 5, 2004  
AMENDED: December 31, 2009  
AMENDED: May , 2014