

# **Insurance Capital Build-Up Incentive Program**

**Administered by the  
State Board of Administration of Florida**

**Annual Report to the President of the Senate and the  
Speaker of the House of Representatives**

**February 1, 2023**

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### **Purpose and Scope**

Section 215.5595(9), Florida Statutes, requires the State Board of Administration to submit a report to the President of the Senate and the Speaker of the House of Representatives by February 1st of each year as to the results of the Insurance Capital Build-Up Incentive Program and each insurer's compliance with the terms of its Surplus Note.

### **Introduction & History**

The Insurance Capital Build-Up Incentive Program ("Program"), administered by the State Board of Administration ("SBA" or "Board"), was created by s. 215.5595, F.S. (the "Statute") for the purpose of providing an incentive for investors to commit additional capital to Florida's residential insurance market and to write a minimum level of premiums for residential hurricane coverage.

In 2006, the Legislature appropriated \$250 million in nonrecurring funds from Florida's General Revenue Fund for the Program. The Legislature specified that \$2.5 million (or 1 percent of the appropriated amount) was to be set aside to pay the administrative costs and fees incurred during the duration of the Program, leaving \$247.5 million available to loan to insurers pursuant to the Program.

The SBA approved an emergency rule (Rule 19ER06-3, F.A.C.) on May 31, 2006, to implement the Program. The emergency rule was subsequently incorporated into Rule 19-15.001, F.A.C., which was later repealed on October 2, 2011, as the rule was no longer necessary. The emergency rule established time frames for insurers to submit their application under the Program. The first timeframe was June 1 to June 15, 2006. The second time frame was June 16 to July 1, 2006. The final timeframe was July 2, 2006 to June 1, 2007. Upon receiving the first set of applications, the SBA, in consultation with the Florida Office of Insurance Regulation ("OIR"), reviewed applications, focusing on the financial condition of the insurer and the insurer's business plan. Applications received during each successive time frame were reviewed only if funds were still available to loan. If more funds were applied for than available, the Statute allowed for prioritization by the SBA, but as it worked out, prioritization was unnecessary. The funds requested matched the funds available as some insurers adjusted their request in order to help maximize the benefits of the program. The SBA received a total of 20 applications from insurers requesting approximately \$356 million in Surplus Note proceeds. As illustrated in Table 1 on page 3, a total of \$247.5 million was loaned to 13 insurers. Each insurer submitting an application by July 1, 2006, was required by law to make a contribution of new capital to its surplus at least equal to the amount of the Surplus Note. Those insurers applying after July 1, 2006, were each required by law to make a contribution of new capital to their surplus that was at least twice the amount of the Surplus Note. New capital contributed by each insurer was verified via bank confirmation before Surplus Note proceeds were distributed. The Surplus Notes issued, combined with the total amount of new capital contributed by the companies (\$296 million), created \$543.5 million in new unencumbered capital, allowing insurers to write additional residential property insurance coverage.

## **Terms of Surplus Notes**

(Note: All information is as of January 25, 2023)

The repayment terms of the Surplus Notes are specified in s. 215.5595(2)(f)1., F.S., as follows:

The surplus note must be repayable to the state with a term of 20 years. The surplus note shall accrue interest on the unpaid principal balance at a rate equivalent to the 10-year U.S. Treasury Bond rate, require the payment only of interest during the first 3 years, and include such other terms as approved by the board. The board may charge late fees up to 5 percent for late payments or other late remittances. Payment of principal, interest, or late fees by the insurer on the surplus note must be approved by the Commissioner of Insurance, who shall approve such payment unless the commissioner determines that such payment will substantially impair the financial condition of the insurer. If such a determination is made, the commissioner shall approve such payment that will not substantially impair the financial condition of the insurer.

Under s. 215.5595(11), F.S., enacted in 2011 as part of Chapter 2011-39, Laws of Florida, certain terms of Surplus Notes issued prior to January 1, 2011, were subject to renegotiation, as follows:

If the insurer agrees to accelerate the payment period of the note by at least 5 years, the board must agree to exempt the insurer from the premium-to-surplus ratios required under paragraph (2)(d). If the insurer agrees to an acceleration of the payment period for less than 5 years, the board may, after consultation with the Office of Insurance Regulation, agree to an appropriate revision of the premium-to-surplus ratios required under paragraph (2)(d) for the remaining term of the note if the revised ratios are not lower than a minimum writing ratio of net premium to surplus of at least 1 to 1 and, alternatively, a minimum writing ratio of gross premium to surplus of at least 3 to 1.

Six insurers (American Capital Assurance Corporation, Cypress Property & Casualty Insurance Company, Florida Peninsula Insurance Company, Privilege Underwriters Reciprocal Exchange, Southern Fidelity Insurance Company, and Tower Hill Signature Insurance Company) renegotiated their Surplus Notes under this provision and entered into addenda reducing the term of the Surplus Notes by five years.

**TABLE 1**

Companies Receiving a Surplus Note	Date of Surplus Note	Amount of Surplus Note	Amount Contributed by Insurer	Total Amount of New Capital	Term Ends
American Capital Assurance Corporation <sup>^</sup>	11/21/06	\$25,000,000	\$25,000,000	\$50,000,000	see notes
American Integrity Insurance Company of Florida	06/27/07	\$7,000,000	\$7,000,000	\$14,000,000	3/31/2027
Cypress Property & Casualty Insurance Company	02/02/07	\$20,500,000	\$20,500,000	\$41,000,000	Paid off
First Home Insurance Company*	06/27/07	\$14,500,000	\$29,000,000	\$43,500,000	Paid off
Florida Peninsula Insurance Company	01/03/07	\$25,000,000	\$25,000,000	\$50,000,000	Paid off
Modern USA Insurance Company***	06/28/07	\$7,000,000	\$7,000,000	\$14,000,000	3/31/2027
Olympus Insurance Company*	06/28/07	\$16,500,000	\$33,500,000	\$50,000,000	Paid off
Privilege Underwriters Reciprocal Exchange*	06/13/07	\$17,000,000	\$34,000,000	\$51,000,000	Paid off
Royal Palm Insurance Company **	12/20/06	\$25,000,000	\$25,000,000	\$50,000,000	Paid off
Southern Fidelity Insurance Company	09/12/06	\$25,000,000	\$25,000,000	\$50,000,000	Paid off
St. Johns Insurance Company^^	07/31/06	\$20,000,000	\$20,000,000	\$40,000,000	see notes
United Property & Casualty Insurance Company	09/22/06	\$20,000,000	\$20,000,000	\$40,000,000	6/30/2026
Universal Property & Casualty Insurance Company	11/09/06	<u>\$25,000,000</u>	<u>\$25,000,000</u>	<u>\$50,000,000</u>	9/30/2026
		\$247,500,000	\$296,000,000	\$543,500,000	

<sup>^</sup>American Capital Assurance Corp was ordered into receivership on April 14, 2021, and a Proof of Claim has been filed for the outstanding balance of \$1,645,880.39

<sup>^^</sup>St. Johns Insurance Company was ordered into receivership on February 25, 2022, and a Proof of Claim will be filed for the outstanding balance of \$5,306,635.15.

\*Companies applying after July 1, 2006

\*\*Now known as Tower Hill Signature Insurance Company

\*\*\*Now known as American Traditions Insurance Company

An amortization summary, showing interest rates, principal and interest payments, as well as the outstanding principal balance, is updated each quarter. The most recent summary is available on the Insurance Capital Build-Up Program website at <https://www.sbafla.com/fsb/Home/InsuranceCapitalBuild-UpIncentiveProgram.aspx>.

### ***Principal***

Principal payments are made in equal quarterly installments, with due dates coinciding with interest payment dates (i.e., January 1, April 1, July 1, and October 1).

Total principal paid since inception of the program is \$227,432,568.98. The outstanding principal balance is \$20,067,431.02. Principal payments not approved by OIR or deferred by OIR are reamortized over the remaining life of the Surplus Note.

### ***Interest***

The interest rate on the Surplus Notes is adjusted quarterly for the term of the Surplus Note based on the 10-year Constant Maturity Treasury rate. The interest rate is determined two business days prior to the payment date in order to set the rate for the following quarter. Additional interest may be charged to insurers failing to meet the minimum writing ratio, the minimum required surplus or failing to maintain a level of surplus and reinsurance sufficient to cover in excess of its 1-in-100 year probable maximum loss (further explained later).

The 10-year Constant Maturity Treasury rate has fluctuated from a low of 0.64% to a high of 5.22%, with the most recent four quarters ranging from 1.52% to 3.76%. Total interest paid since inception of the program is \$79,015,450.69.

Principal and interest payments received are invested in the SBA's Florida PRIME Account until transferred to Florida's General Revenue Fund.

### ***Late Fees***

Section 215.5595(2)(f)1., F.S., gives the SBA the authority to charge five percent for late payments or other late remittances. There were no late fees charged during 2022.

## **Compliance**

Provisions of the Surplus Note and the Statute require each insurer to 1) meet minimum writing ratios, 2) maintain a minimum required surplus, and 3) maintain a level of surplus and reinsurance sufficient to cover in excess of its 1-in-100-year probable maximum loss ("PML"), as further detailed in the following sections. In order to monitor compliance with these requirements, the Surplus Note requires each company submit a quarterly written premium report (Form SBA 15-3) to the OIR and the SBA. Failure to submit the quarterly written premium report is considered a condition of default on the Surplus Note.

If an insurer is in default with the provisions of the Surplus Note, the consequences may include:

- Increasing the interest rate
- Accelerating the repayment of principal and interest
- Shortening the term of the Surplus Note
- Calling the Surplus Note and demanding full payment

A compliance report, showing each insurer's writing ratio(s) and compliance, as well as compliance with minimum required surplus and PML requirements, is prepared each quarter. The most recent compliance report is available on the Insurance Capital Build-Up Program website at <https://www.sbafla.com/fsb/Home/InsuranceCapitalBuild-UpIncentiveProgram.aspx>.

### ***1) Writing Ratio***

The Statute, as originally enacted, required the insurer commit to a minimum writing ratio of net written premium to surplus of at least 2:1 for the life of the Surplus Note (except for an insurer writing only manufactured housing policies; American Integrity Insurance Company of Florida and American Traditions Insurance Company are the two insurers that meet this exception). For example, the insurer would need to write \$2 in premiums for every \$1 of surplus. In order to monitor compliance with this requirement, a section of the quarterly written premium report requires insurers to provide information on their direct premiums written, assumed premiums written, and ceded premiums. Each insurer's writing ratio is determined by OIR and certified quarterly to the SBA.

The Surplus Note recognized that due to an insurer's financial situation, the insurer might not be able to immediately achieve the 2:1 ratio without causing financial stress. As long as an insurer was in the process of aggressively implementing its business plan, a reasonable delay in reaching the 2:1 ratio was considered acceptable. For each insurer, language was incorporated in the Surplus Note to address this situation and provide the proper incentive to meet the goals of the Legislature. If the insurer did not meet the time frame required by the Surplus Note, the SBA and the insurer agreed to additional interest charges and/or repayment of a portion of the Surplus Note. Additional interest charges are 25 basis

points or 450 basis points, depending on the degree the insurer is out of compliance. Several insurers were not able to meet the required minimum writing ratio by the agreed upon date and have paid additional interest charges. The compliance report indicates which companies were required to pay additional interest charges as a result of failing to meet the writing ratio requirements. No insurers have been required to repay a portion of the Surplus Note due to writing ratios.

The Statute was amended in 2008 by Chapter 2008-66, Laws of Florida. The amended Statute relaxed the writing ratio requirements (s. 215.5595(2)(d), F.S.), and allowed for renegotiation of the Surplus Notes (s. 215.5595(10), F.S.) for those insurers with existing Surplus Notes with the SBA. As a result, 11 Surplus Notes were renegotiated to incorporate the new time frames with the revised ratios. The law now allows for the meeting of either a net or gross writing ratio. The requirements were phased in over three calendar years. The phase in for the net writing ratio was 1:1 for the first year (2008), 1.5:1 for the second year, and 2:1 for the third year and beyond. The gross writing ratio was phased in over the three years as 3:1, 4.5:1, and 6:1.

Currently, all companies not in receivership with an outstanding Surplus Note are in compliance with the minimum writing ratio provision of the Surplus Note.

## ***2) Minimum Required Surplus***

As a condition of the Surplus Note, each insurer must maintain a minimum surplus which includes the Surplus Note proceeds and new capital equal to \$50 million (\$14 million for insurers writing only manufactured housing policies). In order to monitor compliance, a section of the quarterly written premium report requires insurers provide information on their total admitted assets, liabilities, and capital and surplus. Insurers not meeting the minimum required surplus for any quarter must provide a detailed explanation showing how the surplus was calculated and why it is below the required amount. If the insurer fails to meet the minimum required surplus, the insurer is considered to be in default on the loan except for the following circumstances:

- situations involving the payment of losses resulting from a catastrophic event or a series of events resulting in catastrophic losses
- situations where minimum required surplus is reduced as a result of the accounting treatment for deferred acquisition costs
- situations where minimum required surplus is reduced as a result of the repayment of principal on the Surplus Note

Currently, all companies not in receivership with an outstanding Surplus Note are in compliance with the minimum required surplus provision of the Surplus Note.

## ***3) 1-in-100 Year Probable Maximum Loss***

The 2008 amendment to the Statute provided an additional condition of the Surplus Note:

The insurer must also commit to maintaining a level of surplus and reinsurance sufficient to cover in excess of its 1-in-100-year probable maximum loss, as determined by a hurricane loss model accepted by the Florida Commission on Hurricane Loss Projection Methodology, which shall be determined by the Office of Insurance Regulation and certified annually to the board. If the board determines that the insurer has failed to meet any of the requirements of this paragraph during the term of the surplus note, the board may increase the interest rate, accelerate the repayment of interest and principal, or shorten the term of the surplus note, subject

to approval by the Commissioner of Insurance of payments by the insurer of principal and interest as provided in paragraph (f).

On October 13, 2022, OIR certified that each insurer not in receivership holding a Surplus Note with the State of Florida maintained a sufficient level of surplus and reinsurance to cover its 1-in-100-year PML for 2022-2023.

## **Funds Transferred to General Revenue**

In 2009, the Legislature enacted Chapter 2009-12, Laws of Florida, which added new subparagraph 215.5595(2)(f)2. This provision requires all future principal, interest, and late fees received from insurers be transferred to the General Revenue Fund within 30 days after receipt. In addition, a 2009 Appropriations Act, Chapter 2009-1, Laws of Florida, directed the SBA to transfer to General Revenue all unrestricted moneys received as repayments of principal, interest, and late fees received from insurers to date, as well as accumulated investment earnings. The sum of \$26,713,695 from repayment of interest, and earnings thereon, was transferred to General Revenue in February 2009. Also transferred to General Revenue in February 2009, was the investment income earned on the original appropriation of \$250 million (including the interest earned on the \$2.5 million set aside in the expense account). Before loans were made to insurers, the appropriated funds accumulated investment earnings, of which \$8,368,141 was transferred to General Revenue in February 2009. There were funds remaining after the initial transfers in February 2009, totaling \$1,587,379.91, which had been frozen from investor withdrawals due to the portfolio's investment in distressed illiquid securities. Since that time, funds were transferred to General Revenue quarterly as the SBA released restrictions on them. In August 2014, the last remaining restrictions were released, and the distressed securities were fully liquidated by early 2015.

To comply with the 2009 amendments to the Statute, all available funds are transferred on the 25<sup>th</sup> of each January, April, July, and October. If the 25<sup>th</sup> falls on a weekend or holiday, the funds are transferred the next business day. A summary of the funds transferred to General Revenue since the date of the last report is provided in Table 2.

**TABLE 2**

Transfer Date	Interest Payments	Principal Payments	Late Fees	Investment Earnings	Total Transferred to General Revenue
4/25/22	64,483.05	1,233,926.13		258.29	1,298,667.47
7/25/22	93,472.01	867,647.07		529.94	961,649.02
10/25/22	117,784.79	867,647.07		1,465.42	986,897.28
1/25/23	134,524.44	867,647.07		2,396.04	1,004,567.55