**Section 5601.75 Loss Reserve Discounting**

a) A trust may discount its reserves for incurred and unpaid losses and loss adjustment expenses, for the purpose of:

1) Reporting under Section 14 of the Act and Section 5601.70 of this Part, and

2) Demonstrating its net worth and adherence to reasonable standards of financial solvency, subject to all of the following conditions:

A) The trust shall have been approved for operation under the Act for not less than two (2) full calendar years.

B) The trust instrument shall provide that each beneficiary may be assessed for any funding deficiency relating to any period in which the beneficiary participated in the trust and that each beneficiary shall be fully liable to the trust for any such assessment; a beneficiary's obligation for any such assessment shall be enforceable regardless of whether the beneficiary is currently a beneficiary of the trust, unless the trust has expressly released the beneficiary with respect to such obligations.

C) With respect to each reporting year, the assumed rate of return used to discount the trust's reserves for losses and loss adjustment expenses shall not exceed the greater of:

i) The trust's average annual portfolio rate of return over the five (5) year period (or such shorter period, in the event that the trust has not been in existence for five (5) years) ending with the last day of the then-current reporting year, less 1/2 of 1%; or

ii) The assumed rate of return used to discount the trust's loss reserves for federal income tax purposes, for the tax year corresponding to the then-current reporting year.

D) In conjunction with the financial statements required by Section 5601.70 of this Part, the trust shall file with the Director a statement of actuarial opinion by a qualified independent actuary, setting forth his or her opinion regarding the adequacy of the trust's reserves for losses and loss adjustment expenses, in such form and of such content as specified in the National Association of Insurance Commissioners Annual Statement Instructions: Property and Casualty. For purposes of this Section, the term "qualified independent actuary" shall mean an individual is either:

i) A member in good standing of the Casualty Actuarial Society; or

ii) A member in good standing of the American Academy of Actuaries who has been approved as qualified for signing casualty loss reserve opinions by the Casualty Practice Council of the American Academy of Actuaries.

E) With respect to each reporting year, the trust shall present the following information in the footnotes to the financial statements or as supplemental information to the information required by Section 5601.70 of this Part:

i) The ultimate, undiscounted losses and loss adjustment expenses reserves in comparison to the reported, discounted value of such reserves, with the aggregate effect of the discount reflected as a separate amount, reviewed by a qualified independent actuary. In addition, the report of the trust's certified public accountants, as contemplated in subsection 5601.70(c) of this Part, shall include a review of the calculation of the discounted losses and loss adjustment expense reserves.

ii) An historical and projected losses and loss adjustment expense payout schedule, demonstrating the portion of incurred losses and loss adjustment expenses paid and projected to be paid in the periods following the period in which the underlying loss was incurred, reviewed by a qualified independent actuary.

iii) A schedule of portfolio investments, including scheduled maturities, and a report of the trust's aggregate portfolio rate of return for the year. If the trust's investments are managed by any third-party manager or trustee, such portfolio rate of return shall be verified by such manager or trustee.

b) A trust which does not comply with all of the conditions set forth in subsection (a), above, may discount its reserves for losses and loss adjustment expenses, but only upon receiving the express written approval of the Director with respect to each calendar year that the trust proposes to discount such reserves. Any trust desiring the Director's approval under this subsection shall submit a written request therefor, prior to September 1 of the year to which the request relates, setting forth:

1) The terms upon which such discounting will be based,

2) an estimate of the anticipated effect of such discounting, and

3) the trusts' commitment to provide the specific information set forth in subsection (a)(2)(E), above. The Director shall not approve any request to discount reserves under this subsection if the presentation of the trust's reserves for losses and loss adjustment expenses on a discounted basis would not accurately reflect the trust's financial condition and would be misleading to its beneficiaries or the general public. The Director shall approve or disapprove any such request within thirty (30) days of receipt thereof.

(Source: Added at 18 Ill. Reg. 2282, effective February 1, 1994)