

SPECIAL ADOPTION

COMMUNITY AFFAIRS

(a)

DIVISION OF LOCAL GOVERNMENT SERVICES

Joint Insurance Funds Investments

Special Adopted New Rules and Concurrent Proposed Readoption of Special Adopted New Rules: N.J.A.C. 5:38

Special New Rules Adopted and Concurrent Proposed Readoption of Special Adopted New Rules Authorized: December 7, 2018, by the Lieutenant Governor Sheila Y. Oliver, Commissioner.
Filed: December 10, 2018, as R.2019 d.005.

Authority: P.L. 2018, c. 40.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Concurrent Proposal Number: PRN 2019-014.

Effective Date: December 10, 2018.

Expiration Date: December 9, 2019.

Please submit written comments on the notice of proposal by March 8, 2019, via e-mail to dlgs@dca.nj.gov or by regular mail to:

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For comments submitted via e-mail, please name the subject heading "NJAC 5:38-1: Joint Insurance Fund Investments"

The agency special adopted new rules and concurrent proposed readoption of special adopted new rules follows:

Summary

In addition to the investments authorized under N.J.S.A. 40A:5-15.1 and 18A:20-37, P.L. 2018, c. 40 also permits a joint insurance fund (JIF) to invest its monies in

"bonds, notes or other obligations issued by an agency or corporation of the federal government or a governmental agency established under the laws of this State, provided that the [issuer] is not in default as to the payment of principal or interest upon any of its outstanding obligations, and provided further that the bonds, notes, or other obligations are purchased at fair market value, guaranteed as to interest and principal, and have a credit rating of A3 or higher by Moody's Investor Services, Inc., A- or higher by Standard & Poor's Corporation, and A- or higher by Fitch Ratings, except that two of the three ratings is sufficient...If a rating for the bonds, notes, or other obligations has not been obtained from two of the credit rating agencies, the bonds, notes, or other obligations may be purchased if the [issuer] meets the minimum rating criteria specified by the previous sentence and if the bond offering has the unconditional guarantee of the [issuer]."

P.L. 2018, c. 40 requires the Commissioner of the Department of Community Affairs, in consultation with the Commissioner of the Department of Banking and Insurance, to promulgate rules limiting the permissible duration of long-term investments authorized for JIF investment under the law, as well as the percentage of long-term investments that a JIF may hold in its investment portfolio. Once adopted, such rules shall be effective immediately upon filing with the Office of Administrative Law and shall be effective until December 9, 2019 (360 days following December 14, 2018 (the effective date of P.L. 2018, c. 40)); the rules may thereafter be amended, adopted, or readopted in

accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

Further, the law permits two or more JIFs to participate in a joint cash management and investment program (JCMI program) subject to a single cash management plan, which must be approved on an annual basis by the Commissioners of the Departments of Community Affairs and Banking and Insurance, respectively.

In consultation with the Commissioner of the Department of Banking and Insurance, the Commissioner of the Department of Community Affairs has promulgated the following rules implementing P.L. 2018, c. 40.

N.J.A.C. 5:38-1.1 contains definitions for the new subchapter.

N.J.A.C. 5:38-1.2 sets forth limitations on the maximum duration of a JIF's or JCMI program's long-term investments, defined as "bonds, notes, or other obligations" issued by a Federal, State, or local government entity that are not expressly permitted for investment under N.J.S.A. 18A:20-37 and 40A:5-15.1, limiting the term to no more than 20 years, unless prior approval is obtained from the Departments of Community Affairs and Banking and Insurance, respectively. No JIF or JCMI cash management plan shall authorize long-term investments to make up more than 50 percent of a JIF's or JCMI program's investment portfolio. N.J.A.C. 5:38-1.2 also includes requirements to be followed by a JIF or JCMI program if the percentage of long-term investments held exceed 50 percent due to the maturity of other investments.

N.J.A.C. 5:38-1.3 sets forth requirements for JIFs and JCMI programs to report the status of their investments.

As the Board has provided a 60-day comment period on this notice of new rules proposed for readoption of special adopted new rules, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The new rules proposed for readoption of special adopted new rules will have a positive social impact by allowing JIFs to broaden their risk pools to stabilize insurance rates and save on insurance costs. The rules will also enable JIFs to responsibly participate in New Jersey's local long-term debt market, which has the potential to significantly and sustainably increase the resources available for local infrastructure and other capital projects.

Economic Impact

The new rules proposed for readoption of special adopted new rules will facilitate insurance premium and debt service savings for New Jersey local governments and school districts. Allowing JIFs to both singly and jointly invest in highly-rated New Jersey State and local government debt will increase investment returns, as well as promote competition in the bond market. Increasing competition for State and local government debt will place downward pressure on interest rates in a time when interest rates are rising, and recent Federal tax law changes are impacting the attractiveness of municipal bonds to investors.

Federal Standards Statement

A Federal standards analysis is not required because the new rules proposed for readoption of special adopted new rules are not being proposed in order to implement, comply with, or participate in any program established under Federal law or under a State law that incorporates or refers to Federal law, standards, or requirements.

Jobs Impact

The Department does not anticipate that the new rules proposed for readoption of special adopted new rules will have a direct impact on the creation or loss of jobs.

Agriculture Industry Impact

The Department does not anticipate that the new rules proposed for readoption of special adopted new rules would have an impact on the agriculture industry.

Regulatory Flexibility Statement

The new rules proposed for readoption of special adopted new rules will not impose any reporting, recordkeeping, or compliance requirements on “small businesses,” as defined by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Housing Affordability Impact Analysis

There is an extreme unlikelihood that the new rules proposed for readoption of special adopted new rules would evoke a change in the average costs associated with housing, as it pertains to permissible investments by joint insurance funds.

Smart Growth Development Impact Analysis

There is an extreme unlikelihood that the new rules proposed for readoption of special adopted new rules would evoke a change in the housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The new rules proposed for readoption of special adopted new rules will have no impact on pretrial detention, sentencing, probation, or parole policies concerning juveniles and adults in the State because the proposed new rules address permissible investments for joint insurance funds.

Full text of the special adopted new rules and the proposed readoption of the special adopted new rules follows:

CHAPTER 38
JOINT INSURANCE FUNDS

SUBCHAPTER 1. INVESTMENTS

5:38-1.1 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings:

“Cash management plan” means a plan, pursuant to which a joint insurance fund shall deposit and/or invest its funds.

“Joint cash management and investment program” or “JCMI program” means a joint investment pool in which two or more joint insurance funds participate, with the pooled funds being invested pursuant to a joint cash management plan.

“Joint cash management plan” means a cash management plan approved by the Commissioner of Banking and Insurance and the Commissioner of Community Affairs, pursuant to which a joint cash management and investment program shall deposit and/or invest its funds.

“Joint insurance fund” or “JIF” means a joint insurance fund created pursuant to P.L. 1983, c. 372 (N.J.S.A. 40A:10-36 et seq.) or P.L. 1983, c. 108 (N.J.S.A. 18A:18B-1 et seq.).

“Long-term investments” means bonds, notes, or other obligations that are issued by an agency or corporation of the Federal government or a governmental entity established under the laws of the State of New Jersey. This term shall not include those types of securities already authorized for investment by a joint insurance fund pursuant to N.J.S.A. 18A:20-37 and 40A:5-15.1.

5:38-1.2 Long-term investments

(a) A joint insurance fund or a joint cash management and investment program may only purchase long-term investments that meet each of the following criteria:

1. The governmental entity responsible for the issuance of the long-term investment is not in default as to the payment of principal or interest upon any of its outstanding obligations;

2. The long-term investment is:

i. Purchased at fair market value;

ii. Guaranteed, as to interest and principal; and

iii. Has a credit rating of A3 or higher by Moody’s Investor Services, Inc.; A- or higher by Standard & Poor’s Corporation, and A- or higher by Fitch Ratings, except that ratings from two of the three aforementioned credit ratings agencies shall be sufficient. If a rating for the long-term investment has not been obtained from at least two of the three credit ratings agencies, the long-term investment may be purchased if the agency, corporation, or governmental entity responsible for the issuance meets the above-referenced minimum rating criteria and if the long-term investment offering has the unconditional guarantee of the agency, corporation, or governmental entity responsible for the issuance.

(b) A joint insurance fund or a joint cash management and investment program shall not invest in long-term investments with a maturity of greater than 20 years from the date of purchase, unless the fund or program seeks prior approval from the Department of Banking and Insurance and the Division of Local Government Services in the Department of Community Affairs to enter into a long-term investment of longer duration.

(c) A cash management plan or joint cash management plan shall not authorize long-term investments to make up more than 50 percent of a joint insurance fund’s or JCMI program’s investment portfolio.

1. In the event that the percentage exceeds 50 percent due to the maturity of other investments not meeting the definition of a “long-term investment” pursuant to this section, the JCMI program shall:

i. Not purchase any long-term investments until a ratio of 50 percent or below is achieved; and

ii. Submit a corrective action plan for approval by the Division of Local Government Services and the Department of Banking and Insurance.

2. If the Division of Local Government Services or the Department of Banking and Insurance does not approve the corrective action plan offered by a joint insurance fund or a JCMI program, either agency may order appropriate remedies, up to and including divestment of one or more long-term investments, to reduce the share of long-term investments to 50 percent or less of an investment portfolio.

5:38-1.3 Cash management plans and joint cash management plans; reporting

(a) The status of a JIF or JCMI program’s investments shall be reported at each meeting of a joint insurance fund, or in the case of a joint cash management and investment program, any entity that administers the same. The report shall be spread upon the minutes or attached to the minutes, and include, at a minimum:

1. All investments made or redeemed over the past month;

2. Each organization holding JIF or JCMI program funds;

3. The amount of securities purchased or sold, class or type of securities purchased, book value, earned income, fees incurred, and market value of all investments to date;

4. The duration of all investments, and the percentage of long-term investments, in the JIF or JCMI program investment portfolio; and

5. Such other information as may be required by the governing body.