



## LOUISIANA DEPARTMENT OF INSURANCE

JAMES J. DONELON  
COMMISSIONER

### **DIRECTIVE 198 (REVISED AND REISSUED)**

**TO: NOTICE TO ALL LOUISIANA CITIZENS PROPERTY INSURANCE CORPORATION ASSESSABLE INSURERS**

**FROM: JAMES J. DONELON, COMMISSIONER OF INSURANCE**

**RE: LOUISIANA CITIZENS PROPERTY INSURANCE CORPORATION REGULAR ASSESSMENT RECOUPMENT AND EMERGENCY ASSESSMENT COLLECTION AND REMITTANCE**

**DATE: FEBRUARY 10, 2021**

Acts 2008, No.415, § 1, effective January 1, 2009, redesignated the provisions of Title 22, formerly comprised of La. R.S. 22:1 to 22:3311, into a new format and numbering scheme comprised of La. R.S. 22:1 to 22:2371, without changing the substance of the provisions. Directive 198, issued August 29, 2007, is being amended and revised and reissued to update the cited statutory provisions and to reflect the proper allocation of matters relative to the Louisiana Department of Insurance (LDI) regulatory authority and Louisiana Citizens Property Insurance Corporation (Citizens).

Due to the devastation inflicted upon Louisiana by Hurricane Katrina and Hurricane Rita and following the issuance of Emergency Rule 15 on September 20, 2005 and Emergency Rule 19 on October 26, 2005, Citizens levied a Regular Assessment in both the Coastal Plan and the FAIR Plan against assessable insurers. Citizens is authorized to levy a Regular Assessment and an Emergency Assessment against assessable insurers in both the Coastal Plan and the FAIR Plan. Citizens is a legislatively created corporation that was established and incorporated pursuant to the authority of La. R.S. 22:2291, et seq.

The Commissioner of Insurance (Commissioner) provides guidance and interpretation herein as to how assessable insurers, assessable policyholders, and any and all other entities doing business in Louisiana and regulated by the Commissioner should conduct their affairs with regard to any Regular Assessment and any Emergency

Assessment in both the Coastal Plan and the FAIR Plan made by Citizens pursuant to La. R.S. 22:2307.

All assessable insurers, assessable policyholders, and affected persons are to conduct themselves in accordance with the purpose and intent of any Regular Assessment and any Emergency Assessment levied by Citizens in both the Coastal Plan and the FAIR Plan pursuant to La. R.S. 22: 2291, et seq. and in compliance with the guidance and interpretation provided herein by Directive 198.

Accordingly, as revised herein, I hereby reissue Directive 198:

**1. Citizens' Website and Publication:**

A. Citizens shall publish on its website ([www.lacitizens.com](http://www.lacitizens.com)) the calculated participation ratios of assessable insurers within 30 days of the LDI's certification of a calendar year's net direct written premiums.

**2. General Provisions Applicable to Both the Recoupment of a Regular Assessment and the Collection of an Emergency Assessment:**

A. To the extent that an assessable insurer requires guidance as to whether an insurance program is to be included as a subject line of business, the assessable insurer is directed by the instructions for allocating the program's premium to the lines of business delineated on Statutory Page 14 of the Annual Statement. Specifically, the following insurance programs, as delineated on Statutory Page 14, shall be considered subject lines of business that are assessable by Citizens:

1. Line 1 (Fire);
2. Line 2.1 (Allied Lines);
3. Line 4 (Homeowners);
4. Line 5.1 (Commercial Multi-Peril – Non-Liability Portion); and
5. All mobile home programs regardless of which line the mobile home business is allocated on Statutory Page 14.

B. Each Regular Assessment recoupment surcharge and Emergency Assessment collection amount shall be calculated separately and should be listed individually as a segregated item on the declarations page. The wording of the notice on the declarations page should be similar to that presented in the following example:

EXAMPLE: 1:

Total Policy Premium \$950.00  
20XX LA FAIR Plan Regular Assessment \$95.00  
20XX LA Coastal Plan Regular Assessment \$47.50  
20XX LA FAIR Plan Emergency Assessment \$47.50  
20XX LA Coastal Plan Emergency Assessment \$25.00  
Total Amount Due: \$1,165.00

If space in the declarations page is not sufficient to allow the listing of all applicable Regular Assessment recoupments and Emergency Assessment collections, a supplemental schedule shall be attached.

For example, the declarations page may reflect the following:

EXAMPLE 2.1:

Total Policy Premium \$950.00  
20XX LA Citizens Assessments \$215.00  
Total Amount Due: \$1,165.00

The supplemental schedule must display each Regular Assessment recoupment and Emergency Assessment collection individually and in a manner similar to those listed in Example 1 above. For example, the supplemental page should reflect the following:

EXAMPLE 2.2:

Total Policy Premium \$950.00  
20XX LA FAIR Plan Regular Assessment \$95.00  
20XX LA Coastal Plan Regular Assessment \$47.50  
20XX LA FAIR Plan Emergency Assessment \$47.50  
20XX LA Coastal Plan Emergency Assessment \$25.00

Total Amount Due: \$1,165.00

On a case-by-case basis, the LDI will consider alternative mechanisms for an assessable insurer to provide notice to assessable policyholders of all Regular Assessment recoupments and Emergency Assessment collections.

C. The recoupment surcharge applicable to a Regular Assessment and the collection amounts applicable to an Emergency Assessment shall not be considered premium and shall not be subject to premium taxes, commissions, service fees, or any other charges or fees.

D. Failure to pay either a Regular Assessment recoupment surcharge or an Emergency Assessment collection amount shall be treated as a non-payment of premium by the assessable policyholder and shall be sufficient cause to cancel the policy.

E. All questions regarding the financial accounting of a Regular Assessment and the financial accounting of an Emergency Assessment should be directed to the LDI's Office of Financial Solvency. All questions regarding the payment and recoupment of a Regular Assessment and the collection and remittance of an Emergency Assessment should be directed to the LDI's Office of Property and Casualty.

### **3. Regular Assessment Recoupment and Remittance:**

A. Citizens will determine if a Regular Assessment is warranted, and Citizens will notify assessable insurers as to the insurer's assessed amount and the percentage of the subject premium used to calculate the assessed amounts. Citizens will file the amount and percentage of a Regular Assessment with the Commissioner. If Citizens does not declare a Regular Assessment in a given year, there will be no such notification.

B. An assessable insurer shall remit the Regular Assessment to Citizens within 30 days of the date of notification of the Regular Assessment.

C. The date of notification shall be the date stated on the invoice issued by Citizens to the assessable insurer.

D. An assessable insurer shall not be entitled to recoup a Regular Assessment until the Regular Assessment has been paid in full to Citizens.

E. If an assessable insurer objects to all or any portion of a Regular Assessment, the assessable insurer shall, within 30 days of the date of the notification by Citizens:

1. Pay the full amount of the Regular Assessment with a full reservation of rights; and
2. File a written appeal with Citizens as per Citizens' Plan of Operation.

F. If the assessable insurer is not able to resolve the dispute with Citizens, the assessable insurer may file a written appeal with the Commissioner setting forth each and every factual and legal basis for the assessable insurer's objection to the payment of the Regular Assessment to Citizens. The Commissioner shall take appropriate action as set forth in the Louisiana Insurance Code.

G. Before an assessable insurer proceeds with the implementation of a recoupment of a Regular Assessment, it is recommended that the insurer determine whether a Louisiana Department of Revenue (Revenue) program will reimburse the insurer in lieu of the insurer implementing a process to recoup against the insurer's assessable policyholders. If Revenue has a Regular Assessment reimbursement program, this program must be accessed before the insurer proceeds with a recoupment surcharge against its assessable policyholders. To determine if a Revenue program exists, contact the Louisiana Department of Insurance or the Louisiana Department of Revenue.

H. **RECOUPMENT IS NOT MANDATORY.** An assessable insurer has the option to surcharge or not to surcharge its subject policyholders to recoup the amount of a Regular Assessment. Furthermore, an assessable insurer may recoup all, none, or only a portion of a Regular Assessment levied against it by Citizens.

I. However, in furtherance of Section H above, once an assessable insurer has determined the uniform recoupment surcharge percentage to be applied to its assessable policyholder base, the uniform recoupment surcharge percentage shall remain constant and in effect for the duration of the 12-month recoupment collection period and cannot be altered by the assessable insurer.

J. Assessable insurers may elect to proceed with the recoupment process as an affiliated group. The affiliated group shall follow the guidance and interpretation of Directive 198. Each action taken by the affiliated group shall be applied uniformly, without exception, to each assessable insurer listed as a member of the affiliated group.

K. Before proceeding with the recoupment process as an affiliated group, the affiliated group shall give the LDI a 30-day written notice. The beginning date of the 30-day written notice shall be the date on which the LDI receives the written notice. The LDI

shall transmit to the affiliated group a copy of the affiliated group's notification evidencing when the written notification was received by the LDI.

L. In this notice, as set forth in Section K above, the affiliated group shall list each member insurer and provide the notice information delineated in Section O below for the affiliated group. Specifically, the affiliated group must demonstrate how the uniform, statewide surcharge percentage was determined given the individual member's Regular Assessment percentage and amount.

M. An assessable insurer that elects to recoup a Regular Assessment amount remitted to Citizens shall select a uniform, statewide surcharge percentage to be applied to all of the assessable insurer's subject policyholders' written premium and shall be identical across all subject lines of business. The maximum allowed surcharge percentage is that percentage underlying a Regular Assessment amount for which the assessable insurer was assessed (i.e., billed by Citizens and paid to Citizens). The Regular Assessment percentage shall be determined by Citizens and provided by Citizens to all assessable insurers. Citizens shall also file the Regular Assessment percentages with the Commissioner.

N. If an assessable insurer determines that it will not seek to recoup the full amount of a Regular Assessment against one or more subject lines of business but will seek to recoup the Regular Assessment against the remaining subject lines of business, the assessable insurer shall first submit a written Partial Recoupment Plan to the Commissioner for approval prior to implementation. The Partial Recoupment Plan shall include sufficient detailed information to enable the Commissioner to ensure that the assessable insurer has not shifted any of the recoupment burden from the subject line(s) of business that will not be fully assessed to the remaining subject line(s) of business that will be assessed. The Partial Recoupment Plan shall also include all of the information required by Section O below.

O. An assessable insurer shall give a 30-day written notification to the LDI stating the uniform, statewide surcharge percentage, demonstrating how the surcharge percentage was determined, stating the beginning date for the recoupment period, stating the ending date of the recoupment period, and setting forth how the assessable insurer shall notify its assessable policyholders of the surcharge percentage and amount. The beginning date of the 30-day period shall be the date on which the LDI received the written notification. The LDI shall transmit to the assessable insurer a copy of the insurer's notification evidencing when the LDI received the written notification.

P. The recoupment process for a Regular Assessment levied after the re-issuance of Directive 198 shall commence within 6 months from the date of notification stated on the invoice issued by Citizens to the assessable insurer. No exception to this 6-month time period shall be granted unless the assessable insurer obtains the written approval of the Commissioner based on the filing of a written Recoupment Exception Petition that establishes why the assessable insurer could not comply with the 6-month period and why the assessable insurer will suffer irreparable harm if an extension is not granted.

Q. If an assessable insurer does not initiate the recoupment process within 6 months of the date set forth in Section P above, the assessable insurer shall have no right to collect, and shall be prohibited from collecting, all or any portion of a Regular Assessment from its assessable policyholders.

R. If an assessable insurer decides to recoup all or any portion of a Regular Assessment, the recoupment shall be implemented and completed within the uninterrupted 12-month period beginning with the date that the assessable insurer initiates the recoupment process. An assessable insurer that initiates the recoupment process shall not interrupt, suspend or otherwise cease the recoupment process before the expiration of the full 12-month period.

S. If an assessable insurer anticipates that it will not recoup all of a Regular Assessment (levied by Citizens and paid to Citizens) within the allowed 12-month period, the assessable insurer may submit an Extended Recoupment Plan to the Commissioner for approval prior to implementation. The Extended Recoupment Plan shall detail the mechanism whereby the assessable insurer intends to recoup the remaining portion of a Regular Assessment over a second 12-month period. The Extended Recoupment Plan shall be filed at least 60 days in advance of the conclusion of the initial recoupment period. The Commissioner has the right to require an assessable insurer to submit additional information in support of the Extended Recoupment Plan. An assessable insurer shall not implement the Extended Recoupment Plan prior to the written approval of the Commissioner. The Extended Recoupment Plan shall, at a minimum, provide the following:

1. The anticipated amount of the Regular Assessment that will not be recouped;
2. Each and every reason why the assessable insurer failed to recoup the entire Regular Assessment during the initial 12-month period allowed under Directive 198 (Revised and Reissued);

3. A detailed explanation as to how the extended percentage surcharge was calculated in order to recoup the remaining Regular Assessment during the second 12-month recoupment period;
4. As to each of the subject lines of business set forth in Section 2.A, the assessable insurer shall provide an unequivocal statement to the Commissioner as to whether or not the assessable insurer will continue to write said business in Louisiana over the next 24-month period; and
5. The assessable insurer shall include in the Extended Recoupment Plan all of the information required in Section O above.

T. If an assessable insurer issues a policy with a term greater than 12 months, the assessable insurer shall adjust the recoupment process so that the surcharge only impacts the equivalent of a 12-month premium and is consistent with the initiation date selected by the assessable insurer.

U. An assessable insurer shall select the date to initiate the surcharge on its assessable policyholders. The initiation date of the 12-month recoupment period shall be the same date for both new and renewal business. The initiation date shall coincide with the effective date of the policyholder's policy.

V. An assessable insurer may elect the same or a different date to initiate the surcharge on its assessable policyholders as between the subject lines of business as set forth in Section 2.A. No other distinction shall be made between policy types as to when to initiate the surcharge.

W. All policies issued as new or renewed for the subject lines of business are subject to a uniform, statewide surcharge. There shall be no assessable policyholder exceptions in the application of the recoupment of a Regular Assessment surcharge by assessable insurers.

X. A Regular Assessment recoupment surcharge owed on a policy shall be subject to the pro-rata adjustment pursuant to La. R.S. 22:2301.

Y. In the event an assessable insurer recoups a Regular Assessment and the amount of the recoupment exceeds the amount of money remitted by the assessable insurer to Citizens for the Regular Assessment, the excess amount recouped shall be remitted by the assessable insurer to Citizens to defray future deficits. Citizens shall establish a procedure to collect the excess amount that shall include appropriate written



notification to the assessable insurer of the excess amount due Citizens and which shall be published by Citizens on its web site at [www.lacitizens.com](http://www.lacitizens.com).

Z. Each assessable insurer shall submit a written report to Citizens reflecting the monetary amount actually recouped from its assessable policyholders. Reporting instructions shall be published by Citizens on its web site which can be accessed at [www.lacitizens.com](http://www.lacitizens.com).

#### **4. Emergency Assessment Collection and Remittance:**

A. Subject to verification by the LDI, Citizens shall annually determine whether an Emergency Assessment will be levied. Citizens shall notify assessable insurers as to the assessment percentages applicable to an Emergency Assessment. This process will continue for as many years as Citizens determines is necessary to enable Citizens to meet its statutory and financial obligations.

B. An Emergency Assessment shall be a uniform, statewide percentage to be applied against all assessable policyholders in Louisiana for the subject lines of business:

1. Fire;
2. Allied Lines;
3. Homeowners;
4. Commercial Multi-Peril – Non-Liability Portion; and
5. All mobile home programs regardless of which line the mobile home business is allocated.

C. Citizens shall set an Emergency Assessment implementation date of January 1<sup>st</sup> for an assessable calendar year and provide assessable insurers three (3) months advanced written notice before the implementation date as to the Emergency Assessment percentage for that calendar year.

D. All policies issued as new or renewed for the subject lines of business set forth in Section 4.B are subject to an Emergency Assessment.

E. Citizens shall be remitted the Emergency Assessment from the first dollars collected by assessable insurers from their assessable policyholders.

F. An Emergency Assessment owed on a policy shall be subject to the pro-rata adjustment pursuant to La. R.S. 22:2301.

G. An Emergency Assessment percentage shall be applied for a full 12-month period. If an assessable insurer issues a policy with a term greater than 12 months, the assessable insurer shall adjust the assessment process so that the Emergency Assessment only impacts the equivalent of a 12-month premium that coincides with Citizens' assessment notice.

H. The date that an assessable insurer begins the implementation of the 12-month Emergency Assessment shall be the same date for both new and renewal business. This date shall coincide with the effective date of the policy.

I. An assessable insurer is not required to give prior notification to Citizens or the LDI before initiating collection of an Emergency Assessment.

J. An Emergency Assessment shall be deemed fully earned on the effective date of the policy.

K. If an assessable insurer objects to all or any portion of an Emergency Assessment collection and/or remittance process, the assessable insurer shall, within 30 days of the date of the notification by Citizens;

1. Remit the full amount of the Emergency Assessment collected with a full reservation of rights; and
2. File a written appeal with Citizens as per Citizens' Plan of Operation.

L. If the assessable insurer is not able to resolve the dispute with Citizens, the assessable insurer may file a written appeal with the Commissioner setting forth each and every factual and legal basis for the assessable insurer's objection to the collection and/or remittance of an Emergency Assessment levied by Citizens. The Commissioner shall take appropriate action as set forth in the Louisiana Insurance Code.

## **5. Legal Redress**

A. In addition to any other legal rights, Citizens shall have the right to refer any potential violation by an assessable insurer to the Commissioner for applicable and appropriate legal redress. The right to take independent legal action against an assessable insurer and/or to refer any potential violation by an assessable insurer to the Commissioner for the potential violation of Directive 198 and/or the underlying statutory law applicable to Citizens relative to a Regular Assessment and/or an Emergency Assessment is vested in Citizens by the Louisiana Insurance Code. The Commissioner retains the independent right to take legal action against an assessable insurer for the

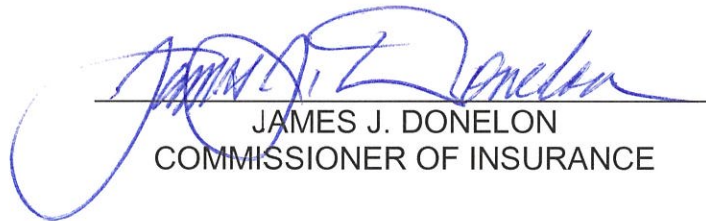
potential violation of Directive 198 (Revised and Reissued) and/or the underlying statutory law applicable to Citizens relative to a Regular Assessment and/or an Emergency Assessment.

**6. Compliance**

A. You are hereby directed to immediately bring your practice into compliance with the unequivocal purpose and intent of the Regular Assessment and Emergency Assessment authority vested in the Louisiana Citizens Property Insurance Corporation pursuant to the Louisiana Insurance Code and the guidance, interpretation and application set forth in Directive 198 (Revised and Reissued).

Please be governed accordingly.

Baton Rouge, Louisiana, this 10<sup>th</sup> day of February 2021.



JAMES J. DONELON  
COMMISSIONER OF INSURANCE