

**PLAN**  
**Second Injury Fund Closure**

**1. Introduction**

SC Code Section 42-7-320 terminates the programs and appropriations of the Second Injury Fund effective July 1, 2013 and charges the Budget and Control Board with providing for: (a) the payment of liabilities of the Fund remaining after June 30, 2013, using a mechanism or mechanisms that are determined reasonably necessary to fund the liabilities and (b) appropriate staffing until staff services are no longer required to administer the obligations of the Fund.

In addition, effective July 1, 2013 SC Code Section 42-7-200 establishes the South Carolina Workers' Compensation Uninsured Employers' Fund within the State Accident Fund and transfers all functions related to the Uninsured Employers' Fund from the Second Injury Fund to the State Accident Fund in accordance with the Budget and Control Board's plan for closure of the Second Injury Fund.

To meet its statutory responsibilities the Budget and Control Board adopts the following plan.

**2.0 Plan**

**2.1 Designation of Agency to Administer Remaining Liabilities**

Upon the termination of the Second Injury Fund July 1, 2013, the Budget and Control Board shall administer the winding down of affairs of the Second Injury Fund and payment of its remaining liabilities as provided in this plan.

**2.2 Transfer of Second Injury Fund Accounts, Assets and Liabilities**

In order for the Board to administer the wind down and remaining liabilities, the Second Injury Fund Trust and Administration accounts (Funds 4260 and 4799) together with their associated assets and liabilities, shall be transferred from the Second Injury Fund (R160) to the Budget and Control Board (F030). The Budget and Control Board shall coordinate processing transfers and establishing general ledger accounts within the Board with the Comptroller General and State Treasurer.

The funds shall be transferred and general ledger accounts established under the Board as soon as practicable after FY 2012-2013 closing transactions are processed. The transferred funds shall continue to be held as separate and distinct trust accounts.

Because the Second Injury Fund terminates July 1, 2013, the Board is authorized to act on behalf of the former Second Injury Fund to process its FY 2013 closing transactions and appropriately record the transactions. The Division of State Budget shall provide the Second Injury Fund and Budget and Control Board, as appropriate, other fund spending authority equal to the amount of any remaining administrative expenditures associated with closing the Second Injury Fund, if needed and adequately documented.

### **2.3 Administration and Use of Funds**

The Budget and Control Board shall use funds transferred according to paragraph 2.2, along with additions generated from assessments and earnings, to satisfy the remaining liabilities of the Second Injury Fund and pay expenses necessary to the performance of this and related responsibilities. The executive director of the Budget and Control Board or his or her designee is authorized to employ staff as needed for these purposes.

### **2.4 Mechanisms for Funding Liabilities and Administrative Costs after June 30, 2013**

Unless modified in accordance with the provisions of paragraph 2.6, beginning FY 2014 and continuing through FY 2018, the mechanism for funding payment and administration of Second Injury Fund obligations is by:

- (a) equitable assessments upon each carrier, which shall make annual payments to the fund in an amount equal to that proportion of sixty million dollars (\$60,000,000) which the normalized premium of each carrier bore to the normalized premium of all carriers during the preceding calendar year. Each insurance carrier, self-insurer, and the State Accident Fund shall make payment based upon workers' compensation normalized premiums during the preceding calendar year. The charge to each insurance carrier is a charge based upon normalized premiums. An employer who has ceased to be a self-insurer continues to be liable for any assessments into the fund on account of any benefits paid by him during such calendar year. Any assessment levied or established in accordance with this section constitutes a personal debt of every employer or insurance carrier so assessed and is due and payable when payment is called for by the Budget and Control Board. In the event of failure to pay any assessment upon the date determined, the employer or insurance carrier immediately may be assessed a penalty in an amount not exceeding ten percent of the unpaid assessment. If the employer or insurance carrier fails to pay the assessment and penalty, they shall be barred from any recovery from the fund on all claims without exception until the assessment and penalty are paid in full. The executive director of the Budget and Control Board or his or her designee may file a complaint for collection against the employer or

insurance carrier in a court of competent jurisdiction for the assessment, penalty, and interest at the legal rate, and the employer/carrier is responsible for the Budget and Control Board's attorney's fees and costs. The penalty and interest under this subsection are payable to the Budget and Control Board for deposit to the Second Injury Fund (Fund 4260). At the time of the filing of the complaint, the Budget and Control Board also shall notify the South Carolina Department of Insurance and the South Carolina Workers' Compensation Commission for appropriate legal and administrative action.

- (b) For purposes of this Plan, "carrier" is defined as the State Accident Fund and any person or fund authorized to insure workers' compensation liability under Title 42 of the SC Code of Laws, including self-insurers.
- (c) For purposes of this Plan, "normalized premium" is defined as gross paid losses before salvage and subrogation times a factor representing normalized expenses. Normalized expenses include taxes, licenses, fees, general expenses, profit, contingencies, and other expenses as reported on the Insurance Expense Exhibit of the NAIC Annual Statement blank. This normalized expense factor is computed annually by the Workers' Compensation Commission by August first of each year and is based upon aggregate expense information obtained from the Department of Insurance derived from insurers' most recently filed annual statements.

## **2.5 Actuarial Valuation(s)**

The executive director of the Budget and Control Board or his or her designee shall cause to be conducted an actuarial valuation of the Fund's remaining liabilities and funding based on data as of June 30, 2014, and at such other times as the executive director or designee determine appropriate, but not less than every two years. Actuarial valuations shall be conducted to determine if: (a) funding as provided in paragraph 2.4 is adequate to generate sufficient funds by fiscal year end 2018 to satisfy the Fund's remaining liabilities without further assessment, (b) sufficient funding has been accumulated to transfer the Fund's remaining liabilities and administration to a third party at a more economical cost than continuing assessments as provided in paragraph 2.4, or (c) funds are being generated in excess of the amount reasonably needed to satisfy the Fund's liabilities and administrative cost.

## **2.6 Termination or Revision of Funding**

The executive director of the Budget and Control Board or designee must advise the five member Budget and Control Board, as appropriate, if an actuarial valuation indicates funding generated in accordance with paragraph 2.4: (a) is insufficient to satisfy the Fund's liabilities by fiscal year end 2018 without further assessment, (b) has reached or is projected to reach a balance potentially sufficient to transfer the Fund's remaining

liabilities and administration to a third party at a more economical cost, or (c) will produce funding exceeding the amount needed to satisfy Fund liabilities and administrative cost. The Board shall take such action as it considers appropriate to modify the funding mechanism, amount or duration, to suspend or terminate the assessment, or to cause a transfer of liabilities or administration or both to a third party.

## **2.7 Rebate of Excess Assessments**

If funds derived from the Second Injury Fund assessment remain after all of the Fund's liabilities and expenses are extinguished or satisfied, the remaining funds shall be returned to those who paid a Second Injury Fund assessment. The amount rebated to each carrier, self-insurer and the State Accident Fund shall be determined by the percentage of the total assessment each paid. For purposes of a rebate, "total assessment" means the aggregate assessment during the last fiscal year in which assessments are collected. For purposes of determining the "total assessment" and share due each carrier, self-insurer and the State Accident Fund, the rebate shall be based upon amounts actually paid and received as Second Injury Fund assessments during the relevant fiscal year.

## **2.8 Uninsured Employers' Fund**

Pursuant to section 42-7-200, effective July 1, 2013 the powers, duties, obligations and responsibilities of the Second Injury Fund that relate to the South Carolina Workers' Compensation Uninsured Employers' Fund are devolved upon the South Carolina Workers' Compensation Uninsured Employers' Fund within the State Accident Fund. In addition, in accordance with this plan's closure of the state agency administering the Second Injury Fund and Uninsured Employers' Fund, and by operation of section 42-7-200, all functions within the Second Injury Fund related to the Uninsured Employers' Fund, including all allied, advisory, affiliated, or related entities, as well as employees, funds, property, and all contractual rights and obligations associated with the Uninsured Employer' Fund are transferred to the Uninsured Employers' Fund within the State Accident Fund. The following positions, along with the employees, are associated with the Uninsured Employers' Fund and transferred pursuant to section 42-7-200: Administrative Assistant 60025625; Administrative Assistant 60025637; Insurance Claims Examiner 60025634; Insurance Claims Examiner 60025632; Claims Analyst I 60025635; Claims Analyst I 60025628; Attorney II 60025640; Attorney III 60025636; Administrative Coordinator I 60025547; Administrative Manager I 60025641; Administrative Coordinator II 60025546; Administrative Specialist II 60025626; Administrative Manager I 60025630; Administrative Specialist II 60025548; and Program Manager II 60025642.