

**The Insurance Federation of Pennsylvania, Inc.**

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**Samuel R. Marshall**  
President & CEO

November 10, 2013

Peter J. Salvatore  
Regulatory Coordinator  
Pennsylvania Insurance Department  
1326 Strawberry Square  
Harrisburg, PA 17120

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**Re: 31 Pa. Code Chapter 25 – Rules and Procedural Requirements for Insurance Holding Company Systems**

Dear Mr. Salvatore:

The Insurance Federation, on behalf of its member insurers and in conjunction with its national counterparts, submits the following comments on the Insurance Department's proposed revisions to Chapter 25 of its regulations, as published in the October 12 **Pennsylvania Bulletin**.

We are largely supportive of the proposed revisions as consistent with the recent changes to Article XIV of the Insurance Company Law brought by Act 136 of 2012, and we appreciate the Department's efforts to work with us and others prior to its formal publication of these proposed revisions.

Nonetheless, we recommend changes in two areas of the proposed revisions that we believe are consistent with Article XIV as recently amended and will provide greater protections and clarifications.

**Section 25.12(c) – Confidentiality of financial information filed as part of a Form A filing (“Statement Regarding the Acquisition of Control of or Merger with a Domestic Insurer”)**

The Department leaves untouched a split in the confidentiality of Form A filings under this subsection. The subsection provides absolute confidentiality for the personal financial statements of nonpublicly held ultimate controlling persons ("UCPs"). By contrast, for all other UCPs, and for all other information of nonpublicly held UCPs, the subsection provides that confidential treatment must be requested by the party making the Form A filing, with detailed requisites covering such a request and with the Department having the authority to evaluate and rule on the request.

We recommend this subsection be revised to delete the absolute confidentiality for personal financial statements of nonpublicly held UCPs making Form A filings.

We think the rules controlling confidentiality for other UCPs (and for other information filed by nonpublicly held UCPs) are equally proper for the personal financial statements of nonpublicly held UCPs. There is no compelling distinction for disparate treatment here: Certainly the public and the targeted insurer have just as much interest in understanding the financial capabilities of a nonpublicly held UCP as of a publicly held UCP seeking control. And the process the Department has in place for requesting and evaluating confidentiality requests should work just as well for financial statements of nonpublicly held UCPs as for all other materials filed by all UCPs in Form A filings.

Act 136, in making extensive revisions to Section 1407 on confidentiality, 40 P.S. Section 991.1407, expressly gave confidential treatment to specific filings and investigations under Article XIV. It did not, however, provide that absolute confidentiality to Form A filings, even as it covered other filings under Section 1402(b), so we question why the Department continues that regulatory grant of selective absolute confidentiality here. Such a grant of absolute confidentiality, given to only one type of filer in a Form A acquisition of control scenario, is one properly left to the General Assembly, not an executive agency.

We recognize the Department's need to thoroughly evaluate the financial capabilities of those making Form A filings to acquire control of or merge with an insurer, and that confidentiality of certain materials is a proper request and expectation for those making these Form A filings.

The process the Department provides in the rest of this subsection – whereby the filing party identifies the material sought to be confidential, proprietary or privileged – is appropriate for personal financial statements of nonpublicly held UCPs. Absent a statutorily-granted distinction, conspicuously absent from the confidentiality section of Section 1407 of Act 136 (the underlying authority for this regulation), it should be deleted here.

**Section 25.21(d) – Prior approval of new or amended management agreements, service contracts, tax allocation agreements, guarantees and cost-sharing arrangements**

We appreciate the overriding goal here, in both Act 136 and this revision to the regulation: The Department will have more notice of, and authority over, the connected activities between a domestic insurer and any person in its holding company system. We realize the items listed above are categories of agreements and arrangements and are intended to be inclusive of specific contracts and the like regardless of their title.

As we considered various forms of agreements and arrangements that might occur in a holding company system, one item came up as meriting clarification - leases between a domestic insurer and any person in its holding company system.

Our expectation is that such leases constitute cost-sharing arrangements. But some insurers note that “cost sharing arrangements,” at least as defined under IRS guidelines and in various business dictionaries, cover the shared costs of developing intangible assets (e.g., computer code, production methods or patents). Further, some traditional legal principles regarding leases note they are more in line with retaining, not sharing ownership and rights.

We therefore recommend leases be expressly covered under this subsection, and that the Department also clarify into which category leases fall – are they cost-sharing arrangements, service contracts, etc. That latter clarification is important because, under Item 6 of the related Form D, an insurer must file different information depending on whether something is a management agreement or service contract; a cost-sharing arrangement; or a tax-allocation agreement or guarantee.

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We appreciate the opportunity to comment on this proposed regulation and the work that has gone into it. We look forward to resolving these outstanding concerns and getting these changes into operation.

Sincerely,

Samuel R. Marshall

C: Stephen Johnson  
Deputy Insurance Commissioner

Honorable Donald C. White  
Honorable Michael J. Stack  
Honorable Tina Pickett  
Honorable Anthony M. DeLuca

James M. Smith, IRRC