

A. REPORTING REQUIREMENT

The 90-Day Reporting Requirement – Notification of Change in Ownership Endorsement (WC 00 04 14 A) provides that changes in ownership and/or combinability status must be reported by the employer to its carrier(s) within 90 days of the date of the change. This is accomplished by submitting a completed Confidential Request for Information Form (see the ERM-14 Form within the Manage Ownership application on the Rating Board’s website, www.nycirb.org.)

Failure to report changes in ownership according to Endorsement WC 00 04 14 A may be considered modification evasion. Refer to Section (F) of this Rule.

B. RESEARCH AND DECISION

The employer, carrier(s), or agent(s) of the employer must submit the ownership and/or combinability status information on the ERM-14 Form or the employer’s company letterhead directly to the Operations Department of the Rating Board or through an online application available on the Rating Board’s website at www.nycirb.org. The Operations Department will review the information submitted regarding each change and determine the impact, if any, on the modification(s) of the entities involved.

The complexity of certain transactions may require the Rating Board to request additional information. The Rating Board may also research public and/or other available records to verify provided information. This information is used to assist in clarifying complex situations or identify possible modification evasion. Refer to Section (F) of this Rule.

C. OWNERSHIP CHANGES

Changes in ownership interest may affect the use of an entity’s experience in future experience ratings. Based on the rules of this Plan, when a change occurs, the Rating Board will determine whether to exclude or retain an entity’s experience in the rating calculation. Refer to Section (A) of this Rule for reporting requirements.

In addition, if the Rating Board determines that the ownership transaction improperly affected the modification, it will take necessary action in accordance with Section (F) of this Rule.

1. Types of Ownership Changes

- a. For purposes of this Plan, a change in ownership includes any of the following:
 - i. Sale, transfer, or conveyance of all or a portion of an entity’s ownership interest
 - ii. Sale, transfer, or conveyance of an entity’s physical assets to another entity that takes over its operations
 - iii. Merger or consolidation of two or more entities
 - iv. Formation of a new entity that acts as, or in effect is, a successor to another entity that:
 - A. Has dissolved,
 - B. Is non-operative, or
 - C. May continue to operate in a limited capacity
 - v. An irrevocable trust or receiver, established either voluntarily or by court mandate
- b. For purposes of this Plan, a change in ownership does not include the following.
 - i. Entities entering or leaving employee leasing arrangements

- ii. Creation or dissolution of joint ventures
- iii. Wrap-up projects
- iv. Establishment of, or change in, a revocable trust
- v. Establishment of “debtor in possession” status
- vi. Entities entering or leaving affiliation, franchise and/or management agreements
- vii. Probate proceedings (until a disposition of the estate is complete)

Note: For more information on experience rating of employee leasing arrangements, joint ventures, and wrap-up projects, refer to Rule 5 of this Plan.

2. Impact of Ownership Changes

Ownership changes may result in a change in:

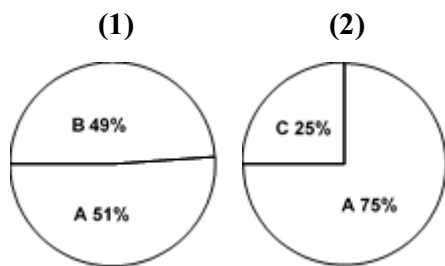
- a. Modification(s).
- b. Combinability status with other entities.
- c. Eligibility to be experience rated. Refer to Rule 2 Section (A) of this Plan.
- d. Rating Effective Date

D. COMBINATION OF ENTITIES

1. The Combination of Two or More Entities requires common majority ownership. Combination requires that:

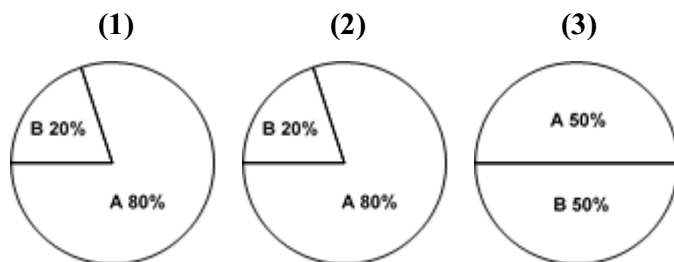
- The same person, group of persons or corporation owns more than 50% of each entity, or
- An entity owns a majority interest in another entity, which in turn owns a majority interest in another entity. All entities are combinable for experience rating purposes regardless of the number of entities involved.

Example 1:



Entities (1) and (2) are combinable since A owns a majority in both.

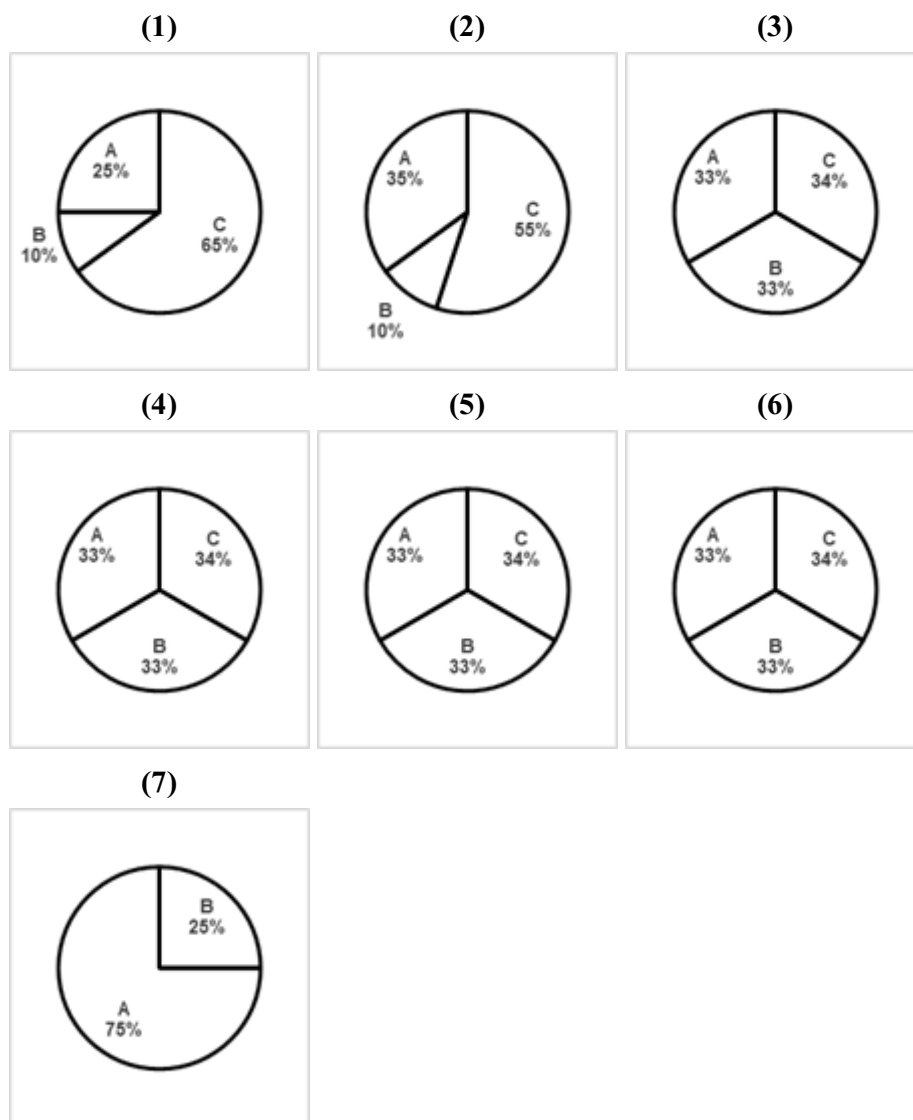
Example 2:



Entities (1), (2), and (3) are all combinable since, as a group, A and B own more than 50% of each.

Example 3:

Six entities are combinable based on common majority ownership. A new entity (7) becomes combinable with one or more, but not all entities in the existing combination. Since none of the original six entities had undergone a change in ownership, they would continue to be rated together. The new entity is rated separately.



2. Determination of Majority Ownership Interest is based on the following:

- a. Majority of issued voting stock.
- b. Majority of the owners, partners or members if no voting stock is issued.
- c. Majority of the board of directors or comparable governing body if (a) or (b) is not applicable
- d. Participation of each general partner in the profits of a partnership. Limited partners are not considered in determining majority interest.
- e. The same central authority that appoints or controls the appointment of the board of trustees or similar body, and exercises direct, complete and active control over the finances, properties, operations and activities of separate legal entities within the same religious denomination.
- f. Ownership interest held by an entity as fiduciary. Such an entity's total ownership interest will also include any ownership held in a nonfiduciary capacity.

Note: For purposes of this Rule, fiduciary does not include a debtor in possession, a trustee under a revocable trust, or a franchisor.

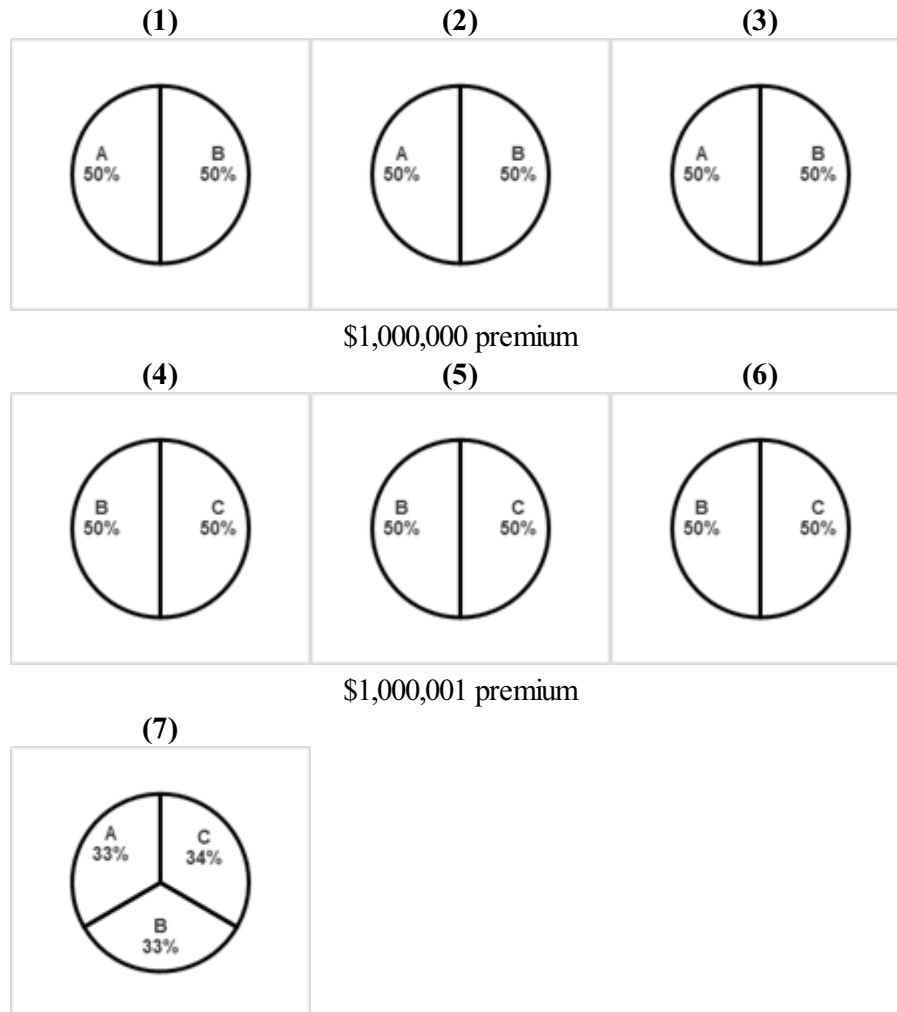
3. Multiple Combinations

- a. More than one combination of entities may be possible within a group of entities. The selection of combinations is based on the combination that involves the most entities.

- b. If Section (D)(3)(a) of this Rule does not result in a single group with a majority of entities, the combination will be based on the group that has the largest amount of estimated standard premium. The estimated standard premium is based on the policies in effect at the time of the combination.
- c. The experience of any entity may be used in only one combination.

Example 4:

Six entities, based on their respective ownership, are split into two sets of three combinable entities each. A new entity's ownership structure is such that it could be combinable with either of the existing three entity combinations. In this situation, assuming each entity has a separate policy, the combination that produces the largest amount of premium would be made. Therefore, Risk 7 would be combinable with entities 4, 5, and 6.



Example 5:

In this example, based on the ownership interest of six entities, two different sets of three entity combinations are possible. For example, the combinations could involve entities 1, 2, 3 and 4, 5, 6, or entities 1, 3, 5 and 2, 4, 6. The Plan rules provide that the combination involving the most entities be made. In this case, based on the ownership structure, a four-entity combination is not possible. As such, the combination that produces the largest amount of premium would be made, assuming each entity has a separate policy.

E. TREATMENT OF EXPERIENCE

1. Transfer of Experience

Changes in ownership or combination status may or may not result in revisions of modifications. The Rating Board will request separate data from the carrier when appropriate. In certain cases, documentation may be

needed to validate the accuracy of the submitted data.

The experience for any entity undergoing a change in ownership will be retained or transferred to the experience ratings of the acquiring, surviving or new entity unless specifically excluded by this Plan.

Transfer of Experience Table 1	
If the single or multiple entity risk disposes of all of its operations and the purchaser...	Then...
Does not have any prior or current policies or experience	The experience will be retained in the future experience ratings of the purchaser, subject to <u>Rule 2 Section (A)</u> of this Plan.
<ul style="list-style-type: none"> • Has prior experience, for which a modification has already been issued, or • Has prior experience, but did not qualify for experience rating 	The experience will be retained in the future experience ratings of the purchaser and combined with the other experience of the purchaser, subject to <u>Rule 2 Section (A)</u> of this Plan

Transfer of Experience Table 2		
If the single or multiple entity risk...	And the purchaser...	Then...
<ul style="list-style-type: none"> • Disposes of part of its operations, and • Otherwise continues to operate its business, and • Its statistical data has been combined on a single policy, and • The insurance provider can furnish the rating organization with the appropriate experience to provide for transfer of the data to the purchaser 	Does not have any experience	<ul style="list-style-type: none"> • The appropriate experience will be retained in the future experience ratings of the purchaser, subject to <u>Rule 2 Section (A)</u> of this Plan. • The same experience will be excluded from the future experience ratings of the seller. • If the separated experience results in the seller, purchaser, or both, not qualifying for experience rating, a unity factor (1.00) will apply to the non-qualifying risk until qualifying experience is developed.
	<ul style="list-style-type: none"> • Has experience but does not qualify for experience rating, or • Is an experience rated risk 	<ul style="list-style-type: none"> • The appropriate experience will be retained in the future experience ratings of the purchaser and combined with the other experience of purchaser, subject to <u>Rule 2 Section (A)</u> of this Plan. • The same experience will be excluded from the future experience ratings of the seller. • If the separated experience results in the seller, purchaser, or both, not qualifying for experience rating, a unity factor (1.00) will apply to the non-qualifying risk until qualifying experience is developed.

<ul style="list-style-type: none"> • Disposes of part of its operations, and • Otherwise continues to operate its business, and • Its statistical data has been combined on a single policy, and • The insurance provider cannot furnish the rating organization with appropriate experience to provide for transfer of the data to the purchaser. 	<ul style="list-style-type: none"> • Does not have any experience, or • Has experience but does not qualify for experience rating 	<ul style="list-style-type: none"> • A unity factor (1.00) will apply to the purchaser's policy until qualifying experience is developed. • All experience developed prior to the sale remains in future ratings of the seller.
	<ul style="list-style-type: none"> • Is an experience rated risk 	<ul style="list-style-type: none"> • The purchaser's modification will continue to apply. Any experience developed by the purchased entity after the sale will be used in future ratings of the purchaser. • All experience developed prior to the sale remains in future ratings of the seller.

2. Exclusion of Experience

Rare circumstances may require that experience for any entity undergoing a change in ownership be excluded from future experience ratings. The experience will be excluded only if the Rating Board confirms **all** of the following:

- The change must be a material change such that:
The entire ownership interest after the change had no ownership interest before the change, or
The collective ownership of all those having interest in an entity results in either less than:
1/3 ownership before the change, or
1/2 ownership after the change; **and**
- The material change in ownership is accompanied by a change in operations sufficient to result in reclassification of the governing classification; **and**
- The material change in ownership is accompanied by a change in the process and hazard of the operations. Change in process and hazard is determined by the Rating Board.

Except for action that may be taken under Section (F) of this Rule, experience is not otherwise excluded for employee leasing companies and temporary employment agencies. For more information on employee leasing companies, refer to Rule 5 Section (B) of this Plan.

3. Recalculation and Application of Modifications

If a change in ownership and/or combinability status occurs, recalculation of modifications may be required, as described in the table below. Changes in ownership and/or combinability status may also result in a change in rating effective date, as determined by the Rating Board.

If the first written reporting of the change by either the acquiring entity or acquired entity to their carrier or to the Rating Board occurs...	Then the recalculation and application of the revised modifications(s) will be as of the...
Within 90 days of the Date of the change	Date of the change
More than 90 days after the date of the change	Next rating effective date following the earliest notice of the change received by a carrier or the rating organization

Recalculation and application of experience rating modifications in conjunction with this rule is subject to Section (F) of this Rule and Rule 4 Section (E) of this Plan.

Example 6:

On 03/01/23, Entity A, with a 01/01/23 modification of 1.26, purchases Entity B with a 10/01/22 modification of 0.86. Assuming the change is reported on a timely basis, the 01/01/23 modification of Entity A is revised as of 03/01/23 (the date of combination) and applies from that date until the expiration date of 01/01/23 rating. In this example, the inclusion of Entity B's experience results in a modification of 1.14, a decrease from the 1.26 original modification. Entity B's original 0.86 modification applies from 10/01/22 until its acquisition of 03/01/23.

Example 7:

Entities C and D have been combined for many years based on the following ownership:

- Entity C – John Doe 50%, Jane Doe 30%, John Smith 20%
- Entity D – John Doe 30%, Jane Doe 10%, John Smith 60%

As a group, the three individuals own 100% of both entities. The rating for the combined entities is effective 1/1/23. On 5/15/23, John Smith sells his 20% interest in Entity C to Sam Jones. The ownership of the two entities now appears as follows:

- Entity C – John Doe 50%, Jane Doe 30%, Sam Jones 20%
- Entity D – John Doe 30%, Jane Doe 10%, John Smith 60%

As a result, the entities are no longer combinable. Assuming the change is reported on a timely basis, Entities C and D are separately rated as of 5/15/23.

If the entities are written on separate policies, separate modifications will be produced for each entity effective the date of the change.

If the entities are written on a single policy, an attempt is made by the carrier(s) to separate the data by entity. If this can be done, each entity will receive a separate modification effective the date of the change. If the data cannot be separated by entity, Entity C will receive a unity modification (1.00). Entity D will continue to be experience rated based on all experience developed prior to the sale.

F. EVASION OF THE EXPERIENCE RATING MODIFICATION

1. Actions

Any action that results in the miscalculation or misapplication of a modification determined in accordance with this Plan is prohibited. These actions include, but are not limited to:

- Failure to report changes in ownership according to Endorsement WC 00 04 14 A
- A change in ownership
- A change in combinability status
- Creation of new entity
- Transfer of operations from one entity to another entity that is not combinable according to Section (D) of this Rule
- Misrepresentation on audits or failure to cooperate with an audit

2. Rating Board Response

The Rating Board may obtain any information that indicates evasion or improper calculation or application of modifications due to actions included, but not limited to, those listed in Section (F)(1) of this Rule.

The Rating Board will act to ensure the proper calculation and application of all current and preceding

modifications impacted by these actions. This includes, but is not limited to the:

- Combination of experience that would otherwise not be combinable according to Section (D) and (E)(1) of this Rule.
- Separation of experience that would otherwise be combinable according to Section (D) and (E)(1) of this Rule.
- Exclusion of experience that would otherwise be included according to Section (E)(1) of this Rule.
- Continuation of experience that would otherwise be excluded according to Sections (E)(1) and (E)(2) of this Rule
- Issuance of modifications that were not originally issued
- Revision and/or retraction of modifications

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