



NYCIRB

New York Compensation
Insurance Rating Board

**NEW YORK EXPERIENCE
RATING PLAN MANUAL
FOR WORKERS'
COMPENSATION AND
EMPLOYERS' LIABILITY
INSURANCE**

2022 EDITION

New York Compensation
Insurance Rating Board
733 Third Avenue
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(212) 697-3535

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INTRODUCTION**A. JURISDICTION WHERE THIS PLAN APPLIES**

This Experience Rating Plan applies exclusively to the New York Workers' Compensation and Employers' Liability Manual. All New York experience rating modifications will be developed in accordance with the rules and procedures described in this Plan and will be promulgated by the New York Compensation Insurance Rating Board ("Rating Board").

B. ORGANIZATION OF THE NEW YORK EXPERIENCE RATING PLAN

This Manual contains rules and rating values that have been approved by the New York State Department of Financial Services ("DFS") pursuant to Article 23 of the New York State Insurance Law. The Manual is organized according to the following topics:

1. Introduction
2. Table of Contents
3. Rule 1 – General Explanations
4. Rule 2 – Experience Rating Elements and Formula
5. Rule 3 – Ownership Changes and Combination of Entities
6. Rule 4 – Application and Revision of Experience Rating Modifications
7. Rule 5 – Special Rating Conditions
8. Tables of Experience Rating Values

RULE 1 – GENERAL EXPLANATIONS

A. EXPERIENCE RATING

Experience rating recognizes the differences among individual employers by comparing the experience of individual employers with the average employer in the same classification. The differences are reflected by an experience rating modification (“modification”) based on individual employer payroll and loss records, which may result in an increase, decrease, or no change in premium.

B. MANDATORY PLAN

1. The New York Experience Rating Plan for Workers’ Compensation and Employers’ Liability Insurance (“Plan”) applies on a mandatory basis for all risks that meet the eligibility requirements in Rule 2 Section (A) of this Plan. A policy cannot be canceled, rewritten or extended for purposes of enabling a risk to qualify for, or avoid application of, this Plan.
2. Any action taken to evade the application of a modification determined in accordance with this Plan is prohibited.
3. Any change in rule or rating value shall become effective at 12:01 a.m. on the date approved for use. Unless otherwise specified, each change applies only from the first Rating Effective Date that occurs on or after the effective date of the change. Refer to Rule 2 Section (B) of this Plan for more information about Rating Effective Date.
4. The Standard Workers’ Compensation and Employers’ Liability Insurance Policy (WC 00 00 00 C) provides the Rating Board with the authority to examine and audit all records that relate to the policy. The application of this Plan’s rules may be affected by the attachment of endorsements found in the New York Workers’ Compensation and Employers’ Liability Insurance Manual.

- 5.** The rules of this Plan are based on policy periods not longer than one year.
- (a)** A policy issued for a period not longer than one year and 16 days is treated as a one-year policy.
- (b)** A policy issued for a period longer than one year and 16 days is treated as follows:
- The policy period is divided into consecutive 12-month units.
 - The Policy Period Endorsement (WC 00 04 05) identifies the time period of less than 12 months to be treated as a short-term policy.
 - All Manual rules and procedures apply to each identified time period as if a separate policy had been issued for each.

C. DEFINITIONS

1. Statistical Plan

The New York Workers' Compensation Statistical Plan ("Statistical Plan") sets forth detailed data reporting requirements for experience of individual risks. Only 1st, 2nd, and 3rd reports, as well as corrections to such reports, are used in the experience rating calculation. Based on a risk's experience period, an individual unit report may be used in more than one experience rating.

2. Experience

The experience used to calculate a risk's modification is comprised of the exposure and losses that are reported according to the Statistical Plan. For purposes of this Plan, exposure and losses may also be referred to as data. The experience used to calculate a modification is determined by Rule 2 Section (E) of this Plan.

3. Exposure

For payroll-based classifications, exposure is the audited payroll for each classification in the experience period reported according to the Statistical Plan.

For non-payroll-based classifications, exposure is the following:

- (a)** Per capita classes: The number of employees as reported in accordance with Part III (6) (b) of the Statistical Plan
- (b)** Per location class: The number of locations as reported in accordance with Part III (6) (c) of the Statistical Plan

	<p>(c) Volunteer Firefighters class: The number of exposure units reported in accordance with Part III (6)(d) of the Statistical Plan multiplied by the rating period manual loss costs for the coverage based on population size during the coverage period.</p> <p>(d) Volunteer Ambulance Workers class: The number of exposure units reported in accordance with Part III (6)(e) of the Statistical Plan applied to the rating period manual loss costs for such exposure units.</p>
	<p>4. Losses</p> <p>Losses used in this Plan are incurred losses which are defined as loss payments plus reserves for future payments as of the valuation date. Incurred losses for each classification in the experience period are those reported according to the Statistical Plan.</p> <p>(a) No loss is excluded from the experience of a risk even if the employer was not responsible for the accident that caused such loss.</p> <p>Exceptions:</p> <p>(i) Losses reported with Catastrophe Number 12 are excluded from experience rating calculations. Catastrophe Number 12 claims include all workers' compensation claims directly attributable to the COVID-19 pandemic.</p> <p>(ii) A loss is not included in the experience of a risk if it is not required to be reported to the New York State Workers' Compensation Board as defined in Section 110 of the New York Workers' Compensation Law provided that the employer pays the claim in the first instance or reimburses the carrier for the treatment rendered to the employee.</p> <p>Note: An employer is not required to file a claim notice with the New York State Workers' Compensation Board if the accident or illness requires ordinary first aid or causes loss of time from work of only one day beyond the working day or shift on which the accident or illness occurred.</p> <p>(b) Loss amounts may be limited in the experience rating calculation. For application of a loss limitation, refer to Rule 2 Section (C)(9) of this Plan.</p>
	<p>5. Entity</p> <p>An entity is an individual, partnership, corporation, unincorporated association, fiduciary, or other legal entity.</p>

	<p>6. Risk</p> <p>A risk consists of all entities eligible for combination under this Plan, regardless of whether insurance is provided by one or more policies or insurance carriers. A risk may be:</p> <p>(a) A single entity, or (b) Two or more entities that qualify for combination according to Rule 3 Section (D) of this Plan.</p>
	<p>7. Subject Premium</p> <p>Subject premium is reported according to the Statistical Plan.</p>
	<p>8. Unity (1.00) Factor</p> <p>A unity (1.00) factor may apply to a risk for reasons including, but not limited to:</p> <ul style="list-style-type: none"> • It does not qualify for experience rating. Refer to Rule 2 Section (A) of this Plan for eligibility requirements. • It does not meet the minimum data requirements. Refer to Rule 4 Section (C) of this Plan for an explanation. • It is a new business with no data available for calculation of an experience rating modification. • It qualifies for experience rating, with the calculation resulting in a 1.00 modification. • Data could not be provided as a result of an ownership change. Refer to Rule 3 Section (C) of this Plan for an explanation.

D. ADMINISTRATION	
	<ol style="list-style-type: none"> 1. The Rating Board determines the applicability of all Plan rules. 2. The modification is calculated, issued and, if necessary, revised by the Rating Board. 3. Unless otherwise provided by this Plan, modification issuance and revision is limited to the current and two preceding modifications.

4. The calculated modification factor is applied by the carrier(s) in accordance with this Plan, other applicable rules, statutes, and regulations.
5. The Rating Board publishes experience rating information for each eligible risk on the Rating Board's Manage Data application, which is accessible to the membership via the Rating Board's website, www.nycirb.org. The carrier of record is provided access to the experience rating worksheets for its own insureds on this application. Producers and other users can view modification factors for individual risks by subscribing to the NYMods application. Registration for access to this application can be obtained via the Rating Board's website at www.nycirb.org.
6. Individual employers, carriers, and other authorized representatives of record may request rating worksheets, as well as Employer Experience Reports, by contacting the Rating Board via email to RatingServices@nycirb.org. Letters of Authority must be furnished to the Rating Board for non-authorized representatives of employers either:
 - (a) On the employer's stationery, authorizing such individuals as their representative and must be signed by an officer, partner, or principal of the employer; or
 - (b) Through an online application available on the Broker / Employer section of the Rating Board's website at www.nycirb.org.

E. APPEAL PROCESS

An employer or its representative may appeal a modification factor by following the appeal procedures as described in Rule I Section (J) of the New York Workers' Compensation and Employers' Liability Insurance Manual.

RULE 2 – EXPERIENCE RATING ELEMENTS AND FORMULAS

A. ELIGIBILITY	
	All employers with New York exposure during the experience period are eligible for participation in the experience rating plan.

B. RATING EFFECTIVE DATE	
	<p>1. The Rating Effective Date appears on a risk’s experience rating worksheet. It is the earliest date that a specific modification is applied to a policy. To determine modification application, refer to Rule 4 Section (D) of this Plan.</p> <p>The Rating Board establishes the rating effective date. In most cases, a risk’s rating effective date is the same as its policy effective date.</p> <p>Note: Wrap-up policies are not used to determine rating effective dates. Refer to Rule 5 Section (A)(4) of this Plan for information on wrap-up policies.</p>
	<p>2. The rating effective date may differ from a risk’s Policy Effective Date for reasons including, but not limited to:</p> <ul style="list-style-type: none"> • Short-term policies • Cancellations • Gaps in coverage • Changes in ownership or combinability status • Multiple policy effective dates • A policy that is longer than one year and 16 days • Late receipt of current policy information by the Rating Board.

3. To determine a risk's rating effective date, the Rating Board will apply the Rating Effective Date Determination Table in conjunction with a review of the most recent full-term policies and unit statistical data. For purposes of this Rule, a full-term policy is considered to be written for 12 months and is not cancelled prior to its expiration date.

Rating Effective Date Determination Table

If the risk is...	Then the rating effective date is...
A single policy risk, or a multiple policy risk with all policies having the same effective date	The effective month and day of the most recent full-term policy in effect and each policy thereafter unless the date is changed due to a reason listed above.
A multiple policy risk with policies having different effective dates	The effective month and day of the most recent full-term policy in effect with the largest amount of estimated standard premium.

4. Rating Effective Date Examples

The rating effective date is the earliest date that a specific modification is applied to a policy.

Example 1:

Assume that a risk has a current policy effective January 1, and all previous policies have also been effective on January 1 since the risk was in business:

Since all policies have had January 1 effective dates, the rating effective date is January 1.

Example 2:

Assume that after several years, the policy effective date changes.

Policy	Rating Effective Date
01/01/18 – 01/01/19	01/01/18
01/01/19 – 06/01/19	01/01/19
06/01/19 – 06/01/20	01/01/19 (applicable from 06/01/19 to 01/01/20) 01/01/20 (applicable from 01/01/20 to 06/01/20)
06/01/20 – 01/01/21	06/01/20

Since the next full-term policy after the change in effective date is 06/01/19-06/01/20, experience ratings will be issued with rating effective dates of 01/01/18, 01/01/19 and 01/01/20. Upon expiration of the 06/01/19-06/01/20 policy, a new rating effective date of 06/01/20 will apply.

Example 3:

Assume that after several years, the policy effective date changes, and then changes again.

Policy Period	Rating Effective Date
01/01/18 – 01/01/19	01/01/18
01/01/19 – 05/01/19	01/01/19
05/01/19 – 05/01/20	01/01/19 (applicable from 05/01/19 to 01/01/20) 01/01/20 (applicable from 01/01/20 to 05/01/20)
05/01/20 – 05/01/21	05/01/20
01/01/21 – 01/01/22	05/01/20 (applicable from 01/01/21 to 05/01/21) 05/01/21 (applicable from 05/01/21 to 01/01/22)
01/01/22 – 01/01/23	01/01/22

Since the next full-term policy after the first change in effective date is 05/01/19-05/01/20, experience ratings will be issued with rating effective dates of 01/01/18, 01/01/19 and 01/01/20. Upon expiration of the 05/01/19-05/01/20 policy, a new rating effective date of 05/01/20 will apply. The 05/01 rating effective date will remain until after expiration of the 01/01/21-01/01/22 policy. A new rating effective date will become effective 01/01/22.

C. ELEMENTS OF THE EXPERIENCE RATING FORMULA AND WORKSHEET	
1.	<p>Expected Loss Rate</p> <p>The Expected Loss Rate (“ELR”) is a factor reflecting the amount of expected losses per unit of exposure for experience rating purposes for each classification. The ELR is applied to each \$100 of payroll for payroll-based classifications and to exposure for non-payroll-based classifications) for a classification.</p> <p>ELRs are listed in Table I – Expected Loss Rates of this Plan.</p>
2.	<p>Expected Losses</p> <p>The Expected Losses for each payroll-based classification are determined by multiplying the ELR by payroll divided by 100. For non-payroll classifications, the classification’s exposure is multiplied by the ELR. The result is rounded to the nearest whole number. Within the experience rating calculation, the expected losses represent the benchmark level of losses expected for all employers in the state within a particular classification.</p> <p>Note: In determining the modification for risks subject to the New York Payroll Limitation Law, expected losses are based on limited payrolls.</p>
3.	<p>Primary/Excess Split Point Value</p> <p>The dollar value which splits a loss into its primary and excess portions is known as the primary/excess split point. This value varies by size of risk in terms of expected losses and can be found in Table II – Primary/Excess Split Points of this Plan.</p>
4.	<p>Discount Ratio</p> <p>The Discount Ratio (“D-Ratio”) is a factor applied to the expected losses for each classification and Split Point to determine Expected Primary Losses.</p> <p>Discount ratios by classification and Split Point are listed in Table III – D-Ratios of this Plan.</p>

	<p>5. Expected Primary Losses</p> <p>A risk's Expected Primary Losses for each classification are determined by multiplying the Expected Losses for the classification by the classification D-Ratio for the risk's Split Point. The result is rounded to the nearest whole number.</p>
	<p>6. Expected Excess Losses</p> <p>A risk's Expected Excess Losses for each classification are the difference between the classification's Expected Losses and Expected Primary Losses.</p>
	<p>7. Actual Incurred Losses</p> <p>For purposes of experience rating, Actual Incurred Losses are the loss amounts reported according to the Statistical Plan. Actual Incurred Losses include both paid amounts and carrier established reserves on each claim.</p>
	<p>8. Actual Primary Losses</p> <p>Actual Primary Losses are the portion of the actual incurred losses that are used in the experience rating calculation. For each actual incurred loss, the amount up to the primary/excess split point value is considered primary.</p>

9. Losses Employed in a Rating

To reduce the effect of unusual or catastrophic occurrences on the modification, certain loss limitations apply.

- (a) For each claim, losses considered in the determination of the modification are limited to the Split Point applicable to the individual risk. Actual excess losses (the portion of the loss that exceeds the Primary/Excess Split Point) are not used in the calculation of the modification.

Example 1:

Assume a risk has a Primary/Excess Split Point of \$10,000. A claim is reported with a loss amount of \$85,000 and appears at full value on the modification worksheet. In the determination of the modification, the loss amount will be limited to \$10,000. This limitation applies to all claims that exceed \$10,000 for this risk.

Example 2:

Assume a risk has a Primary/Excess Split Point of \$20,000. A claim is reported with a loss amount of \$185,000 and appears at full value on the modification worksheet. In the determination of the modification, the loss amount will be limited to \$20,000. This limitation applies to all claims that exceed \$20,000 for this risk.

Example 3:

Assume a risk has a Primary/Excess Split Point of \$100,000. A claim is reported with a loss amount of \$85,000 and appears at full value on the modification worksheet. In the determination of the modification, the loss amount will not be limited because the claim value is less than the Primary/Excess Split Point for this risk.

- (b) For an occurrence involving two or more claims, the two largest losses are used in experience rating with each claim value limited to the Split Point applicable to the individual risk.

Example 4:

Company A, which has a Primary / Excess Split Point of \$20,000, has three claims from a single occurrence:

Claim	Actual Incurred	Split Point	Actual Primary
1	\$275,000	\$20,000	\$20,000
2	\$ 42,000	\$20,000	\$20,000
3	\$ 5,000	\$20,000	\$0
Total	\$322,000		\$40,000

Claims 1 and 2 have the two largest reported loss amounts from this single occurrence and will be used in the calculation of the modification. Claim 3 is not used in the calculation.

In addition, Claims 1 and 2 exceed the Split Point. Accordingly, the actual primary portion of each is the Split Point amount of \$20,000.

Example 5:

Company A, which has a Primary / Excess Split Point of \$20,000, has four claims from a single occurrence:

Claim	Actual Incurred	Split Point	Actual Primary
1	\$119,000	\$20,000	\$20,000
2	\$15,000	\$20,000	\$15,000
3	\$5,000	\$20,000	\$0
4	\$4,000	\$20,000	\$0
Total	\$143,000		\$35,000

Claims 1 and 2 have the two largest reported loss amounts from this single occurrence and are used in the calculation of the modification. Claims 3 and 4 are not used in the calculation.

In addition, Claim 1 exceeds the Split Point, and accordingly, its actual primary portion is the Split Point amount of \$20,000. Claim 2 does not exceed the Split Point, therefore the actual primary portion of each is the actual reported loss amount.

Example 6:

As a comparison, if each loss in Example 5 above was a result of four separate occurrences, all losses would be limited individually and used in the calculation as follows:

Loss	Actual Incurred	Split Point	Actual Primary
1	\$119,000	\$20,000	\$20,000
2	\$15,000	\$20,000	\$15,000
3	\$5,000	\$20,000	\$5,000
4	\$4,000	\$20,000	\$4,000
Total	\$143,000		\$44,000

Example 7:

Company A, which has a Primary / Excess Split Point of \$20,000, has four claims from a single occurrence (labeled losses 1 through 4), and two additional claims from two separate occurrences (labeled losses 5 and 6):

Occurrence	Loss	Actual Incurred	Split Point	Actual Primary
A	1	\$119,000	\$20,000	\$20,000
A	2	\$15,000	\$20,000	\$15,000
A	3	\$5,000	\$20,000	\$0
A	4	\$4,000	\$20,000	\$0
B	5	\$40,000	\$20,000	\$20,000
C	6	\$2,000	\$20,000	\$2,000
	Total	\$185,000		\$57,000

Claims 1 and 2 have the two largest reported loss amounts from the single occurrence and are used in the calculation of the modification. Claims 3 and 4 are part of the same occurrence and are not used in the calculation.

In addition, Claim 1 exceeds the Split Point, therefore its actual primary portion is the Split Point amount of \$20,000. Claim 2 does not exceed the Split Point, therefore the actual primary portion of each is the actual reported loss amount.

Claims 5 and 6 are included because each comes from an individual, separate occurrence. Claim 5 exceeds the Split Point, and its actual primary portion is the Split Point amount of \$20,000. Claim 6 does not exceed the Split Point, and its actual primary portion is the actual reported loss amount.

10. Table of Classifications with Non-Ratable Elements

The following Non-Ratable Element Codes are not subject to experience rating:

Classification Code	Non-Ratable Element Code
4771	0771
7405	7445
7431	7453

11. Prior Formula Modification

The Prior Formula Modification is defined as the modification or merit rating factor resulting from the application of the experience rating plan rules and formula, which was in effect until September 30, 2022 (“Prior Rules and Formula”), to the data during the experience period as defined under this Plan.

For risks that were previously rated under the interstate rating plan administered by the National Council on Compensation Insurance (“NCCI”), the Prior Formula Modification is the modification resulting from the application of the Prior Rules and Formula to New York data during the experience period.

12. Number of Claims

The Number of Claims refers to the number of indemnity and medical claims incurred by the insured during the experience period. Claims are defined as those which had a medical and/or indemnity incurred loss amount.

For occurrences involving two or more claims, the number of claims from each such occurrence is limited to two.

D. EXPERIENCE RATING FORMULA	
1.	<p>The experience rating modification formula is used to determine the modification for all risks.</p> $\text{Experience Rating Modification} = \frac{\text{Actual Primary Losses} + \text{Expected Excess Losses}}{\text{Expected Losses}}$ <p>Note: If total expected losses are below \$100, Expected Losses in the above formula will be assigned a minimum value of \$100 and Expected Excess Losses will be derived using the minimum value of \$100 for Expected Losses. The derivation of Expected Primary Losses will not be affected by the minimum expected loss amount.</p>
2.	<p>Capped Debit Modification</p> <p>Modification factors determined by the formula in Section (D)(1) of this Rule are subject to a capping methodology as follows:</p> <ul style="list-style-type: none"> (a) If the number of claims for the risk during the experience period is 1, the modification cannot exceed 1.12 (b) If the number of claims for the risk during the experience period is 2, the modification cannot exceed 1.40 (c) If the number of claims for the risk during the experience period is 3, the modification cannot exceed 1.75 (d) If the number of claims for the risk during the experience period is 4 or more, the modification cap is determined by the following formula: $\text{Capped Debit Modification} = 2 + 0.000003 \times \text{Expected Losses}$
3.	<p>United States Longshore and Harbor Workers’ (“USL&HW”) Act Coverage</p> <p>Experience ratings containing classifications where the rates include coverage under the USL&HW Act are calculated using the formula described in Section (D)(1) of this Rule.</p> <p>Classifications subject to the USL&HW Act, but not followed by the letter “F” in the Table of Expected Loss Rates and Discount Ratios, have their expected losses determined by applying the USL&HW Act percentage, found on Table I – Expected Loss Rates, to the expected loss rate (ELR) for such classifications.</p>
4.	<p>Transitional Modification Factor</p> <p>A transitional modification factor may apply to risks with rating effective dates from October 1, 2022 through September 30, 2023. Specifically, if the modification resulting from the formula described above exceeds the Prior Formula Modification by more than 0.3, a transitional modification will be promulgated equal to the Prior Formula Modification + 0.3.</p>

E. EXPERIENCE TO BE USED IN A RATING

1. Experience Period

The experience period represents the total amount of past exposure and loss data used in an experience rating. The calculation of a risk's modification must include all eligible experience that occurred during the experience period.

(a) A risk's rating effective date determines its experience period. Experience for each of a risk's policies is included if the policy effective date is:

- (i) Not less than 21 months before the rating effective date; and
- (ii) Not more than 57 months before the rating effective date.

(b) A risk's experience period cannot contain more than 45 months of data. The 45-month limitation is a maximum period of time between the expiration date of the most recent policy and the effective date of the oldest policy. While the experience period may not exceed 45 months, a modification may be produced with less than 12 months of data. The amount of data included in a risk's experience period may be impacted for reasons including, but not limited to:

- Short-term policies
- Cancellations
- Gaps in coverage
- Changes in ownership or combinability status
- Rating effective date changes
- Multiple policy effective dates
- Policies longer than one year and 16 days
- Wrap-up policies

(c) If both the recent and oldest policies fit within the experience period, and the inclusion of both policies would exceed 45 months, the oldest policy is not used.

(d) Based on a risk's rating effective date:

- (i) A risk's most current data, excluding 4th through 10th reports, is used to calculate modifications. Refer to the Statistical Plan for valuation date information.
- (ii) An individual policy's 1st, 2nd, and 3rd report data may be used in more than three modifications. However, the policy must be eligible for inclusion according to Section (E)(1)(a)(b) and (c) of this Rule.

2. Experience Period Reference Table

The following table provides an illustration of the policies that need to be included in the experience for a respective rating effective date and can be used as a reference.

EXPERIENCE PERIOD REFERENCE TABLE

Rating Effective Date	Oldest Policy Effective Date	Most Recent Policy Effective Date	Rating Effective Date	Oldest Policy Effective Date	Most Recent Policy Effective Date
01/01/23	04/01/18	04/01/21	01/01/24	04/01/19	04/01/22
02/01/23	05/01/18	05/01/21	02/01/24	05/01/19	05/01/22
03/01/23	06/01/18	06/01/21	03/01/24	06/01/19	06/01/22
04/01/23	07/01/18	07/01/21	04/01/24	07/01/19	07/01/22
05/01/23	08/01/18	08/01/21	05/01/24	08/01/19	08/01/22
06/01/23	09/01/18	09/01/21	06/01/24	09/01/19	09/01/22
07/01/23	10/01/18	10/01/21	07/01/24	10/01/19	10/01/22
08/01/23	11/01/18	11/01/21	08/01/24	11/01/19	11/01/22
09/01/23	12/01/18	12/01/21	09/01/24	12/01/19	12/01/22
10/01/23	01/01/19	01/01/22	10/01/24	01/01/20	01/01/23
11/01/23	02/01/19	02/01/22	11/01/24	02/01/20	02/01/23
12/01/23	03/01/19	03/01/22	12/01/24	03/01/20	03/01/23
01/01/25	04/01/20	04/01/23	01/01/26	04/01/21	04/01/24
02/01/25	05/01/20	05/01/23	02/01/26	05/01/21	05/01/24
03/01/25	06/01/20	06/01/23	03/01/26	06/01/21	06/01/24
04/01/25	07/01/20	07/01/23	04/01/26	07/01/21	07/01/24
05/01/25	08/01/20	08/01/23	05/01/26	08/01/21	08/01/24
06/01/25	09/01/20	09/01/23	06/01/26	09/01/21	09/01/24
07/01/25	10/01/20	10/01/23	07/01/26	10/01/21	10/01/24
08/01/25	11/01/20	11/01/23	08/01/26	11/01/21	11/01/24
09/01/25	12/01/20	12/01/23	09/01/26	12/01/21	12/01/24
10/01/25	01/01/21	01/01/24	10/01/26	01/01/22	01/01/25
11/01/25	02/01/21	02/01/24	11/01/26	02/01/22	02/01/25
12/01/25	03/01/21	03/01/24	12/01/26	03/01/22	03/01/25
01/01/27	04/01/22	04/01/25	01/01/28	04/01/23	04/01/26
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03/01/27	06/01/22	06/01/25	03/01/28	06/01/23	06/01/26
04/01/27	07/01/22	07/01/25	04/01/28	07/01/23	07/01/26
05/01/27	08/01/22	08/01/25	05/01/28	08/01/23	08/01/26
06/01/27	09/01/22	09/01/25	06/01/28	09/01/23	09/01/26
07/01/27	10/01/22	10/01/25	07/01/28	10/01/23	10/01/26
08/01/27	11/01/22	11/01/25	08/01/28	11/01/23	11/01/26
09/01/27	12/01/22	12/01/25	09/01/28	12/01/23	12/01/26
10/01/27	01/01/23	01/01/26	10/01/28	01/01/24	01/01/27
11/01/27	02/01/23	02/01/26	11/01/28	02/01/24	02/01/27
12/01/27	03/01/23	03/01/26	12/01/28	03/01/24	03/01/27
01/01/29	04/01/24	04/01/27	01/01/30	04/01/25	04/01/28
02/01/29	05/01/24	05/01/27	02/01/30	05/01/25	05/01/28
03/01/29	06/01/24	06/01/27	03/01/30	06/01/25	06/01/28
04/01/29	07/01/24	07/01/27	04/01/30	07/01/25	07/01/28
05/01/29	08/01/24	08/01/27	05/01/30	08/01/25	08/01/28
06/01/29	09/01/24	09/01/27	06/01/30	09/01/25	09/01/28
07/01/29	10/01/24	10/01/27	07/01/30	10/01/25	10/01/28
08/01/29	11/01/24	11/01/27	08/01/30	11/01/25	11/01/28
09/01/29	12/01/24	12/01/27	09/01/30	12/01/25	12/01/28
10/01/29	01/01/25	01/01/28	10/01/30	01/01/26	01/01/29
11/01/29	02/01/25	02/01/28	11/01/30	02/01/26	02/01/29
12/01/29	03/01/25	03/01/28	12/01/30	03/01/26	03/01/29

3. Experience Period Examples

For the examples below, consider the following scenario:

A risk's rating effective date determines its experience period. The experience period contains policies with effective dates ranging from 21 to 57 months before the rating effective date, not exceeding 45 months of data.

To determine the maximum 45-month time period included in the experience period, refer to the Experience Period Reference Table or apply the following procedure:

- (a) List the modification effective date 1/1/23
- (b) Add 3 months to the date in (a) 4/1/23
- (c) Subtract 2 years from the date in (b) 4/1/21
- (d) Subtract 3 years from the date in (c) 4/1/18

The maximum experience period of a 1/1/23 modification includes policies with effective dates on or after 4/1/18, through policies with effective dates on or before 4/1/21.

The examples below clarify the experience period used in a rating that has policy periods with varying lengths.

Example 1:

Assume a 1/1/23 rating effective date.

Policy Period	Months of Data
06/01/18 – 01/01/19	7
01/01/19 – 01/01/20	12
01/01/20 – 01/01/21	12
01/01/21 – 01/01/22	12

The 1/1/23 rating includes 43 months of data. This is within the 45-month period under this rule. The oldest policy period (6/1/18-1/1/19) is not more than 57 months before the rating effective date.

Example 2:

Assume a 7/1/23 rating effective date.

Policy Period	Months of Data
10/01/18 – 07/01/19	9
07/01/19 – 07/01/20	12
07/01/20 – 10/15/20	3.5
10/15/20 – 07/01/21	8.5 month coverage gap – no data to be included
07/01/21 – 07/01/22	12

The 7/1/23 rating includes 36.5 months of data, excluding the 8.5-month gap in coverage. This is within the 45 - month period as provided under this rule. The oldest policy period (10/1/18-7/1/19) is not more than 57 months before the rating effective date

Example 3:

Assume a 7/1/23 rating effective date.

Policy Period	Months of Data
02/01/19 – 12/01/19	10
12/01/19 – 07/01/20	7-month coverage gap – no data to be included
07/01/20 – 07/01/21	12
07/01/21 – 07/01/22	12

The 7/1/23 rating includes 34 months of data, excluding the 7-month gap in coverage. This is within the 45-month period as provided under this Rule. The oldest policy period (2/1/19-12/1/19) is only 53 months before the rating effective date and does not exceed the 57-month limit.

Example 4:

Assume a 7/1/23 rating effective date.

Policy Period	Months of Data
07/01/19 – 07/01/20	12
07/01/20 – 07/01/21	12
07/01/21 – 10/01/21	3-month coverage gap – no data to be included
10/01/21 – 07/01/22	9

The 7/1/23 rating includes 33 months of data within an experience period of 36 months. The data effective 10/1/21 is used.

Example 5:

Assume a 7/1/23 rating effective date.

Policy Period	Months of Data
07/01/19 – 07/01/20	10
07/01/20 – 07/01/21	12
07/01/21 – 07/01/22	12
10/01/21 – 10/01/22	12 – newly acquired subsidiary with a different policy date

In this example, the 7/1/21-7/1/22 policy overlaps with the 10/1/21-10/1/22 subsidiary policy. The 7/1/23 rating includes 36 months of data for the principal entity and 12 months of data for the subsidiary entity. Because two policies overlap for nine months, the 39-month experience period is within the 45-month limit.

Example 6:

Assume a 7/1/23 rating effective date.

Policy Period	Months of Data
12/01/18 – 07/01/19	7
07/01/19 – 07/01/20	12
07/01/20 – 07/01/21	12
07/01/21 – 09/01/21	2
09/01/21 – 07/01/22	10

The experience period includes the 12/1/18 policy and the 9/1/21 policy. In this example, the 7/1/23 rating includes 43 months of data

Example 7:

Assume a 7/1/23 rating effective date.

Policy Period	Months of Data
11/01/18 – 11/01/19	12
11/01/19 – 09/01/20	10
09/01/20 – 07/01/21	10-month coverage gap – no data to be included
07/01/21 – 10/01/21	3
10/01/21 – 07/01/22	9

The 7/1/23 rating includes 34 months of data, excluding the 10-month gap in coverage. This is within the 45-month period. The most recent policy period (10/1/21-7/1/22) is not less than 21 months before the rating effective date.

Example 8:

Assume a 9/1/23 rating effective date.

Policy Period	Months of Data
11/01/18 – 11/01/19	12
11/01/19 – 11/01/20	12
11/01/20 – 09/01/21	10
09/01/21 – 09/01/22	12

In this example, there is a total of 46 months of data. Since this exceeds the 45-month period and the oldest data is more than 57 months before the rating effective date, the 11/1/18-11/1/19 policy is not used. As a result, the experience period is 34 months.

Example 9:

Assume a 1/1/23 rating effective date with combinable entities A and B,

Entity A		Entity B	
Policy Date	Months of Data	Policy Date	Months of Data
01/01/19 – 01/01/20	12	03/01/19 – 03/01/20	12
01/01/20 – 01/01/21	12	03/01/20 – 03/01/21	12
01/01/21 – 01/01/21	12	03/01/21 – 03/01/22	12
Total	36	Total	36

The experience period for a 1/1/23 rating effective date can include policies with effective dates on or between 4/1/18 and 4/1/21. Entity A and Entity B each have 36 months of experience. This particular risk’s experience period begins 1/1/19 and ends 3/1/22, totaling 39 months of experience, even though 33 of the 39 months are overlapping. Each entity’s separate experience, as well as the total experience of the risk, fits within the 45-month maximum experience period.

4. Self-Insurer Data

- (a) Experience of self-insured risks may be included in an experience rating upon written request to the Operations Department of the Rating Board.
- (b) Payroll and loss data must be submitted to the Rating Board on Form ERM-6. The ERM-6 Form is available on the Rating Board’s website at www.nycirb.org. The ERM-6 Form must be signed by either the risk, self-insurer or authorized third party administrator (“TPA”). The data is subject to verification by the entity submitting the data for inclusion in an experience rating, as well as by the Rating Board.
- (c) The carrier requesting the data inclusion must be the risk’s insurer during the time for which the modification including the self-insured data would apply.
- (d) For multiple insurer risks, agreement from only one of the risk’s insurers, during the time for which the modification would apply, is required.

5. Discontinued Operations

An entity may discontinue all or part of its operations.

If an entity discontinues...	Then the future experience ratings will include...
All of its operations and reestablishes them at a later date	The applicable data developed prior to the discontinuation.
Parts of its operations	The applicable data developed both prior to the discontinuation and for the remaining operations.

6. Insolvent Carriers

- (a) Experience ratings may be promulgated by the Rating Board using data reported by those insolvent carriers that continue providing sufficient complete levels of unit statistical reports for experience rating purposes.
- (b) When an insolvent carrier is unable to submit unit statistical reports for the policies it has written, experience ratings will be issued by the Rating Board if the experience required for rating purposes is submitted by the liquidator, an authorized Managing General Agent (MGA) or TPA, or by the employer using an ERM-6 Form. The data from an ERM-6 will be included in the determination of the rating upon receipt of authorization from the risk's carrier during the time for which the modification including the data submitted on an ERM-6 would apply.
- (c) Data obtained from insolvent carriers that has been submitted later than the customary due date schedule for unit statistical reports, or insolvent carrier data obtained from third party sources, will be utilized in calculating experience ratings to the extent that the submitted data impacts the current and, if applicable, up to two preceding experience ratings. Refer to Rule 4 Section (B)(2)(a) of this Plan.
- (d) When absolutely no insolvent carrier unit statistical report data can be obtained, the following steps will be taken:
 - If a first report (exposure record) is unobtainable, an experience rating will be calculated without the policy that is missing the first report.
 - If a subsequent report(s) is missing, and the prior report(s) has been submitted to the Rating Board, experience ratings will be calculated using the prior report(s) data.
 - If an experience rating cannot be issued due to multiple years with missing data from an insolvent carrier, the last authorized rating factor will continue to apply.

RULE 3 – OWNERSHIP CHANGES AND COMBINATION OF ENTITIES

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:

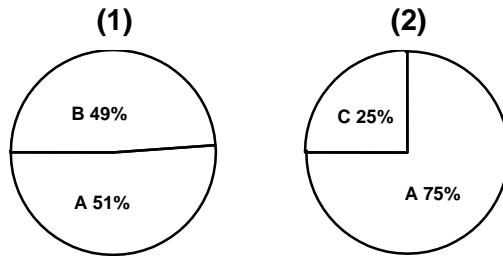
- (a) Modification(s).
- (b) Combinability status with other entities.
- (c) Eligibility to be experience rated. Refer to Rule 2 Section (A) of this Plan.
- (d) Rating Effective Date

D. COMBINATION OF ENTITIES

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

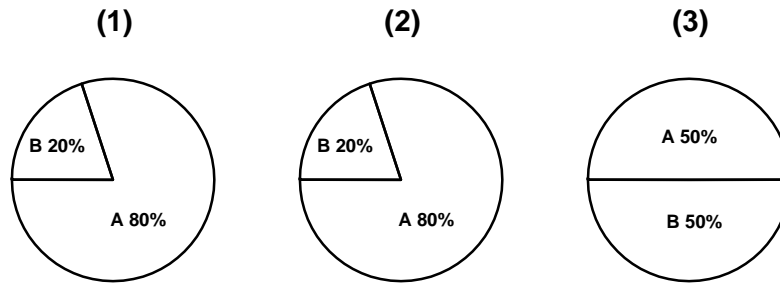
- The same person, group of persons or corporation owns more than 50% of each entity, or
- An entity owns a majority interest in another entity, which in turn owns a majority interest in another entity. All entities are combinable for experience rating purposes regardless of the number of entities involved.

Example 1:



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

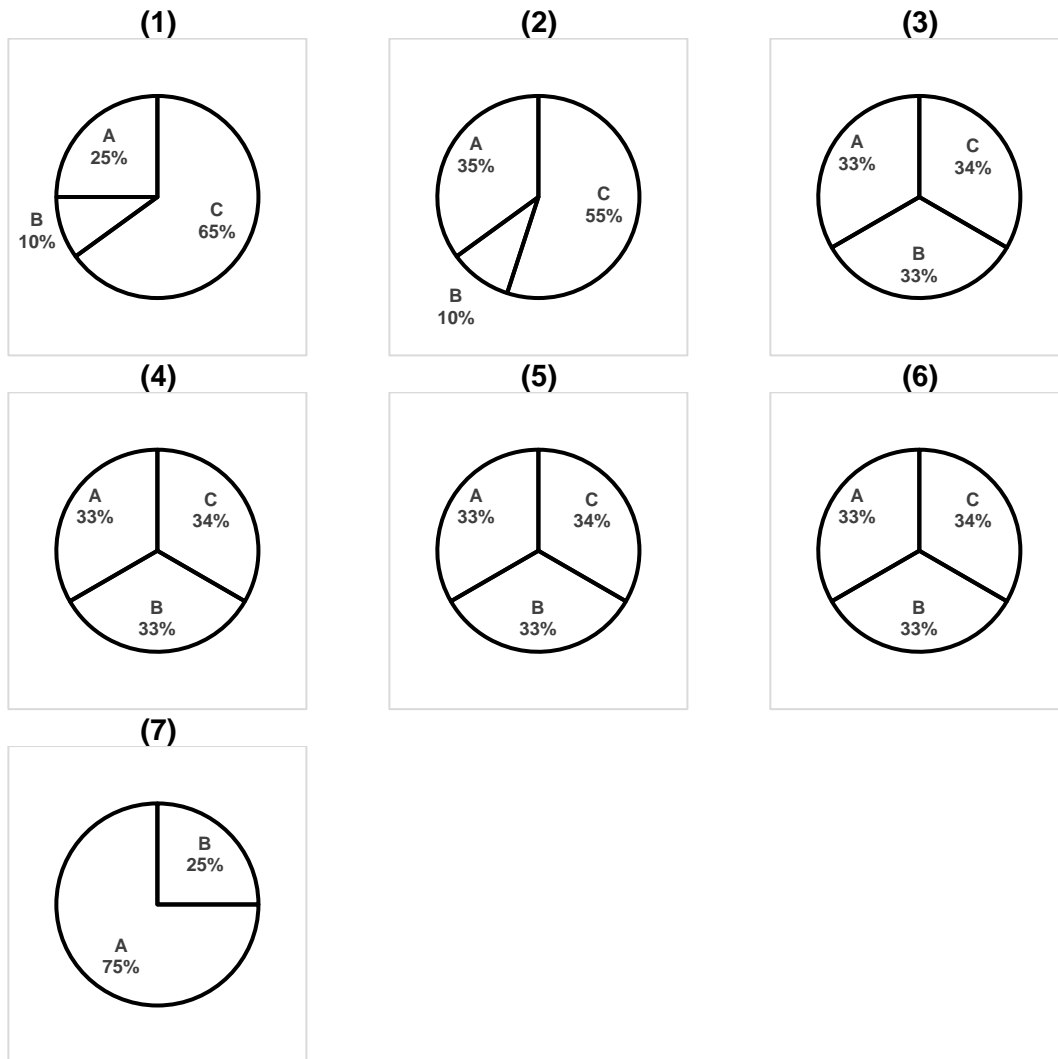
Example 2:



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.

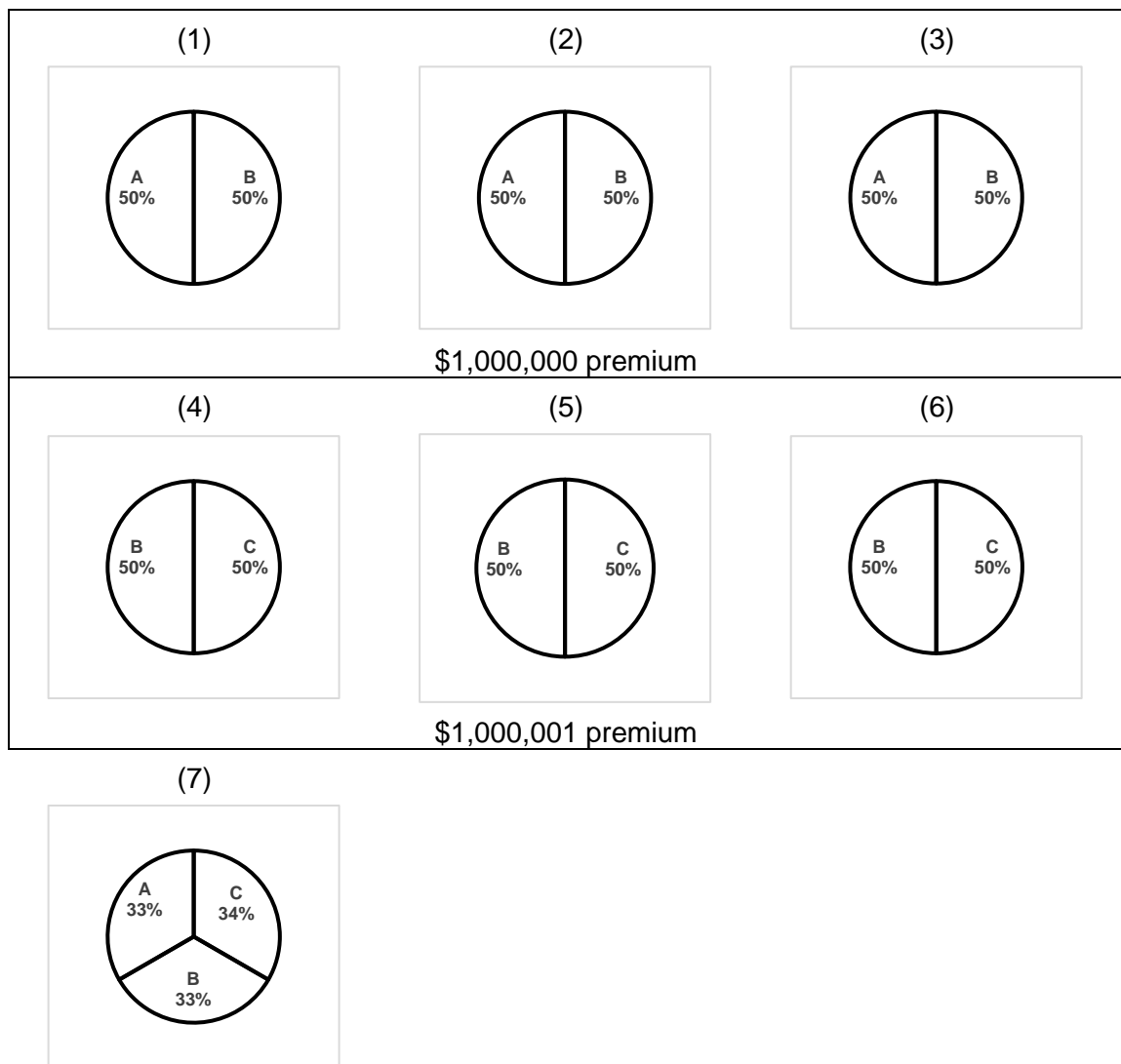
Note: For purposes of this Rule, fiduciary does not include a debtor in possession, a trustee under a revocable trust, or a franchisor.

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	
<p>1. Transfer of Experience</p>	<p>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.</p> <p>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.</p>
<p>Transfer of Experience Table 1</p>	
<p>If the single or multiple entity risk disposes of all of its operations and the purchaser...</p>	
<p>Then...</p>	
<p>Does not have any prior or current policies or experience</p>	<p>The experience will be retained in the future experience ratings of the purchaser, subject to Rule 2 Section (A) of this Plan.</p>
<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 	<p>The experience will be retained in the future experience ratings of the purchaser and combined with the other experience of the purchaser, subject to Rule 2 Section (A) of this Plan</p>

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 	<p>Does not have any experience</p>	<ul style="list-style-type: none"> • The appropriate experience will be retained in the future experience ratings of the purchaser, subject to Rule 2 Section (A) 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 Rule 2 Section (A) 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.

Transfer of Experience Table 2 (cont'd)

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 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	
	<p>1. Actions</p> <p>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:</p> <ul style="list-style-type: none"> • 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
	<p>2. Rating Board Response</p> <p>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.</p> <p>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:</p> <ul style="list-style-type: none"> • 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

RULE 4 – APPLICATION AND REVISION OF EXPERIENCE RATING MODIFICATIONS

A. GENERAL EXPLANATION

1. Modifications for eligible risks generally are determined on an annual basis and are effective for a period of 12 months. However, as provided in this Plan, certain circumstances may result in a reduced or extended application of an modification. Refer to Section (4)(D) of this Rule.
2. Only one modification applies to a risk at any given time and it applies to all operations of the risk.
3. Modifications are applied to the premium developed by the use of the carrier's rates in force on the effective date of the modification.

B. INCLUSION OF PAYROLL AND LOSSES

1. Revision of Payroll

An insurance provider may discover within the audit period (within three years of policy expiration) that previously reported payroll must be revised. When the Rating Board receives these corrections, it will revise the current and up to two preceding modifications. Refer to Part VI of the Statistical Plan for circumstances under which revised payroll values are required.

2. Revision of Losses

Revised unit reports (correction reports) to 1st, 2nd, and 3rd reports may be submitted in accordance with the Statistical Plan. With limited exception as indicated below, the Rating Board will use all payroll and loss correction reports in the production of the appropriate modifications. Refer to Part V of the Statistical Plan for circumstances under which revised loss values are required.

(a) Submission of revised loss values on unit reports will result in the automatic recalculation of the current and, if applicable, up to **two** preceding modifications when:

- (i)** Originally reported loss values were incorrect due to clerical or processing error
- (ii)** An originally reported claim is non-compensable as determined by:
 - Official ruling by a court or the Workers' Compensation Board denying benefits under the New York State Workers' Compensation Law
 - A claimant's failure to file for benefits during the period allowed by the New York State Workers' Compensation Law

	<ul style="list-style-type: none"> • A claimant's failure to prosecute his/her claim when a carrier contends, prior to the valuation date, that the claimant is not entitled to benefits under the New York State Workers' Compensation Law <p>(iii) Data obtained from carriers, including insolvent carriers and insolvent carrier data obtained from third party sources, has been submitted later than the customary due date schedule for unit statistical reports.</p> <p>(b) Submission of revised loss values when a subrogation recovery is applicable to a claim will result in the automatic recalculation of the current and up to six preceding modifications. If a subrogation recovery is obtained in an action against a third-party, the current modification is that which is in effect when the insurance provider determines the revised loss value.</p> <p>(c) In cases where a claim has been officially determined by the courts or ruling by the Workers' Compensation Board to be fully or partially fraudulent, the submission of revised loss values will result in the automatic recalculation of the current and up to six preceding modifications. If a claim is officially declared fraudulent, the current modification is that which is in effect when the official declaration of fraud is made.</p> <p>Note:</p> <p>In cases where a claim involves a subrogation recovery, or is declared fully or partially fraudulent, the respective identifiers must be included on the revised unit statistical reports. Failure to properly identify these cases will result in no change in the modification. Refer to Part IV of the Statistical Plan for appropriate coding information.</p>
	<p>3. Corrections in Classifications</p> <p>(a) A risk's classification(s) may be corrected in accordance with the New York Workers' Compensation and Employers' Liability Manual. When a classification assigned to a risk is revised other than as a result of a change in risk operations, the modification may be recalculated by the Rating Board. The purpose of such recalculation is to produce a modification using rating values that correspond to the class rates charged on a policy.</p>

	<p>(b) In such circumstances, the Rating Board will act to ensure the proper calculation and application of modifications. This includes, but is not limited to:</p> <ul style="list-style-type: none"> • Reassigning past payroll to the appropriate classification code(s) and rating values • Using correction reports submitted in accordance with the Statistical Plan • Reviewing the information submitted regarding each change and determining the impact, if any, on the modification(s) of the entities involved • Requesting additional information, if necessary, due to the complexity of certain corrections <p>(c) The Rating Board will <u>not</u> revise an existing modification if the change in classification is a result of:</p> <ul style="list-style-type: none"> • A change in risk operations • A filed and approved change to the classification system
	<p>4. Third-Party Cases</p> <p>Losses for which a third-party claim has been made are included in the calculation of a modification under the following conditions:</p> <p>(a) Unsettled Claims Use the loss as reported at full value.</p> <p>(b) Settled claims Use the following procedure to adjust the loss amount:</p> <ul style="list-style-type: none"> (i) Determine the loss amount prior to settlement (ii) Subtract the amount recovered (iii) Add the expenses incurred in obtaining the recovery (iv) If the amount in (iii) exceeds the recovery amount in (ii), use the loss amount in (i) prior to settlement
	<p>5. Liability-Over Cases</p> <p>Liability-Over refers to suits or claims brought against an insured by third parties to recover all or a portion of damages obtained from such third parties by the insured's employees because of a bodily injury sustained by these employees arising out of and in the course of employment. When a risk's incurred losses include liability-over claims, the inclusion of such losses in the experience rating calculation is as follows. When settled liability-over claims result in:</p> <p>(a) No payment to a third-party – The experience rating calculation will include any allocated claim adjustment expense incurred in defending such claims. This expense is limited to the Primary/Excess Split Point applicable to the risk.</p>

- (b) Payment to a third-party – No change is made in the loss valuation used in the calculation of the current modification. At the next valuation date, the calculation will include the settlement amount plus any allocated claim adjustment expense incurred in defending such claims. This expense and settlement amount is limited to the Primary/Excess Split Point applicable to the risk.
- (c) For unsettled claims, incurred loss values are included in the experience rating calculation.

C. MINIMUM DATA REQUIREMENTS

The following table provides the minimum data requirements for all experience periods possible under this Plan. Refer to Rule 2 (E)(1) of this Plan for more information on experience period.

Experience Period (Months)	Number of Months of 1 st Report Unit Statistical Data	Experience Period (Months)	Number of Months of 1 st Report Unit Statistical Data
Less than 12	All	35	23
12-24	12	36	24
25	13	37	25
26	14	38	26
27	15	39	27
28	16	40	28
29	17	41	29
30	18	42	30
31	19	43	31
32	20	44	32
33	21	45	33
34	22		

1. Exceptions to Minimum Data Requirements

Modifications will be issued when the Rating Board determines that the:

- (a) Risk has had a lapse in coverage
- (b) Insurance provider is insolvent and not expected to report unit statistical data.

2. Submissions of Missing Data

When the missing data is submitted according to the Statistical Plan, the Rating Board will revise the current modification, and if applicable, up to two preceding modifications.

D. APPLICATION FOR SINGLE AND MULTIPLE POLICY RISKS

The rating effective date determines the application of a modification. The rating effective date is determined according to Rule 2 (B)(3) of this plan. A modification will apply for:

- No less than three months, except for those impacted by changes in ownership and combinability status according to Rule 3 of this Plan.
- No more than 15 months

1. For Single Policy Risks

(a) The modification applies for the full term of:

- (i) The policy beginning on that date, or
- (ii) Any other policy beginning up to three months after that date.

(b) If a new policy begins **more than** three months after the rating effective date, the following procedure applies:

- (i) The current modification applies to the new policy until the date the modification expires.
- (ii) A renewal modification applies to the new policy until the date the policy expires.
- (iii) A new rating effective date may be established. Usually, this will be the date 12 months after the effective date of the new policy.

2. For Multiple Policy Risks

If a risk is covered by two or more policies with different effective dates, the following procedure applies:

- (a) A modification is issued to be effective for 12 months. This modification applies to the portion of each policy falling within that 12-month period, regardless of the policy's effective and expiration dates.
- (b) A renewal modification applies to each policy as described above in 2(a).
- (c) The Rating Board will review the effective dates of the multiple policies and may authorize the application of a modification for a period of other than 12 months.

E. CHANGES IN EXPERIENCE RATING MODIFICATIONS

Modifications may change for reasons detailed in this Plan. These changes apply retroactively to the effective date of the policy, or as of the rating effective date, if different from the policy effective date.

RULE 5 – SPECIAL RATING CONDITIONS

A. CONSTRUCTION / CONTRACTING RISKS	
	<p>1. Cost-Plus Contracts</p> <p>Under a cost-plus contract, the principal agrees to compensate the contractor based on the cost of the work performed plus a fixed fee. A policy covering both contractor and the principal is:</p> <ul style="list-style-type: none"> • Assigned the modification of the contractor • Included in the experience of the contractor
	<p>2. Joint Ventures</p> <p>Two or more contractors, not combinable for experience rating under the rules of this Plan, may associate for the purpose of undertaking one or more projects as a joint venture.</p> <p>A joint venture may qualify for its own experience rating provided all of the following conditions are met:</p> <ul style="list-style-type: none"> • The contract(s) for the participating entities is (are) awarded in the name of the joint venture; and • The participating entities share the control, direction, and supervision of all work undertaken; and • The participating entities maintain a common bank account, payroll, and business records <p>Note: The experience of the joint venture participants is excluded from the individual contractors' modifications.</p>

Experience Rating Modification Determination	
A joint venture...	The modification is calculated...
Will not qualify for its own modification in the first year or two year(s) of operations(s)	By the carrier using: <ul style="list-style-type: none"> A weighted average of the modifications of the participating entities A unity (1.00) factor for a participating entity that does not have its own modification
May qualify for its own modification in the third and subsequent year(s) of operation(s)	By the Rating Board using the experience developed by the joint venture as reported to the Rating Board
<p>3. Uninsured Contractors</p> <p>The experience of an uninsured contractor must be reported in accordance with the Statistical Plan and will be included in the experience of the primary contractor.</p>	
<p>4. Wrap-Up Construction Project</p> <p>A policy issued for an entity participating in a wrap-up construction project is subject to its own modification. (This also applies to a modification for a policy issued for two or more entities that are combinable under the rules of this Plan). Payroll and loss experience developed for all such policies, including wrap-up and non-wrap-up experience, is used in future modifications of the participating entities. There is no modification for wrap-up construction projects as a unit. Refer to Rule VI Section (M) of the New York Workers' Compensation and Employers' Liability Manual for more information on wrap-up construction projects.</p>	

B. EMPLOYEE LEASING/PROFESSIONAL EMPLOYER ORGANIZATION

For the purpose of this Plan, employee leasing arrangements shall mean an arrangement whereby an entity contracts with another entity to lease some or all of its workers. The entity providing the workers shall be referred to as the Professional Employer Organization (“PEO”). The entity utilizing the workers shall be referred to as the client.

The payroll and loss experience of the client's leased and non-leased employees will be assigned to the client for experience rating purposes.

Note: Any reference to the PEO as an additional insured in any manual rule or endorsement used for employee leasing purposes does not imply common ownership between the client and the Professional Employer Organization (“PEO”) for experience rating.

When a client leaves an employee leasing arrangement, no special treatment for experience rating purposes is necessary since the experience of the client is routinely reported to the Rating Board in accordance with the Statistical Plan.

C. EX-MEDICAL EXPERIENCE

If coverage is provided on an ex-medical basis as permitted by the rules of the New York Workers’ Compensation and Employers’ Liability Manual, the modification is calculated using the formula described in Rule 2 Section (D)(1) of this Plan, with the following exception:

Apply the ex-medical multiplier to convert the total expected losses for each classification to an ex-medical basis.

D. GROUP EXPERIENCE RATING PLAN FOR PUBLIC CORPORATIONS

1. A group consisting of a county and any other public corporations (cities, towns, villages, districts, etc.), as defined in Article 5 of the New York State Workers' Compensation Law, Section 32.2 of the Volunteer Firefighters’ Benefit Law and Section 32.2 of the Volunteer Ambulance Workers’ Benefit Law, may elect to be covered under a single policy. The group will be treated in all respects as a single risk for the purpose of experience rating, provided that the clerk of the board of supervisors of such county certifies to the Rating Board **prior** to the effective date of rates:

(a) The names of the county and other public corporations which have elected to become members of the group.

	<p>(b) The board of supervisors of the county and the governing board of each other participating public corporation have, by appropriate action, made such election and have agreed that all of their respective insurable employees shall be covered under a group policy for a period of one year after the effective date of the modification and under any renewal of such policy while said election continues in effect.</p> <p>(c) That a named carrier has agreed to issue, and the group will accept and agree to be bound by the terms and conditions of, a single joint policy naming the county and each member of the group as co-insureds.</p>
<p>2.</p>	<p>The certificate filed with the Rating Board will be considered applicable to all future ratings unless a public corporation later withdraws its election. No public corporation may be newly admitted to the group after the effective date of and during any rating period, but it may be admitted for the following rating period provided its name is certified in accordance with the provisions of 1 above. The carrier must indicate to the Rating Board the names of all public corporations to be insured under a group policy prior to the development of a rating.</p>
<p>3.</p>	<p>Whenever such a group is established, the modification for any rating period shall be based upon the combined experience of all participating members for such rating period and shall be applied to each member for the whole period even though any member withdraws from the group. When a member withdraws from the group, its experience shall be removed from the group rating at the end of the term and shall be used in separately rating the withdrawn member.</p>
<p>4.</p>	<p>Any group established in accordance with these rules will be covered under a single policy naming the county and each public corporation as employers.</p>

E. NATIONAL DEFENSE PROJECT RATING PLAN: ATOMIC ENERGY

The modification is not applicable to the workers' compensation premium resulting from operations under the National Defense Projects Rating Plan or Atomic Energy operations under the Nuclear Regulatory Authority. The exposure and losses are excluded from experience rating.

F. RATING TRANSITION PROGRAM

This program applies to employers previously experience rated under certain classification codes that have been discontinued. It does not apply to new risks or any other programs. The Rating Board will assign any experience reported under the discontinued class code to the replacement class code and the ELRs and D-Ratios of the replacement class code will be used in the derivation of the modification.

G. UNITED STATES LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT COVERAGE

1. Modifications containing classifications where the authorized rates include coverage under the USL&HW Act, are calculated using the formula described in Rule 2 Section (D)(1) of this Plan.
2. Classifications subject to the USL&HW Act, but not followed by the letter "F" in the Table of Expected Loss Rates and Discount Ratios, have their expected losses determined by applying the USL&HW Act percentage in that table to the classifications' expected loss rates. The formula described in Rule 2 Section (D)(1) of this Plan will then apply.