§ 5405. Participation. (a) Every member of the association shall participate in its writings, expenses, profits and losses in the proportion that the net direct premiums of the member (but excluding that portion of premiums attributable to the operation of the association) written during the preceding calendar year bear to the aggregate net direct premiums written in this state by all members of the association. Each member's participation in the association shall be determined annually on the basis of such net direct premiums written during the preceding calendar year as disclosed in the annual statements and other reports filed by the member with the superintendent.

(b) No member shall be obligated in any year to reimburse the association on account of its proportionate share in the deficit from operations of the association in that year in excess of one percent of its surplus to policyholders. The aggregate amount not so reimbursed shall be reallocated among the remaining members in accordance with the method of determining participation prescribed in this section, after excluding from the computation the total net direct premiums of all members not sharing in such excess deficit. In the event that the deficit from operations allocated to all members in any calendar year shall exceed one percent of their respective surplus to policyholders, the amount of such deficit shall be allocated to each member in accordance with the method of determining participation prescribed in this section.

(c) Annually, on a date set by the superintendent, the association shall estimate its deficit from operations, and after application of the funds provided for in subsection (d) of this section, calculate a factor, not to exceed one percent, by relating such deficit to net direct premiums written for the latest calendar year, subject to the approval of the superintendent. Such factor may be reflected in the determination of rates filed by the principal rating organization in this state and by members of the association for fire, extended coverage, broad form coverage pursuant to subsection (g) of section five thousand four hundred two of this article, additional perils, homeowners and commercial multiple peril package policies which include the perils of fire and extended coverage. Notwithstanding the provisions of section five thousand four hundred four of this article to the contrary, any part of such deficit which exceeds one percent as so calculated, shall

be defrayed by an increase in rates for the respective occupancy classes, based upon the association's related loss and expense experience together with other information the superintendent requires, in accordance with filings approved by the superintendent. Each member's share of the estimated deficit shall be collected by the association in accordance with the plan of operation.

(d) In accordance with regulations of the superintendent, the deficit from the operations of the association shall be credited with income earned from the New York property/casualty insurance security fund. The credit shall be an amount determined by the superintendent, which in no year shall exceed income earned or the sum of fifteen million dollars whichever is less. The credit shall be estimated annually by the superintendent on a date set by the superintendent, and such estimated amount shall be credited to the association and transferred from the income as earned during the year by the New York property/casualty insurance security fund. Any difference between the estimated amount of income and the actual amount of income for the year shall be taken into account in computing the estimate for the next period. Notwithstanding the foregoing provisions of this section or any other law to the contrary, if the assets of the association exceed its liabilities on the thirtieth day of November in any year commencing on or after April first, nineteen hundred eighty-two in accordance with regulations of the superintendent, the association shall pay to the New York property/casualty insurance security fund an amount equal to any amounts paid from such fund to the association in accordance with the provisions of article seventy-six of this chapter and this section which have not been repaid prior to such thirtieth day of November, together with any investment income attributable thereto, as determined by the superintendent, up to the amount of such excess. Any such payment shall be made no later than February first of the following year.

(e) Members shall not be relieved of their obligation to reimburse the association for their share of the deficit resulting from the operations of the association prior to August first, nineteen hundred seventy-nine.

(f) (1) Any member that voluntarily writes, as of expiration date, a policy or coverage currently written through the association, shall receive credit against its participation in association writings. Such credit shall be to the extent of twice the net direct premium, on an

annual basis, of such policy or coverage voluntarily written and shall apply for one year.

(2) Subject to approval by the superintendent, the association shall develop and implement an incentive plan for members which voluntarily write policies that include windstorm coverage in coastal areas. Such plan shall also include incentives for members to voluntarily write wraparound policies, as defined by the association, in coastal areas, when such wraparound policies include coverage for windstorm on a replacement cost basis in excess of the windstorm coverage contained in an association policy issued to the same policyholder. The purpose of these incentives shall be to encourage the writing of voluntary insurance policies in coastal areas by reducing the participation in the writings of the association of those member companies which voluntarily write policies that include windstorm coverage in such areas. For the purposes of this section, coastal areas include: areas within one mile of a saltwater ocean, sound, inlet or bay on Long Island's south shore or along the shore of Brooklyn, Queens, Staten Island and Long Island's forks; areas within two thousand five hundred feet of a saltwater ocean, sound, inlet or bay on Long Island's north shore, the Bronx or Westchester.

(3) The association shall offer a policy form which may be used only in conjunction with voluntary market wraparound policies that provide windstorm coverage in excess of amounts insured by the association. The policy form, which may include broad form coverage, shall provide replacement cost coverage for dwellings and personal property for repair or replacement without deduction for depreciation on terms and conditions generally consistent with policies customarily in use in the voluntary market as modified to make the association policy compatible with voluntary market wraparound policies. Coverage offered by the association under such policy shall not exceed six hundred thousand dollars for dwelling coverage and two hundred fifty thousand dollars for personal property, and shall be available to cover one to four family owner-occupied dwellings, apartment units or condominium units. The association may require applicants to provide evidence of the purchase of flood insurance as a condition of eligibility for coverage under this policy. The association shall file the form for approval with the superintendent.