



# Notice of Intent to Adopt Rules

Revised July 2013

## 1. General Information

a. Agency/Board Name		
b. Agency/Board Address	c. City	d. Zip Code
e. Name of Contact Person		f. Contact Telephone Number
g. Contact Email Address		
h. Date of Public Notice		i. Comment Period Ends
j. Program		

## 2. Rule Type and Information: For each chapter listed, indicate if the rule is New, Amended, or Repealed.

If "New," provide the Enrolled Act numbers and years enacted:

a. Provide the Chapter Number, Short Title, and Rule Type of Each Chapter being Created/Amended/Repealed  
*Please use the Additional Rule Information form for more than 10 chapters, and attach it to this certification.*

Chapter Number:	Short Title:	<input type="checkbox"/> New	<input type="checkbox"/> Amended	<input type="checkbox"/> Repealed
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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c.  The Statement of Reasons is attached to this certification.

d.  N/A     In consultation with the Attorney General's Office, the Agency's Attorney General representative concurs that strike and underscore is not required as the proposed amendments are pervasive (Section 5 of the Rules on Rules).

e. A copy of the proposed rules\* may be obtained:

By contacting the Agency at the physical and/or email address listed in Section 1 above.  
 At the following URL: \_\_\_\_\_

\* If Item "d" above is not checked, the proposed rules shall be in strike and underscore format.

**3. Public Comments and Hearing Information**

a. A public hearing on the proposed rules has been scheduled.  Yes  No

	If "Yes:"	Date:	Time:	City:	Location:

b. What is the manner in which interested persons may present their views on the rulemaking action?  
 By submitting written comments to the Agency at the physical and/or email address listed in Section 1 above.  
 At the following URL: \_\_\_\_\_

A public hearing will be held if requested by 25 persons, a government subdivision, or by an association having not less than 25 members. Requests for a public hearing may be submitted:  
 To the Agency at the physical and/or email address listed in Section 1 above.  
 At the following URL: \_\_\_\_\_

c. Any person may urge the Agency not to adopt the rules and request the Agency to state its reasons for overruling the consideration urged against adoption. Requests for an agency response must be made prior to, or within thirty (30) days after adoption, of the rule, addressed to the Agency and Contact Person listed in Section 1 above.

**4. Federal Law Requirements**

a. These rules are created/amended/revoked to comply with federal law or regulatory requirements.  Yes  No

	If "Yes:"	Applicable Federal Law or Regulation Citation:

Indicate one (1):  
 The proposed rules meet, but do not exceed, minimum federal requirements.  
 The proposed rules exceed minimum federal requirements.

Any person wishing to object to the accuracy of any information provided by the Agency under this item should submit their objections prior to final adoption to:  
 To the Agency at the physical and/or email address listed in Section 1 above.  
 At the following URL: \_\_\_\_\_

**5. State Statutory Requirements**

a. Indicate one (1):  
 The proposed rule change *MEETS* minimum substantive statutory requirements.  
 The proposed rule change *EXCEEDS* minimum substantive statutory requirements. Please attach a statement explaining the reason that the rules exceed the requirements.

b. Indicate one (1):  
 The Agency has complied with the requirements of W.S. 9-5-304. A copy of the assessment used to evaluate the proposed rules may be obtained:  
 By contacting the Agency at the physical and/or email address listed in Section 1 above.  
 At the following URL: \_\_\_\_\_  
 Not Applicable.

**6. Authorization**

a. I certify that the foregoing information is correct.

<i>Printed Name of Authorized Individual</i>	
<i>Title of Authorized Individual</i>	
<i>Date of Authorization</i>	

Distribution List:

- Attorney General and LSO: Hard copy of Notice of Intent; Statement of Reasons; clean copy of the rules; and strike-through and underline version of rules (if applicable). *Optional:* electronic copies of all items noted (in addition to hard copies) may be emailed to LSO at [Criss.Carlson@wyoleg.gov](mailto:Criss.Carlson@wyoleg.gov).
- Secretary of State: Electronic version of Notice of Intent sent to [Rules@wyo.gov](mailto:Rules@wyo.gov).

DEPARTMENT OF INSURANCE

STATE OF WYOMING

IN THE MATTER OF THE AMENDMENT )  
OF CHAPTER 50 AND THE )  
PROMULGATION OF CHAPTER 69 OF )  
THE WYOMING DEPARTMENT OF )  
INSURANCE RULES AND )  
REGULATIONS, ) Docket No. 17-39

STATEMENT OF PRINCIPAL REASONS

FOR

The Amendment of Chapter 50 and promulgation of Chapter 69 of the Wyoming Insurance Department Regulations

The Department of Insurance (DOI) originally promulgated Chapter 50 of its Rules and Regulations in 1997, and it has not been substantially modified since that time. The language of Chapter 50 is based largely upon model language drafted by the National Association of Insurance Commissioners (NAIC). The NAIC provides the opportunity for input from all states and territories, as well as from the insurance industry, regarding proposed language to be included in model regulations regarding various subjects. Since Chapter 50 was originally promulgated, the NAIC model regulation regarding credit for reinsurance was amended. The language of Chapter 50 has been modified to make it consistent with the changes made to the NAIC model regulation occurring after Chapter 50 was originally adopted.

In addition, during the 2017 legislative session, the Wyoming legislature adopted changes to W.S. §§ 26-5-112 through 26-5-116 regarding the credit to be given a domestic insurer for reinsurance. In order to fully implement the statutory changes, additional changes

to Chapter 50 are necessary. Also as a result of changes to W.S. §§ 26-5-112 through 26-5-116, creation of a new regulation, Chapter 69, became necessary. Chapter 69 is based on a model regulation from the NAIC and deals with term and universal life insurance reserve financing. In drafting Chapter 69, the DOI has made the appropriate changes to the model language to reference the applicable areas of Wyoming law. The amendments to Chapter 50 and the promulgation of Chapter 69 are proposed to fully implement the 2017 statutory changes.

Finally, the DOI is accredited with the NAIC regarding its financial solvency regulation, and has been since 1993. Accreditation allows efficient and consistent regulation of insurers. It also allows other states to rely on the DOI's financial oversight of domestic insurance companies reducing the regulatory pressure on Wyoming companies from other states. The changes to Chapter 50 and the promulgation of Chapter 69 are necessary to maintain financial accreditation with the NAIC.

CHAPTER 50  
CREDIT FOR REINSURANCE REGULATION

**Section 1. Authority.** This regulation is promulgated pursuant to W.S. 26-5-116(a), 26-2-110(a) and 16-3-101 *et seq.*

**Section 2. Purpose.** The purpose of this regulation is to set forth rules and procedural requirements which the Wyoming Insurance Commissioner deems necessary to carry out the provisions of W.S. 26-5-111 through 26-5-117 of the Insurance Code. The actions and information required by this regulation are declared to be necessary and appropriate in the public interest and for the protection of the ceding insurers in this state.

**Section 3. Severability.** If any provision of this regulation, or the application of the provision to any person or circumstance, is held invalid, the remainder of the regulation, and the application of the provision to persons or circumstances other than those to which it is held invalid, shall not be affected.

**Section 4. Credit for Reinsurance - Reinsurer Licensed in this State.** Pursuant to W. S. 26-5-112(a)(i), the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that was licensed in this state as of any date on which statutory financial statement credit for reinsurance is claimed.

**Section 5. Credit for Reinsurance - Accredited Reinsurers.**

(a) Pursuant to W.S. 26-5-112(a)(ii), the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which is accredited as a reinsurer in this state as of the date on which statutory financial statement credit for reinsurance is claimed. An accredited reinsurer shall:

(i) File a properly executed Form AR-1 (located at the department of insurance website, <https://sites.google.com/a/wyo.gov/doi/home>) as evidence of its submission to this state's jurisdiction and to this state's authority to examine its books and records;

(ii) File with the commissioner a certified copy of a certificate of authority or other acceptable evidence that it is licensed to transact insurance or reinsurance in at least one state, or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one state;

(iii) File annually with the commissioner a copy of its annual statement filed with the insurance department of its state of domicile or, in the case of an alien assuming insurer, with the state through which it is entered and in which it is licensed to transact insurance or reinsurance, and a copy of its most recent audited financial statement; and

Maintain a surplus in an amount not less than \$20,000,000 or obtain the affirmative approval of the commissioner upon a finding that it has adequate financial capacity to meet its

reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers.

(b) If the commissioner determines that the assuming insurer has failed to meet or maintain any of these qualifications, he may upon written notice and opportunity for a hearing, suspend or revoke the accreditation. Credit shall not be allowed a domestic ceding insurer under this section if the assuming insurer's accreditation has been revoked by the commissioner, or if the reinsurance was ceded while the assuming insurer's accreditation was under suspension by the commissioner.

#### **Section 6. Credit for Reinsurance - Reinsurer Domiciled and Licensed in Another State.**

(a) Pursuant to W.S. §-26-5-112(a)(iii) the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which as of the date on which statutory financial statement credit for reinsurance is claimed:

(i) Is domiciled in (or, in the case of a United States branch of an alien assuming insurer, is entered through) a state which employs standards regarding credit for reinsurance substantially similar to those applicable under W.S. 26-5-111 through 26-5-117 and this regulation;

(ii) Maintains a surplus as regards policyholders in an amount not less than \$20,000,000; and

(iii) Files a properly executed Form AR-1 with the commissioner as evidence of its submission to Wyoming's authority to examine its books and records.

(b) The provisions of this section relating to surplus as regards policyholders shall not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system. As used in this section, "substantially similar" standards means credit for reinsurance standards which the commissioner determines equal or exceed the standards of W.S. 26-5-111 through 26-5-117 and this regulation.

#### **Section 7. Credit for Reinsurance - Reinsurers Maintaining Trust Funds.**

(a) Pursuant to W.S. 26-5-112(a)(v) the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which, as of any date on which statutory financial statement credit for reinsurance is claimed, and thereafter for so long as credit for reinsurance is claimed, maintains a trust fund in an amount prescribed below in a qualified U.S. financial institution as defined in W.S. 26-5-114(b), for the payment of the valid claims of its U.S. domiciled ceding insurers, their assigns and successors in interest. The assuming insurer shall report annually to the commissioner substantially the same information as that required to be reported on the National Association of Insurance Commissioners ("NAIC") annual statement form by licensed insurers to enable the commissioner to determine the sufficiency of the trust fund.

(b) The following requirements apply to the following categories of assuming insurer:

(i) The trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by U.S. domiciled insurers, and in addition, the assuming insurer shall maintain a trustee surplus of not less than \$20,000,000, except as provided in paragraph (2) of this subsection.

(ii) At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three full years, the commissioner with principal regulatory oversight of the trust may authorize a reduction in the required trustee surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of U.S. ceding insurers, policyholders and claimants in light of reasonably foreseeable adverse loss development. The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and shall consider all material risk factors, including when applicable the lines of business involved, the stability of the incurred loss estimates and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The minimum required trustee surplus may not be reduced to an amount less than thirty percent (30%) of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers covered by the trust.

(iii) The trust fund for a group including incorporated and individual unincorporated underwriters shall consist of:

(A) For reinsurance ceded under reinsurance agreements with an inception, amendment or renewal date on or after January 1, 1993, funds in trust in an amount not less than the respective underwriters' several liabilities attributable to business ceded by U.S. domiciled ceding insurers to any underwriter of the group;

(B) For reinsurance ceded under reinsurance agreements with an inception date on or before December 31, 1992, and not amended or renewed after that date, notwithstanding the other provisions of this regulation, funds in trust in an amount not less than the respective underwriters' several insurance and reinsurance liabilities attributable to business written in the United States; and

(C) In addition to these trusts, the group shall maintain a trustee surplus of which \$100,000,000 shall be held jointly for the benefit of the United States domiciled ceding insurers of any member of the group for all the years of account.

(iv) The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of regulation and solvency control by the group's domiciliary regulator as are the unincorporated members. The group shall, within ninety (90) days after its financial statements are due to be filed with the group's domiciliary regulator, provide to the commissioner:

(A) An annual certification by the group's domiciliary regulator of the

solvency of each underwriter member of the group; or

(B) If a certification is unavailable, a financial statement prepared by independent public accountants of each underwriter member of the group.

(v) The trust fund for a group of incorporated insurers under common administration whose members possess aggregate policyholders surplus of \$10,000,000,000 (calculated and reported in substantially the same manner as prescribed by the annual statement instructions and *Accounting Practices and Procedures Manual* of the NAIC) and which has continuously transacted an insurance business outside the United States for at least three (3) years immediately prior to making application for accreditation shall:

(A) Consist of funds in trust in an amount not less than the assuming insurers' several liabilities attributable to business ceded by U.S. domiciled ceding insurers to any members of the group pursuant to reinsurance contracts issued in the name of such group;

(B) Maintain a joint trusteed surplus of which \$100,000,000 shall be held jointly for the benefit of U.S. domiciled ceding insurers of any member of the group; and

(C) File a properly executed Form AR-1 as evidence of the submission to this state's authority to examine the books and records of any of its members and shall certify that any member examined will bear the expense of any such examination.

(vi) Within ninety (90) days after the statements are due to be filed with the group's domiciliary regulator, the group shall file with the commissioner an annual certification of each underwriter member's solvency by the member's domiciliary regulators, and financial statements, prepared by independent public accountants, of each underwriter member of the group.

(c) Credit for reinsurance shall not be granted unless the form of the trust and any amendments to the trust have been approved by either the commissioner of the state where the trust is domiciled or the commissioner of another state who, pursuant to the terms of the trust instrument, has accepted responsibility for regulatory oversight of the trust. The form of the trust and any trust amendments also shall be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument shall provide that:

(i) Contested claims shall be valid and enforceable out of funds in trust to the extent remaining unsatisfied thirty (30) days after entry of the final order of any court of competent jurisdiction in the United States;

(ii) Legal title to the assets of the trust shall be vested in the trustee for the benefit of the grantor's United States ceding insurers, their assigns and successors in interest.

(iii) The trust shall be subject to examination as determined by the commissioner.



(iv) The trust shall remain in effect for as long as the assuming insurer, or any member or former member of a group of insurers, shall have outstanding obligations under reinsurance agreements subject to the trust; and

(v) No later than February 28 of each year the trustee of the trust shall report to the commissioner in writing setting forth the balance in the trust and listing the trust's investments at the preceding year end, and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the next following December 31.

(vi) Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by this subsection or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight over the trust or other designated receiver all of the assets of the trust fund.

(vii) The assets shall be distributed by and claims shall be filed with and valued by the commissioner with regulatory oversight over the trust in accordance with the laws of the state in which the trust is domiciled applicable to the liquidation of domestic insurance companies.

(viii) If the commissioner with regulatory oversight over the trust determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the U.S. beneficiaries of the trust, the commissioner with regulatory oversight over the trust shall return the assets, or any part thereof, to the trustee for distribution in accordance with the trust agreement.

(ix) The grantor shall waive any right otherwise available to it under U.S. law that is inconsistent with this provision.

(d) For purposes of this section, the term "liabilities" shall mean the assuming insurer's gross liabilities attributable to reinsurance ceded by U.S. domiciled insurers excluding liabilities that are otherwise secured by acceptable means, and, shall include:

(i) For business ceded by domestic insurers authorized to write (accident and health, and property and casualty insurance):

(A) Losses and allocated loss expenses paid by the ceding insurer, recoverable from the assuming insurer;

(B) Reserves for losses reported and outstanding;

(C) Reserves for losses incurred but not reported;

(D) Reserves for allocated loss expenses; and

(E) Unearned premiums.

(ii) For business ceded by domestic insurers authorized to write life, health and annuity insurance:

(A) Aggregate reserves for life policies and contracts net of policy loans and net due and deferred premiums;

(B) Aggregate reserves for accident and health policies;

(C) Deposit funds and other liabilities without life or disability contingencies; and

(D) Liabilities for policy and contract claims.

(e) Assets deposited in trusts established pursuant to W.S. 26-5-112 and this section shall be valued according to their current fair market value and shall consist only of cash in U.S. dollars, certificates of deposit issued by a U.S. financial institution as defined in W.S. 26-5-114, clean, irrevocable, unconditional and “evergreen” letters of credit issued or confirmed by a qualified U.S. financial institution, as defined in W.S. 26-5-114, and investments of the type specified in this subsection, but investments in or issued by an entity controlling, controlled by or under common control with either the grantor or beneficiary of the trust shall not exceed five percent (5%) of total investments. No more than twenty percent (20%) of the total of the investments in the trust may be foreign investments authorized under paragraphs (i)(E), (iii), (vi)(B) or (vii) of this subsection, and no more than ten percent (10%) of the total of the investments in the trust may be securities denominated in foreign currencies. For purposes of applying the preceding sentence, a depository receipt denominated in dollars and representing rights conferred by a foreign security shall be classified as a foreign investment denominated in a foreign currency. The assets of a trust established to satisfy the requirements of W.S. 26-5-112 shall be invested only as follows:

(i) Government obligations that are not in default as to principal or interest, that are valid and legally authorized and that are issued, assumed or guaranteed by:

(A) The United States or by any agency or instrumentality of the United States;

(B) A state of the United States;

(C) A territory, possession or other governmental unit of the United States;

(D) An agency or instrumentality of a governmental unit referred to in subparagraphs (B) and (C) of this paragraph if the obligations shall be by law (statutory or otherwise) payable, as to both principal and interest, from taxes levied or by law required to be

levied or from adequate special revenues pledged or otherwise appropriated or by law required to be provided for making these payments, but shall not be obligations eligible for investment under this paragraph if payable solely out of special assessments on properties benefited by local improvements; or

(E) The government of any other country that is a member of the Organization for Economic Cooperation and Development and whose government obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;

(ii) Obligations that are issued in the United States, or that are dollar denominated and issued in a non-U.S. market, by a solvent U.S. institution (other than an insurance company) or that are assumed or guaranteed by a solvent U.S. institution (other than an insurance company) and that are not in default as to principal or interest if the obligations:

(A) Are rated A or higher (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC, or if not so rated, are similar in structure and other material respects to other obligations of the same institution that are so rated;

(B) Are insured by at least one authorized insurer (other than the investing insurer or a parent, subsidiary or affiliate of the investing insurer) licensed to insure obligations in this state and, after considering the insurance, are rated AAA (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC; or

(C) Have been designated as Class One or Class Two by the Securities Valuation Office of the NAIC;

(iii) Obligations issued, assumed or guaranteed by a solvent non-U.S. institution chartered in a country that is a member of the Organization for Economic Cooperation and Development or obligations of U.S. corporations issued in a non-U.S. currency, provided that in either case the obligations are rated A or higher (or the equivalent) by a rating agency recognized by the Securities Valuation Office of the NAIC;

(iv) An investment made pursuant to the provisions of paragraph (i), (ii) or (iii) of this subsection shall be subject to the following additional limitations:

(A) An investment in or loan upon the obligations of an institution other than an institution that issues mortgage-related securities shall not exceed five percent (5%) of the assets of the trust;

(B) An investment in any one mortgage-related security shall not exceed five percent (5%) of the assets of the trust;

(C) The aggregate total investment in mortgage-related securities shall not exceed twenty-five percent (25%) of the assets of the trust; and

(D) Preferred or guaranteed shares issued or guaranteed by a solvent U.S. institution are permissible investments if all of the institution's obligations are eligible as investments under paragraphs (2)(a) and (2)(c) of this subsection, but shall not exceed two percent (2%) of the assets of the trust.

(v) As used in this regulation:

(A) "Mortgage-related security" means an obligation that is rated AA or higher (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC and that either:

(I) Represents ownership of one or more promissory notes or certificates of interest or participation in the notes (including any rights designed to assure servicing of, or the receipt or timeliness of receipt by the holders of the notes, certificates, or participation of amounts payable under, the notes, certificates or participation), that:

(1.) Are directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, or on a residential manufactured home as defined in 42 U.S.C.A. section 5402(6), whether the manufactured home is considered real or personal property under the laws of the state in which it is located; and

(2.) Were originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution that is supervised and examined by a federal or state housing authority, or by a mortgagee approved by the Secretary of Housing and Urban Development pursuant to 12 U.S.C.A. sections 1709 and 1715-b, or, where the notes involve a lien on the manufactured home, by an institution or by a financial institution approved for insurance by the Secretary of Housing and Urban Development pursuant to 12 U.S.C.A. section 1703; or

(II) Is secured by one or more promissory notes or certificates of deposit or participations in the notes (with or without recourse to the insurer of the notes) and, by its terms, provides for payments of principal in relation to payments, or reasonable projections of payments, or notes meeting the requirements of paragraphs (I)(1.) and (I)(2.) of this subsection;

(B) "Promissory note," when used in connection with a manufactured home, shall also include a loan, advance or credit sale as evidenced by a retail installment sales contract or other instrument.

(ii) Equity interests

(A) Investments in common shares or partnership interests of a solvent U.S. institution are permissible if:

(I) Its obligations and preferred shares, if any, are eligible as investments under this subsection; and

(II) The equity interests of the institution (except an insurance company) are registered on a national securities exchange as provided in the Securities Exchange Act of 1934, 15 U.S.C. sections 78a to 78kk or otherwise registered pursuant to that Act, and if otherwise registered, price quotations for them are furnished through a nationwide automated quotations system approved by the Financial Industry Regulatory Authority, or successor organization. A trust shall not invest in equity interests under this paragraph an amount exceeding one percent (1%) of the assets of the trust even though the equity interests are not so registered and are not issued by an insurance company;

(B) Investments in common shares of a solvent institution organized under the laws of a country that is a member of the Organization for Economic Cooperation and Development, if:

(I) All its obligations are rated A or higher, (or the equivalent), by a rating agency recognized by the Securities Valuation Office of the NAIC; and

(II) The equity interests of the institution are registered on a securities exchange regulated by the government of a country that is a member of the Organization for Economic Cooperation and Development;

(C) An investment in or loan upon any one institution's outstanding equity interests shall not exceed one percent (1%) of the assets of the trust. The cost of an investment in equity interests made pursuant to this paragraph, when added to the aggregate cost of other investments in equity interests then held pursuant to this paragraph, shall not exceed ten percent (10%) of the assets in the trust;

(iii) Obligations issued, assumed or guaranteed by a multinational development bank, provided the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC.

(iv) Investment companies.

(A) Securities of an investment company registered pursuant to the Investment Company Act of 1940, 15 U.S.C. 80a, are permissible investments if the investment company:

(I) Invests at least ninety percent (90%) of its assets in the types of securities that qualify as an investment under paragraph (i), (ii) or (iii) of this subsection or invests in securities that are determined by the commissioner to be substantively similar to the types of securities set forth in paragraph (i), (ii) or (iii) of this subsection; or

(II) Invests at least ninety percent (90%) of its assets in the types of equity interests that qualify as an investment under paragraph (vi)(A) of this subsection;

(B) Investments made by a trust in investment companies under this paragraph shall not exceed the following limitations:

(I) An investment in an investment company qualifying under subparagraph (A)(I.) of this paragraph shall not exceed ten percent (10%) of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall not exceed twenty-five percent (25%) of the assets in the trust; and

(II) Investments in an investment company qualifying under subparagraph (A)(II) of this paragraph shall not exceed five percent (5%) of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall be included when calculating the permissible aggregate value of equity interests pursuant to paragraph (vi)(A) of this subsection.

(v) Letters of Credit.

(A) In order for a letter of credit to qualify as an asset of the trust, the trustee shall have the right and the obligation pursuant to the deed of trust or some other binding agreement (as duly approved by the commissioner), to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.

(B) The trust agreement shall provide that the trustee shall be liable for its negligence, willful misconduct or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances where such draw would be required shall be deemed to be negligence and/or willful misconduct.

(f) A specific security provided to a ceding insurer by an assuming insurer pursuant to Section 9 of this regulation shall be applied, until exhausted, to the payment of liabilities of the assuming insurer to the ceding insurer holding the specific security prior to, and as a condition precedent for, presentation of a claim by the ceding insurer for payment by a trustee of a trust established by the assuming insurer pursuant to this section.

#### **Section 8. Credit for Reinsurance—Certified Reinsurers.**

(a) Pursuant to W.S. 26-5-112(a)(vi), the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that has been certified as a reinsurer in this state at all times for which statutory financial statement credit for reinsurance is claimed under this section. The credit allowed shall be based upon the security held by or on behalf of the ceding insurer in accordance with a rating assigned to the certified reinsurer by the commissioner. The security shall be in a form consistent with the provisions of W.S. 26-5-112(a)(vi) and 26-5-113, and sections 11, 12 or 13 of this chapter. The amount of

security required in order for full credit to be allowed shall correspond with the following requirements:

(i)	<b>Ratings</b>	<b>Security Required</b>
	Secure – 1	0%
	Secure – 2	10%
	Secure – 3	20%
	Secure – 4	50%
	Secure – 5	75%
	Vulnerable – 6	100%

(ii) Affiliated reinsurance transactions shall receive the same opportunity for reduced security requirements as all other reinsurance transactions.

(iii) The commissioner shall require the certified reinsurer to post one hundred percent (100%), for the benefit of the ceding insurer or its estate, security upon the entry of an order of rehabilitation, liquidation or conservation against the ceding insurer.

(iv) In order to facilitate the prompt payment of claims, a certified reinsurer shall not be required to post security for catastrophe recoverables for a period of one year from the date of the first instance of a liability reserve entry by the ceding company as a result of a loss from a catastrophic occurrence as recognized by the commissioner. The one year deferral period is contingent upon the certified reinsurer continuing to pay claims in a timely manner. Reinsurance recoverables for only the following lines of business as reported on the NAIC annual financial statement related specifically to the catastrophic occurrence will be included in the deferral:

- (A) Line 1: Fire
- (B) Line 2: Allied Lines
- (C) Line 3: Farmowners multiple peril
- (D) Line 4: Homeowners multiple peril
- (E) Line 5: Commercial multiple peril
- (F) Line 9: Inland Marine
- (G) Line 12: Earthquake
- (H) Line 21: Auto physical damage

(v) Credit for reinsurance under this section shall apply only to reinsurance contracts entered into or renewed on or after the effective date of the certification of the assuming insurer. Any reinsurance contract entered into prior to the effective date of the certification of the assuming insurer that is subsequently amended after the effective date of the certification of the assuming insurer, or a new reinsurance contract, covering any risk for which collateral was provided previously, shall only be subject to this section with respect to losses incurred and reserves reported from and after the effective date of the amendment or new contract.

(vi) Nothing in this section shall prohibit the parties to a reinsurance agreement

from agreeing to provisions establishing security requirements that exceed the minimum security requirements established for certified reinsurers under this section.

(b) Certification Procedure.

(i) The commissioner shall post notice on the insurance department's website promptly upon receipt of any application for certification, including instructions on how members of the public may respond to the application. The commissioner may not take final action on the application until at least thirty (30) days after posting the notice required by this paragraph.

(ii) The commissioner shall issue written notice to an assuming insurer that has made application and been approved as a certified reinsurer. Included in the notice shall be the rating assigned the certified reinsurer in accordance with subsection (a) of this section. The commissioner shall publish a list of all certified reinsurers and their ratings.

(iii) In order to be eligible for certification, the assuming insurer shall meet the following requirements:

(A) The assuming insurer must be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the commissioner pursuant to subsection (c) of this section.

(B) The assuming insurer shall maintain capital and surplus, or its equivalent, of no less than \$250,000,000 calculated in accordance with subparagraph (iv)() of this subsection. This requirement may also be satisfied by an association including incorporated and individual unincorporated underwriters having minimum capital and surplus equivalents (net of liabilities) of at least \$250,000,000 and a central fund containing a balance of at least \$250,000,000.

(C) The assuming insurer shall maintain financial strength ratings from two or more rating agencies deemed acceptable by the commissioner. These ratings shall be based on interactive communication between the rating agency and the assuming insurer and shall not be based solely on publicly available information. These financial strength ratings will be one factor used by the commissioner in determining the rating that is assigned to the assuming insurer. Acceptable rating agencies include the following:

- (I) Standard & Poor's;
- (II) Moody's Investors Service;
- (III) Fitch Ratings;
- (IV) A.M. Best Company; or
- (V) Any other Nationally Recognized Statistical Rating

Organization.

(D) The certified reinsurer must comply with any other requirements



reasonably imposed by the commissioner.

(iv) Each certified reinsurer shall be rated on a legal entity basis, with due consideration being given to the group rating where appropriate, except that an association including incorporated and individual unincorporated underwriters that has been approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating. Factors that may be considered as part of the evaluation process include, but are not limited to, the following:

(A) The certified reinsurer's financial strength rating from an acceptable rating agency. The maximum rating that a certified reinsurer may be assigned will correspond to its financial strength rating as outlined in the table below. The commissioner shall use the lowest financial strength rating received from an approved rating agency in establishing the maximum rating of a certified reinsurer. A failure to obtain or maintain at least two financial strength ratings from acceptable rating agencies will result in loss of eligibility for certification:

<u>Ratings</u>	<u>Best</u>	<u>S&amp;P</u>	<u>Moody's</u>	<u>Fitch</u>
Secure – 1	A++	AAA	Aaa	AAA
Secure – 2	A+	AA+, AA, AA-	Aa1, Aa2, Aa3	AA+, AA, AA-
Secure – 3	A	A+, A	A1, A2	A+, A
Secure – 4	A-	A-	A3	A-
Secure – 5	B++, B+	BBB+, BBB, BBB-	Baa1, Baa2, Baa3	BBB+, BBB, BBB-
Vulnerable – 6	B, B-C++, C+, C, C-, D, E, F	BB+, BB, BB-, B+, B, B-, CCC, CC, C, D, R	Ba1, Ba2, Ba3, B1, B2, B3, Caa, Ca, C	BB+, BB, BB-, B+, B, B-, CCC+, CC, CCC-, DD

(B) The business practices of the certified reinsurer in dealing with its ceding insurers, including its record of compliance with reinsurance contractual terms and obligations;

(C) For certified reinsurers domiciled in the U.S., a review of the most recent applicable NAIC Annual Statement Blank, either Schedule F (for property/casualty reinsurers) or Schedule S (for life and health reinsurers);

(D) For certified reinsurers not domiciled in the U.S., a review annually of Form CR-F (for property/casualty reinsurers) or Form CR-S (for life and health reinsurers) (located at the Department of Insurance website, <https://sites.google.com/a/wyo.gov/doi/home>);

(E) The reputation of the certified reinsurer for prompt payment of claims under reinsurance agreements, based on an analysis of ceding insurers' Schedule F reporting of overdue reinsurance recoverables, including the proportion of obligations that are more than ninety (90) days past due or are in dispute, with specific attention given to obligations payable to companies that are in administrative supervision or receivership;

(F) Regulatory actions against the certified reinsurer;

(G) The report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in paragraph (H) below;

(H) For certified reinsurers not domiciled in the U.S., audited financial statements (audited U.S. GAAP basis if available, audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a U.S. GAAP basis, or, with the permission of the state insurance commissioner, audited IFRS statements with reconciliation to U.S. GAAP certified by an officer of the company), regulatory filings, and actuarial opinion (as filed with the non-U.S. jurisdiction supervisor). Upon the initial application for certification, the commissioner will consider audited financial statements for the last three (3) years filed with its non-U.S. jurisdiction supervisor;

(I) The liquidation priority of obligations to a ceding insurer in the certified reinsurer's domiciliary jurisdiction in the context of an insolvency proceeding;

(J) A certified reinsurer's participation in any solvent scheme of arrangement, or similar procedure, which involves U.S. ceding insurers. The commissioner shall receive prior notice from a certified reinsurer that proposes participation by the certified reinsurer in a solvent scheme of arrangement; and

(K) Any other information deemed relevant by the commissioner.

(v) Based on the analysis conducted under subparagraph (iv)(E) of a certified reinsurer's reputation for prompt payment of claims, the commissioner may make appropriate adjustments in the security the certified reinsurer is required to post to protect its liabilities to U.S. ceding insurers, provided that the commissioner shall, at a minimum, increase the security the certified reinsurer is required to post by one rating level under subparagraph (iv)(A) if the commissioner finds that:

(A) More than fifteen percent (15%) of the certified reinsurer's ceding insurance clients have overdue reinsurance recoverables on paid losses of ninety (90) days or more which are not in dispute and which exceed \$100,000 for each cedent; or

(B) The aggregate amount of reinsurance recoverables on paid losses which are not in dispute that are overdue by ninety (90) days or more exceeds \$50,000,000.

(vi) The assuming insurer shall submit a properly executed Form CR-1 (located at the department of insurance website, <https://sites.google.com/a/wyo.gov/doi/home>) as evidence of its submission to the jurisdiction of this state, appointment of the commissioner as an agent for service of process in this state, and agreement to provide security for one hundred percent (100%) of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers if it resists enforcement of a final U.S. judgment. The commissioner shall not certify any assuming insurer that is domiciled in a jurisdiction that the commissioner has determined does not adequately and promptly enforce final U.S. judgments or arbitration awards.

(vii) The certified reinsurer must agree to meet applicable information filing requirements as determined by the commissioner, both with respect to an initial application for certification and on an ongoing basis. All information submitted by certified reinsurers which are not otherwise public information subject to disclosure shall be exempted from disclosure under W.S. 16-4-201 through 16-4-205 and shall be withheld from public disclosure. The applicable information filing requirements are, as follows:

(A) Notification within ten (10) days of any regulatory actions taken against the certified reinsurer, any change in the provisions of its domiciliary license or any change in rating by an approved rating agency, including a statement describing the changes and the reasons for them;

(B) Annually, Form CR-F or CR-S, as applicable;

(C) Annually, the report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in subsection (D) below;

(D) Annually, audited financial statements (audited U.S. GAAP basis if available, audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a U.S. GAAP basis, or, with the permission of the state insurance commissioner, audited IFRS statements with reconciliation to U.S. GAAP certified by an officer of the company), regulatory filings, and actuarial opinion (as filed with the certified reinsurer's supervisor). Upon the initial certification, audited financial statements for the last three (3) years filed with the certified reinsurer's supervisor;

(E) At least annually, an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from U.S. domestic ceding insurers;

(F) A certification from the certified reinsurer's domestic regulator that the certified reinsurer is in good standing and maintains capital in excess of the jurisdiction's highest regulatory action level; and

(G) Any other information that the commissioner may reasonably

require.

(viii) Change in Rating or Revocation of Certification.

(A) In the case of a downgrade by a rating agency or other disqualifying circumstance, the commissioner shall upon written notice assign a new rating to the certified reinsurer in accordance with the requirements of paragraph (iv)(A).

(B) The commissioner shall have the authority to suspend, revoke, or otherwise modify a certified reinsurer's certification at any time if the certified reinsurer fails to meet its obligations or security requirements under this section, or if other financial or operating results of the certified reinsurer, or documented significant delays in payment by the certified reinsurer, lead the commissioner to reconsider the certified reinsurer's ability or willingness to meet its contractual obligations.

(C) If the rating of a certified reinsurer is upgraded by the commissioner, the certified reinsurer may meet the security requirements applicable to its new rating on a prospective basis, but the commissioner shall require the certified reinsurer to post security under the previously applicable security requirements as to all contracts in force on or before the effective date of the upgraded rating. If the rating of a certified reinsurer is downgraded by the commissioner, the commissioner shall require the certified reinsurer to meet the security requirements applicable to its new rating for all business it has assumed as a certified reinsurer.

(D) Upon revocation of the certification of a certified reinsurer by the commissioner, the assuming insurer shall be required to post security in accordance with section 10 in order for the ceding insurer to continue to take credit for reinsurance ceded to the assuming insurer. If funds continue to be held in trust in accordance with section 7, the commissioner may allow additional credit equal to the ceding insurer's *pro rata* share of the funds, discounted to reflect the risk of uncollectibility and anticipated expenses of trust administration. Notwithstanding the change of a certified reinsurer's rating or revocation of its certification, a domestic insurer that has ceded reinsurance to that certified reinsurer may not be denied credit for reinsurance for a period of three (3) months for all reinsurance ceded to that certified reinsurer, unless the reinsurance is found by the commissioner to be at high risk of uncollectibility.

(c) Qualified Jurisdictions.

(i) If upon conducting an evaluation under this section with respect to the reinsurance supervisory system of any non-U.S. assuming insurer, the commissioner determines that the jurisdiction qualifies to be recognized as a qualified jurisdiction, the commissioner shall publish notice and evidence of the recognition in an appropriate manner. The commissioner may establish a procedure to withdraw recognition of those jurisdictions that are no longer qualified.

(ii) In order to determine whether the domiciliary jurisdiction of a non-U.S. assuming insurer is eligible to be recognized as a qualified jurisdiction, the commissioner shall evaluate the reinsurance supervisory system of the non-U.S. jurisdiction, both initially and on an

ongoing basis, and consider the rights, benefits, and the extent of reciprocal recognition afforded by the non-U.S. jurisdiction to reinsurers licensed and domiciled in the U.S. The commissioner shall determine the appropriate approach for evaluating the qualifications of those jurisdictions, and create and publish a list of jurisdictions whose reinsurers may be approved by the commissioner as eligible for certification. A qualified jurisdiction must agree to share information and cooperate with the commissioner with respect to all certified reinsurers domiciled within that jurisdiction. Additional factors to be considered in determining whether to recognize a qualified jurisdiction, in the discretion of the commissioner, include but are not limited to the following:

- (A) The framework under which the assuming insurer is regulated.
  - (B) The structure and authority of the domiciliary regulator with regard to solvency regulation requirements and financial surveillance.
  - (C) The substance of financial and operating standards for assuming insurers in the domiciliary jurisdiction.
  - (D) The form and substance of financial reports required to be filed or made publicly available by reinsurers in the domiciliary jurisdiction and the accounting principles used.
  - (E) The domiciliary regulator's willingness to cooperate with U.S. regulators in general and the commissioner in particular.
  - (F) The history of performance by assuming insurers in the domiciliary jurisdiction.
  - (G) Any documented evidence of substantial problems with the enforcement of final U.S. judgments in the domiciliary jurisdiction. A jurisdiction will not be considered to be a qualified jurisdiction if the commissioner has determined that it does not adequately and promptly enforce final U.S. judgments or arbitration awards.
  - (H) Any relevant international standards or guidance with respect to mutual recognition of reinsurance supervision adopted by the International Association of Insurance Supervisors or successor organization.
  - (I) Any other matters deemed relevant by the commissioner.
- (iii) A list of qualified jurisdictions shall be published through the NAIC committee process. The commissioner shall consider this list in determining qualified jurisdictions. If the commissioner approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the commissioner shall provide thoroughly documented justification with respect to the criteria provided under subsections 8(c)(ii)(A) to (I).
  - (iv) U.S. jurisdictions that meet the requirements for accreditation under the

NAIC financial standards and accreditation program shall be recognized as qualified jurisdictions.

(d) Recognition of Certification Issued by an NAIC Accredited Jurisdiction.

(i) If an applicant for certification has been certified as a reinsurer in an NAIC accredited jurisdiction, the commissioner has the discretion to defer to that jurisdiction's certification and to defer to the rating assigned by that jurisdiction if the assuming insurer submits a properly executed Form CR-1 and any additional information that the commissioner requires. The assuming insurer shall be considered a certified reinsurer in this state.

(ii) Any change in the certified reinsurer's status or rating in the other jurisdiction shall apply automatically in this state as of the date it takes effect in the other jurisdiction. The certified reinsurer shall notify the commissioner of any change in its status or rating within 10 days after receiving notice of the change.

(iii) The commissioner may withdraw recognition of the other jurisdiction's rating at any time and assign a new rating in accordance with subsection 8(b)(viii) of this section.

(iv) The commissioner may withdraw recognition of the other jurisdiction's certification at any time, with written notice to the certified reinsurer. Unless the commissioner suspends or revokes the certified reinsurer's certification in accordance with subparagraph (b)(viii) of this section, the certified reinsurer's certification shall remain in good standing in this state for a period of three (3) months, which shall be extended if additional time is necessary to consider the assuming insurer's application for certification in this state.

(e) **Mandatory Funding Clause.** In addition to the clauses required under section 14, reinsurance contracts entered into or renewed under this section shall include a proper funding clause, which requires the certified reinsurer to provide and maintain security in an amount sufficient to avoid the imposition of any financial statement penalty on the ceding insurer under this section for reinsurance ceded to the certified reinsurer.

(f) The commissioner shall comply with all reporting and notification requirements that may be established by the NAIC with respect to certified reinsurers and qualified jurisdictions.

**Section 9. Credit for Reinsurance Required by Law.** Pursuant to W.S. 26-5-112(a)(iv) the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of W.S. 26-5-112(a)(i),(ii),(iii), (v), or (vi) but only with respect to the insurance of risks located in jurisdictions where such reinsurance is required by the applicable law or regulation of that jurisdiction. As used in this section, "jurisdiction" means any state, district or territory of the United States and any lawful national government.

**Section 10. Reduction from Liability for Reinsurance Ceded to an Unauthorized Assuming Insurer not Meeting the Requirements of Sections 4 Through 9.**

(a) Pursuant to W.S. 26-5-113 the commissioner shall allow a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of W.S. 26-5-112 in an amount not exceeding the liabilities carried by the ceding insurer. The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the exclusive benefit of the ceding insurer, under a reinsurance contract with such assuming insurer as security for the payment of obligations under the reinsurance contract. The security shall be held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer or, in the case of a trust, held in a qualified United States financial institution as defined in W.S. 26-5-114(b). This security may be in the form of any of the following:

(i) Cash.

(ii) Securities listed by the Securities Valuation Office of the NAIC, including those deemed exempt from filing as defined by the Purposes and Procedures Manual of the Securities Valuation Office, and qualifying as admitted assets.

(iii) Clean, irrevocable, unconditional, and "evergreen" letters of credit issued or confirmed by a qualified United States institution, as defined in W.S. 26-5-114(a) effective no later than December 31 of the year for which filing is being made, and in the possession of or in trust for the ceding insurer on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation shall, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification or amendment, whichever first occurs; or any other form of security acceptable to the commissioner.

(b) An admitted asset or a reduction from liability for reinsurance ceded to an unauthorized assuming insurer pursuant to this section shall be allowed only when the requirements of section 14 and the applicable portions of sections 11, 12, or 13 of this regulation have been satisfied.

**Section 11. Trust Agreements Qualified Under Section 10.**

(a) As used in this section:

(i) "Beneficiary" means the entity for whose sole benefit the trust has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court-appointed domiciliary receiver including conservator, rehabilitator or liquidator.

(ii) "Grantor" means the entity that has established a trust for the sole benefit of

the beneficiary. When established in conjunction with a reinsurance agreement, the grantor is the unlicensed, unaccredited assuming insurer.

(iii) "Obligations", as used in Subsection (b)(xi) of this section, means:

(A) Reinsured losses and allocated loss expenses paid by the ceding company, but not recovered from the assuming insurer;

(B) Reserves for reinsured losses reported and outstanding;

(C) Reserves for reinsured losses incurred but not reported; and

(D) Reserves for allocated reinsured loss expenses and unearned premiums.

(b) Required conditions.

(i) The trust agreement shall be entered into between the beneficiary, the grantor and a trustee which shall be a qualified United States financial institution as defined in W.S. 26-5-114(b).

(ii) The trust agreement shall create a trust account into which assets shall be deposited.

(iii) All assets in the trust account shall be held by the trustee at the trustee's office in the United States.

(iv) The trust agreement shall provide that:

(A) The beneficiary shall have the right to withdraw assets from the trust account at any time, without notice to the grantor, subject only to written notice from the beneficiary to the trustee;

(B) No other statement or document is required to be presented to withdraw assets, except that the beneficiary may be required to acknowledge receipt of withdrawn assets;

(C) It is not subject to any conditions or qualifications outside of the trust agreement; and

(D) It shall not contain references to any other agreements or documents except as provided for under paragraphs (xi) and (xii) of this subsection.

(v) The trust agreement shall be established for the sole benefit of the beneficiary.



(vi) The trust agreement shall require the trustee to:

(A) Receive assets and hold all assets in a safe place;

(B) Determine that all assets are in a form that the beneficiary, or the trustee upon direction by the beneficiary, may whenever necessary negotiate any assets without consent or signature from the grantor or any other person or entity;

(C) Furnish to the grantor and the beneficiary a statement of all assets in the trust account upon its inception and at intervals no less frequent than the end of each calendar quarter;

(D) Notify the grantor and the beneficiary within ten (10) days, of any deposits to or withdrawals from the trust account;

(E) Upon written demand of the beneficiary, immediately take any and all steps necessary to transfer absolutely and unequivocally all right, title and interest in the assets held in the trust account to the beneficiary and deliver physical custody of the assets to the beneficiary; and

(F) Allow no substitutions or withdrawals of assets from the trust account, except on written instructions from the beneficiary, except that the trustee may, without the consent of but with notice to the beneficiary, upon call or maturity of any trust asset, withdraw the asset upon condition that the proceeds are paid into the trust account.

(vii) The trust agreement shall provide that at least thirty (30) days, but not more than forty-five (45) days, prior to termination of the trust account, written notification of termination shall be delivered by the trustee to the beneficiary.

(viii) The trust agreement shall be made subject to and governed by the laws of the state in which the trust is domiciled.

(ix) The trust agreement shall prohibit invasion of the trust corpus for the purpose of paying commission to, or reimbursing the expenses of, the trustee. In order for a letter of credit to qualify as an asset of the trust, the trustee shall have the right and the obligation pursuant to the deed of trust or some other binding agreement (as duly approved by the commissioner), to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.

(x) The trust agreement shall provide that the trustee shall be liable for its own negligence, willful misconduct, or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances where the draw would be required shall be deemed to be negligence, willful misconduct, or both.

(xi) Notwithstanding other provisions of this regulation, when a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities and accident and health, where it is customary practice to provide a trust agreement for a specific purpose, the trust agreement may, provide that the ceding insurer shall use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:

(A) To pay or reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement regarding any losses and allocated loss expenses paid by the ceding insurer, but not recovered from the assuming insurer, or for unearned premiums due to the ceding insurer if not otherwise paid by the assuming insurer;

(B) To pay the assuming insurer any amounts held in the trust account that exceed "one hundred two percent (102%) percent of the actual amount required to fund the assuming insurer's obligations under the specific reinsurance agreement; or

(C) Where the ceding insurer has received notification of termination of the trust account and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten (10) days prior to the termination date, to withdraw amounts equal to those obligations and deposit those amounts in a separate account in the name of the ceding insurer in any qualified United States financial institution as defined in W.S. 26-5-114(b) apart from its general assets and in trust for the uses and purposes specified in subparagraphs (A) and (B) above as may remain executory after the withdrawal and for any period after the termination date.

(xii) Notwithstanding other provisions of this regulation, when a trust agreement is established to meet the requirements of section 10 in conjunction with a reinsurance agreement covering life, annuities or accident and health risks, and where it is customary to provide a trust agreement for a specific purpose, the trust agreement may require the ceding insurer to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer only for the following purposes:

(A) To pay or reimburse the ceding insurer for:

(I) The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of the policies; and

(II) The assuming insurer's share under the specific reinsurance agreement of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurer, under the terms and provisions of the policies reinsured under the reinsurance agreement;

(B) To pay to the assuming insurer amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken

by the ceding insurer; or

(C) Where the ceding insurer has received notification of termination of the trust and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten (10) days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer, and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified U.S. financial institution apart from its general assets, in trust for the uses and purposes specified in Subparagraphs (A) and (B) of this paragraph as may remain executory after withdrawal and for any period after the termination date.

(xiii) Either the reinsurance agreement or the trust agreement shall stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash in United States dollars, certificates of deposit issued by a United States bank and payable in United States dollars, and investments permitted by the Insurance Code or any combination of the above, provided investments in or issued by an entity controlling, controlled by, or under common control with either the grantor or the beneficiary of the trust shall not exceed five percent (5%) of total investments. The agreement may further specify the types of investments to be deposited. If the reinsurance agreement covers life, annuities, or accident and health risks, then the provisions required by this paragraph shall be included in the reinsurance agreement.

(c) Permitted conditions.

(i) The trust agreement may provide that the trustee may resign upon delivery of a written notice of resignation effective not less than ninety (90) days after the beneficiary and grantor receive the notice and that the trustee may be removed by the grantor by delivery to the trustee and the beneficiary of a written notice of removal, effective not less than ninety (90) days after the trustee and the beneficiary receive the notice provided that no resignation or removal shall be effective until a successor trustee has been duly appointed and approved by the beneficiary and the grantor and all assets in the trust have been transferred to the new trustee.

(ii) The grantor may have the full and unqualified right to vote any shares of stock in the trust account and to receive from time to time payments of any dividends or interest upon any shares of stock or obligations included in the trust account. Any interest or dividends shall be either forwarded promptly upon receipt to the grantor or deposited in a separate account established in the grantor's name.

(iii) The trustee may be given authority to invest and accept substitutions of any funds in the account, provided that no investment or substitution shall be made without prior approval of the beneficiary, unless the trust agreement specifies categories of investments acceptable to the beneficiary and authorizes the trustee to invest funds and to accept substitutions which the trustee determines are at least equal in current fair market value to the assets withdrawn and are consistent with the restrictions in subsection (d)(i)(B) of this section.

(iv) The trust agreement may provide that the beneficiary may at any time designate a party to which all or part of the trust assets are to be transferred. This transfer may be conditioned upon the trustee receiving, prior to or simultaneously, other specified assets.

(v) The trust agreement may provide that, upon termination of the trust account, all assets not previously withdrawn by the beneficiary shall, with written approval by the beneficiary, be delivered to the grantor.

(d) Additional conditions applicable to reinsurance agreements:

(i) A reinsurance agreement may contain provisions that:

(A) Require the assuming insurer to enter into a trust agreement and to establish a trust account for the benefit of the ceding insurer, and specifying what the agreement is to cover;

(B) Require the assuming insurer, prior to depositing assets with the trustee, to execute assignments or endorsements in blank, or to transfer legal title to the trustee of all shares, obligations or any other assets requiring assignments, in order that the ceding insurer, or the trustee upon the direction of the ceding insurer, may whenever necessary negotiate these assets without consent or signature from the assuming insurer or any other entity;

(C) Require that all settlements of account between the ceding insurer and the assuming insurer be made in cash or its equivalent; and

(D) Stipulate that the assuming insurer and the ceding insurer agree that the assets in the trust account, established pursuant to the provisions of the reinsurance agreement, may be withdrawn by the ceding insurer at any time, notwithstanding any other provisions in the reinsurance agreement, and shall be utilized and applied by the ceding insurer or its successors in interest by operation of law, including without limitation any liquidator, rehabilitator, receiver, or conservator of such company, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for the following purposes:

(I) To pay or reimburse the ceding insurer for:

(1.) The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement because of cancellations of the policies;

(2.) The assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer pursuant to the provisions of the policies reinsured under the reinsurance agreement; and

(3.) Any other amounts necessary to secure the credit or

reduction from liability for reinsurance taken by the ceding insurer;

(II) To make payment to the assuming insurer of amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.

(ii) The reinsurance agreement also may contain provisions that:

(A) Give the assuming insurer the right to seek approval from the ceding insurer, which shall not be unreasonably or arbitrarily withheld, to withdraw from the trust account all or any part of the trust assets and transfer those assets to the assuming insurer, provided:

(I) The assuming insurer shall, at the time of withdrawal, replace the withdrawn assets with other qualified assets having a current fair market value equal to the market value of the assets withdrawn so as to maintain at all times the deposit in the required amount; or

(II) After withdrawal and transfer, the current fair market value of the trust account is no less than one hundred two (102%) percent of the required amount.

(B) Provide for the return of any amount withdrawn in excess of the actual amounts required for Paragraph (i)(D) of this subsection and for interest payments at a rate not in excess of the prime rate of interest on the amounts;

(C) Permit the award by any arbitration panel or court of competent jurisdiction of:

(I) Interest at a rate different from that provided in subparagraph (B);

(II) Court or arbitration costs;

(III) Attorney's fees; and

(IV) Any other reasonable expenses.

(e) Financial reporting. A trust agreement may be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with this department in compliance with the provisions of this regulation when established on or before the date of filing of the financial statement of the ceding insurer. The reduction for the existence of an acceptable trust account may be up to the current fair market value of acceptable assets available to be withdrawn from the trust account at that time, but the reduction shall be no greater than the specific obligations under the reinsurance agreement that the trust account was established to secure.

(f) Existing agreements. Notwithstanding the effective date of this regulation, any trust agreement or underlying reinsurance agreement that existed as of, July 1, 1992, the effective date of W.S. 26-5-117 will continue to be acceptable until the expiration or renewal date of the agreement, at which time the agreements shall fully comply with this regulation for the trust agreement to be acceptable.

(g) The failure of any trust agreement to specifically identify the beneficiary as defined in subsection (a) of this section shall not be construed to affect any actions or rights which the commissioner may take or possess pursuant to Wyoming law.

## **Section 12. Letters of Credit Qualified Under Section 10.**

(a) The letter of credit must be clean, irrevocable, and unconditional and issued or confirmed by a qualified United States financial institution as defined in W.S. 26-5-114(a). The letter of credit shall contain an issue date and date of expiration and shall stipulate that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds and that no other document need be presented. The letter of credit shall also indicate that it is not subject to any condition or qualifications outside of the letter of credit. The letter of credit itself shall not contain reference to any other agreements, documents, or entities, except as provided in subsection (h)(i) below. As used in this section, "beneficiary" means the domestic insurer for whose benefit the letter of credit has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court appointed domiciliary receiver including conservator, rehabilitator, or liquidator.

(b) The heading of the letter of credit may include a boxed section containing the name of the applicant and other appropriate notations to provide a reference for the letter of credit. The boxed section shall be clearly marked to indicate that the information is for internal identification purposes only.

(c) The letter of credit shall contain a statement to the effect that the obligation of the qualified United States financial institution under the letter of credit is in no way contingent upon reimbursement with respect thereto.

(d) The term of the letter of credit shall be for at least one year and shall contain an "evergreen clause" which prevents the expiration of the letter of credit without due notice from the issuer. The "evergreen clause" shall provide for a period of no less than thirty (30) days' notice prior to the expiration date or nonrenewal.

(e) The letter of credit shall state whether it is subject to and governed by the laws of Wyoming or the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 600) (UCP 600) or International Standby Practices of the International Chamber of Commerce Publication 590 (ISP98), or any successor publication, and all drafts drawn thereunder shall be presentable at an office in the United States of a qualified

United States financial institution.

(f) If the letter of credit is made subject to the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 500), or any successor publication, then the letter of credit shall specifically address and provide for an extension of time to draw against the letter of credit in the event that one or more of the occurrences specified in Article 17 of Publication 500 or any other successor publication, occur.

(g) If the letter of credit is issued by a financial institution authorized to issue letters of credit, other than a qualified United States financial institution as described in subsection (a) of this section, then the following additional requirements shall be met:

(i) The issuing financial institution shall formally designate the confirming qualified United States financial institution as its agent for the receipt and payment of the drafts; and

(ii) The "evergreen clause" shall provide for thirty (30) days notice prior to expiration date for nonrenewal.

(h) Reinsurance agreement provisions.

(i) The reinsurance agreement in conjunction with which the letter of credit is obtained may contain provisions which:

(A) Require the assuming insurer to provide letters of credit to the ceding insurer and specify what they are to cover;

(B) Stipulate that the assuming insurer and ceding insurer agree that the letter of credit provided by the assuming insurer pursuant to the provisions of the reinsurance agreement may be drawn upon at any time, notwithstanding any other provisions in the agreement, and shall be utilized by the ceding insurer or its successors in interest only for one or more of the following reasons:

(I) To pay or reimburse the ceding insurer for:

(1.) The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurers, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of such policies;

(2.) The assuming insurer's share, under the specific reinsurance agreement, of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurers, under the terms and provisions of the policies reinsured under the reinsurance agreement; and

(3.) Any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer;

(II) Where the letter of credit will expire without renewal or be reduced or replaced by a letter of credit for a reduced amount and where the assuming insurer's entire obligations under the reinsurance agreement remain unliquidated and undischarged ten (10) days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of the liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer and exceed the amount of any reduced or replacement letter of credit, and deposit those amounts in a separate account in the name of the ceding insurer in a qualified U.S. financial institution apart from its general assets, in trust for such uses and purposes specified in subsection (h)(i)(B)(I) of this section as may remain after withdrawal and for any period after the termination date.

(C) All of the provisions of paragraph (i) of this subsection shall be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer.

(ii) Nothing contained in paragraph (i) of this subsection shall preclude the ceding insurer and assuming insurer from providing for:

(A) An interest payment, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to subparagraph (i)(B) of this subsection; or

(B) The return of any amounts drawn down on the letters of credit in excess of the actual amounts required for the above or any amounts that are subsequently determined not to be due.

**Section 13. Other Security.** A ceding insurer may take credit for unencumbered funds withheld by the ceding insurer in the United States subject to withdrawal solely by the ceding insurer and under its exclusive control.

**Section 14. Reinsurance Contract.**

(a) Credit will not be granted, nor an asset or reduction from liability allowed, to a ceding insurer for reinsurance effected with assuming insurers meeting the requirements of sections 4, 5, 6, 7, 8 or 9 of this regulation or otherwise in compliance with W.S. 26-5-112 after the adoption of this regulation unless the reinsurance agreement:

(i) Includes a proper insolvency clause, which stipulates that reinsurance is payable directly to the liquidator or successor without diminution regardless of the status of the ceding company, pursuant to W.S. 26-5-115;

(ii) Includes a provision pursuant to W.S. 26-5-112(c) whereby the assuming insurer, if an unauthorized assuming insurer, has submitted to the jurisdiction of an alternative dispute resolution panel or court of competent jurisdiction within the United States, has agreed to comply with all requirements necessary to give the court or panel jurisdiction, has designated an agent upon whom service of process may be effected, and has agreed to abide by the final decision



of the court or panel; and

(iii) Includes a proper reinsurance intermediary clause, if applicable, which stipulates that the credit risk for the intermediary is carried by the assuming insurer.

**Section 15. Contracts Affected.** All new and renewal reinsurance transactions entered into after the effective date of this rule shall conform to the requirements of W.S. 26-5-111 through 26-5-117 and this regulation if credit is to be given to the ceding insurer for such reinsurance.

**Section 16. Effective Date.** This regulation shall become effective immediately upon filing with the Secretary of State.

CHAPTER 50  
CREDIT FOR REINSURANCE REGULATION

**Section 1. Authority.** This regulation is promulgated pursuant to W.S. §§26-5-116(a), and ~~W.S. § 26-2-110(a) of the Wyoming Insurance Code and pursuant to the Wyoming Administrative Procedure Act, W.S. § 16-3-101 et seq et seq.~~

**Section 2. Purpose.** The purpose of this regulation is to set forth rules and procedural requirements which the Wyoming Insurance Commissioner deems necessary to carry out the provisions of W.S. §§26-5-111 through 26-5-117 of the Insurance Code. The actions and information required by this regulation are declared to be necessary and appropriate in the public interest and for the protection of the ceding insurers in this state.

**Section 3. Severability.** If any provision of this regulation or the application of the provision to any person or circumstance is held invalid, the remainder of the regulation, and the application of the provision to persons or circumstances other than those to which it is held invalid shall not be affected.

~~If any provision of this regulation, or its application to any person or circumstance, is held invalid, such determination shall not affect other provisions or applications of this regulation which can be given effect without the invalid provision or application, and to that end the provisions of this regulation are severable.~~

**Section 4. Credit for Reinsurance - Reinsurer Licensed in this State.** Pursuant to W. S. §-26-5-112(a)(i), the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that was licensed in this state as of any date on which statutory financial statement credit for reinsurance is claimed. ~~the commissioner shall allow credit for reinsurance ceded by a domestic insurer to assuming insurers which were licensed to transact insurance in this state as of the date of the ceding insurer's statutory financial statement.~~

**Section 5. Credit for Reinsurance - Accredited Reinsurers.**

(a) Pursuant to W.S. §-26-5-112(a)(ii), the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which is accredited as a reinsurer in this state as of the date on which statutory financial statement credit for reinsurance is claimed. ~~An accredited reinsurer must shall: of the ceding insurer's statutory financial statement. An accredited reinsurer is one which:~~

(i) Files a properly executed Form AR-1 (~~attached as an exhibit to this regulation~~ located at the Department of Insurance website, <https://sites.google.com/a/wyo.gov/doi/home>) as evidence of its submission to this state's jurisdiction and to this state's authority to examine its books and records;

(ii) Files with the commissioner a certified copy of ~~a letter or a certificate of authority or other acceptable evidence that of compliance as evidence that~~ it is licensed to transact insurance or reinsurance in at least one state, or, in the case of a United States branch of an alien

assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one state;

(iii) Files annually with the commissioner a copy of its annual statement filed with the insurance department of its state of domicile or, in the case of an alien assuming insurer, with the state through which it is entered and in which it is licensed to transact insurance or reinsurance, and a copy of its most recent audited financial statement; and

(iv) Maintains a surplus ~~as regards policyholders~~ in an amount not less than \$20,000,000 or obtain the affirmative approval of the commissioner upon a finding that it has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers, and whose accreditation has not been denied by the commissioner within ninety (90) days of its submission or, in the case of companies with a surplus as regards policyholders of less than \$20,000,000, whose accreditation has been approved by the commissioner.

(b) If the commissioner determines that the assuming insurer has failed to meet or maintain any of these qualifications, he may upon written notice and opportunity for a hearing, suspend or revoke the accreditation. ~~No e-Credit shall not be allowed a domestic ceding insurer under this section if the assuming insurer's accreditation with respect to reinsurance ceded if the assuming insurer's accreditation has been denied or revoked by the commissioner, after notice and hearing, or if the reinsurance was ceded while the assuming insurer's accreditation was under suspension by the commissioner.~~

#### **Section 6. Credit for Reinsurance - Reinsurer Domiciled and Licensed in Another State.**

(a) Pursuant to W.S. §-26-5-112(a)(iii) the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which as of the date ~~of the ceding insurer's statutory financial statement:~~ on which statutory financial statement credit for reinsurance is claimed:

(i) Is domiciled ~~and licensed in~~ (or, in the case of a United States branch of an alien assuming insurer, is entered through ~~and licensed in~~) a state which employs standards regarding credit for reinsurance substantially similar to those applicable under W.S. §§-26-5-111 through 26-5-117 and this regulation;

(ii) Maintains a surplus as regards policyholders in an amount not less than \$20,000,000; and

(iii) Files a properly executed Form AR-1 with the commissioner as evidence of its submission to Wyoming's authority to examine its books and records.

(b) The provisions of this section relating to surplus as regards policyholders shall not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the

same holding company system. As used in this section, "substantially similar" standards means credit for reinsurance standards which the commissioner determines equal or exceed the standards of W.S. §§ ~~25-26~~26-5-111 through 26-5-117 and this regulation.

### **Section 7. Credit for Reinsurance - Reinsurers Maintaining Trust Funds.**

(a) Pursuant to W.S. § 26-5-112(a)(v) the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which, as of ~~the any date on which statutory financial statement credit for reinsurance is claimed, and thereafter for so long as credit for reinsurance is claimed, maintains a trust fund in an amount prescribed below in a qualified U.S. financial institution as defined in W.S. § 26-5-114(b), for the payment of the valid claims of its U.S. domiciled ceding insurers, their assigns and successors in interest. of the ceding insurer's statutory financial statement maintains a trust fund in an amount prescribed below in a qualified United States financial institution as defined in W.S. § 26-5-114(b) for the payment of the valid claims of its United States policyholders and ceding insurers, their assigns and successors in interest.~~ The assuming insurer shall report annually to the commissioner substantially the same information as that required to be reported on the National Association of Insurance Commissioners ("NAIC") annual statement form by licensed insurers, to enable the commissioner to determine the sufficiency of the trust fund.

(b) The following requirements apply to the following categories of assuming insurer:

(i) ~~The trust fund for a single assuming insurer shall consist of funds in a trusted account trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by U.S. domiciled insurers business written in the United States, and in addition, assuming insurer shall maintain a trusted surplus of not less than \$20,000,000, except as provided in paragraph (2) of this subsection. a trusted surplus of not less than \$20,000,000.~~

(ii) At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three full years, the commissioner with principal regulatory oversight of the trust may authorize a reduction in the required trusted surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of U.S. ceding insurers, policyholders and claimants in light of reasonably foreseeable adverse loss development. The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and shall consider all material risk factors, including when applicable the lines of business involved, the stability of the incurred loss estimates and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The minimum required trusted surplus may not be reduced to an amount less than thirty percent (30%) of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers covered by the trust.

(iii) The trust fund for a group including incorporated and individual unincorporated underwriters shall consist of:

(A) For reinsurance ceded under reinsurance agreements with an

inception, amendment or renewal date on or after January 1, 1993, funds in a ~~trusted~~ ~~account trust~~ in an amount not less than the ~~group's~~ respective underwriters' aggregate several liabilities attributable to business ceded by U.S. domiciled ceding insurers to any underwriter of the group;

(B) For reinsurance ceded under reinsurance agreements with an inception date on or before December 31, 1992, and not amended or renewed after that date, notwithstanding the other provisions of this regulation, funds in trust in an amount not less than the respective underwriters' several insurance and reinsurance liabilities attributable to business written in the United States; and

(C) In addition to these trusts, ~~written in the United States and, in addition,~~ the group shall maintain a trusted surplus of which \$100,000,000 shall be held jointly for the benefit of the United States ~~domiciled ceding insurers of any member of the group for all the years of account. ceding insurers of any member of the group.~~ ~~The group shall make available to the commissioner annual certifications by the group's domiciliary regulator and its independent public accountants of the solvency of each underwriter member of the group.~~

(iv) The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of regulation and solvency control by the group's domiciliary regulator as are the unincorporated members. The group shall, within ninety (90) days after its financial statements are due to be filed with the group's domiciliary regulator, provide to the commissioner:

(A) An annual certification by the group's domiciliary regulator of the solvency of each underwriter member of the group; or

(B) If a certification is unavailable, a financial statement prepared by independent public accountants of each underwriter member of the group.

(v) The trust fund for a group of incorporated insurers under common administration, whose members possess aggregate policyholders surplus of \$10,000,000,000 (calculated and reported in substantially the same manner as prescribed by the annual statement instructions and *Accounting Practices and Procedures Manual* of the NAIC) and which has continuously transacted an insurance business outside the United States for at least three (3) years immediately prior to making application for accreditation, shall:

(A) Consist of funds in trust in an amount not less than the assuming insurers' several liabilities attributable to business ceded by U.S. domiciled ceding insurers to any members of the group pursuant to reinsurance contracts issued in the name of such group;

(B) Maintain a joint trusted surplus of which \$100,000,000 shall be held jointly for the benefit of U.S. domiciled ceding insurers of any member of the group; and

(C) File a properly executed Form AR-1 as evidence of the submission

to this state's authority to examine the books and records of any of its members and shall certify that any member examined will bear the expense of any such examination.

(vi) Within ninety (90) days after the statements are due to be filed with the group's domiciliary regulator, the group shall file with the commissioner an annual certification of each underwriter member's solvency by the member's domiciliary regulators, and financial statements, prepared by independent public accountants, of each underwriter member of the group.

(c) Credit for reinsurance shall not be granted unless the form of the trust and any amendments to the trust have been approved by either the commissioner of the state where the trust is domiciled or the commissioner of another state who, pursuant to the terms of the trust instrument, has accepted responsibility for regulatory oversight of the trust. The form of the trust and any trust amendments also shall be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument shall provide that:

~~The trust shall be established in a form approved by the commissioner and complying with W.S. § 26-5-112(b) and this section. The trust instrument shall provide that:~~

(i) Contested claims shall be valid and enforceable out of funds in trust to the extent remaining unsatisfied thirty (30) days after entry of the final order of any court of competent jurisdiction in the United States;

(ii) Legal title to the assets of the trust shall be vested in the trustee for the benefit of the grantor's United States policyholders and ceding insurers, their assigns and successors in interest;

(iii) The trust shall be subject to examination as determined by the commissioner;

(iv) The trust shall remain in effect for as long as the assuming insurer, or any member or former member of a group of insurers, shall have outstanding obligations under reinsurance agreements subject to the trust; ~~and~~

(v) No later than February 28 of each year the trustees of the trust shall report to the commissioner in writing setting forth the balance in the trust and listing the trust's investments at the preceding year end, and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the next following December 31.

(vi) Notwithstanding any other provisions in the trust instrument:

(A) If the trust fund is inadequate because it contains an amount less than the amount required by this subsection or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction

directing the trustee to transfer to the commissioner with regulatory oversight over the trust or other designated receiver all of the assets of the trust fund. No amendment to the trust shall be effective unless reviewed and approved in advance by the commissioner.

(B) The assets shall be distributed by and claims shall be filed with and valued by the commissioner with regulatory oversight over the trust in accordance with the laws of the state in which the trust is domiciled applicable to the liquidation of domestic insurance companies.

(C) If the commissioner with regulatory oversight over the trust determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the U.S. beneficiaries of the trust, the commissioner with regulatory oversight over the trust shall return the assets, or any part thereof, to the trustee for distribution in accordance with the trust agreement.

(D) The grantor shall waive any right otherwise available to it under U.S. law that is inconsistent with this provision.

(d) For purposes of this section, the term “liabilities” shall mean the assuming insurer’s gross liabilities attributable to reinsurance ceded by U.S. domiciled insurers excluding liabilities that are otherwise secured by acceptable means, and, shall include:

(i) For business ceded by domestic insurers authorized to write accident and health, and property and casualty insurance:

(A) Losses and allocated loss expenses paid by the ceding insurer, recoverable from the assuming insurer;

(B) Reserves for losses reported and outstanding;

(C) Reserves for losses incurred but not reported;

(D) Reserves for allocated loss expenses; and

(E) Unearned premiums.

(ii) For business ceded by domestic insurers authorized to write life, health and annuity insurance:

(A) Aggregate reserves for life policies and contracts net of policy loans and net due and deferred premiums;

(B) Aggregate reserves for accident and health policies;

(C) Deposit funds and other liabilities without life or disability

contingencies; and

(D) Liabilities for policy and contract claims.

(e) Assets deposited in trusts established pursuant to W.S. §26-5-112 and this section shall be valued according to their current fair market value and shall consist only of cash in U.S. dollars, certificates of deposit issued by a U.S. financial institution as defined in W.S. §26-5-114, clean, irrevocable, unconditional and “evergreen” letters of credit issued or confirmed by a qualified U.S. financial institution, as defined in W.S. §26-5-114, and investments of the type specified in this subsection, but investments in or issued by an entity controlling, controlled by or under common control with either the grantor or beneficiary of the trust shall not exceed five percent (5%) of total investments. No more than twenty percent (20%) of the total of the investments in the trust may be foreign investments authorized under paragraphs (i)(E), (iii), (vi)(B) or (vii) of this subsection, and no more than ten percent (10%) of the total of the investments in the trust may be securities denominated in foreign currencies. For purposes of applying the preceding sentence, a depository receipt denominated in dollars and representing rights conferred by a foreign security shall be classified as a foreign investment denominated in a foreign currency. The assets of a trust established to satisfy the requirements of W.S. §26-5-112 shall be invested only as follows:

(i) Government obligations that are not in default as to principal or interest, that are valid and legally authorized and that are issued, assumed or guaranteed by:

(A) The United States or by any agency or instrumentality of the United States;

(B) A state of the United States;

(C) A territory, possession or other governmental unit of the United States;

(D) An agency or instrumentality of a governmental unit referred to in subparagraphs (B) and (C) of this paragraph if the obligations shall be by law (statutory or otherwise) payable, as to both principal and interest, from taxes levied or by law required to be levied or from adequate special revenues pledged or otherwise appropriated or by law required to be provided for making these payments, but shall not be obligations eligible for investment under this paragraph if payable solely out of special assessments on properties benefited by local improvements; or

(E) The government of any other country that is a member of the Organization for Economic Cooperation and Development and whose government obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;

(ii) Obligations that are issued in the United States, or that are dollar



denominated and issued in a non-U.S. market, by a solvent U.S. institution (other than an insurance company) or that are assumed or guaranteed by a solvent U.S. institution (other than an insurance company) and that are not in default as to principal or interest if the obligations:

(A) Are rated A or higher (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC, or if not so rated, are similar in structure and other material respects to other obligations of the same institution that are so rated;

(B) Are insured by at least one authorized insurer (other than the investing insurer or a parent, subsidiary or affiliate of the investing insurer) licensed to insure obligations in this state and, after considering the insurance, are rated AAA (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC; or

(C) Have been designated as Class One or Class Two by the Securities Valuation Office of the NAIC;

(iii) Obligations issued, assumed or guaranteed by a solvent non-U.S. institution chartered in a country that is a member of the Organization for Economic Cooperation and Development or obligations of U.S. corporations issued in a non-U.S. currency, provided that in either case the obligations are rated A or higher (or the equivalent) by a rating agency recognized by the Securities Valuation Office of the NAIC;

(iv) An investment made pursuant to the provisions of paragraph (i), (ii) or (iii) of this subsection shall be subject to the following additional limitations:

(A) An investment in or loan upon the obligations of an institution other than an institution that issues mortgage-related securities shall not exceed five percent (5%) of the assets of the trust;

(B) An investment in any one mortgage-related security shall not exceed five percent (5%) of the assets of the trust;

(C) The aggregate total investment in mortgage-related securities shall not exceed twenty-five percent (25%) of the assets of the trust; and

(D) Preferred or guaranteed shares issued or guaranteed by a solvent U.S. institution are permissible investments if all of the institution's obligations are eligible as investments under paragraphs (2)(a) and (2)(c) of this subsection, but shall not exceed two percent (2%) of the assets of the trust.

(v) As used in this regulation:

(A) “Mortgage-related security” means an obligation that is rated AA or higher (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC and that either:

(I) Represents ownership of one or more promissory notes or certificates of interest or participation in the notes (including any rights designed to assure servicing of, or the receipt or timeliness of receipt by the holders of the notes, certificates, or participation of amounts payable under, the notes, certificates or participation), that:

(1.) Are directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, or on a residential manufactured home as defined in 42 U.S.C.A. section 5402(6), whether the manufactured home is considered real or personal property under the laws of the state in which it is located; and

(2.) Were originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution that is supervised and examined by a federal or state housing authority, or by a mortgagee approved by the Secretary of Housing and Urban Development pursuant to 12 U.S.C.A. sections 1709 and 1715-b, or, where the notes involve a lien on the manufactured home, by an institution or by a financial institution approved for insurance by the Secretary of Housing and Urban Development pursuant to 12 U.S.C.A. section 1703; or

(II) Is secured by one or more promissory notes or certificates of deposit or participations in the notes (with or without recourse to the insurer of the notes) and, by its terms, provides for payments of principal in relation to payments, or reasonable projections of payments, or notes meeting the requirements of paragraphs (I)(1.) and (I)(2.) of this subsection;

(B) “Promissory note,” when used in connection with a manufactured home, shall also include a loan, advance, or credit sale as evidenced by a retail installment sales contract or other instrument.

(vi) Equity interests.

(A) Investments in common shares or partnership interests of a solvent U.S. institution are permissible if:

(I) Its obligations and preferred shares, if any, are eligible as investments under this subsection; and

(II) The equity interests of the institution (except an insurance company) are registered on a national securities exchange as provided in the Securities Exchange Act of 1934, 15 U.S.C. §§sections 78a to 78kk or otherwise registered pursuant to that Act, and if otherwise registered, price quotations for them are furnished through a nationwide automated quotations system approved by the Financial Industry Regulatory Authority, or successor organization. A trust shall not invest in equity interests under this paragraph an amount

exceeding one percent (1%) of the assets of the trust even though the equity interests are not so registered and are not issued by an insurance company.

(B) Investments in common shares of a solvent institution organized under the laws of a country that is a member of the Organization for Economic Cooperation and Development, if:

(I) All its obligations are rated A or higher (or the equivalent) by a rating agency recognized by the Securities Valuation Office of the NAIC; and

(II) The equity interests of the institution are registered on a securities exchange regulated by the government of a country that is a member of the Organization for Economic Cooperation and Development.

(C) An investment in or loan upon any one institution's outstanding equity interests shall not exceed one percent (1%) of the assets of the trust. The cost of an investment in equity interests made pursuant to this paragraph, when added to the aggregate cost of other investments in equity interests then held pursuant to this paragraph, shall not exceed ten percent (10%) of the assets in the trust;

(vii) Obligations issued, assumed or guaranteed by a multinational development bank, provided the obligations are rated A or higher (or the equivalent) by a rating agency recognized by the Securities Valuation Office of the NAIC.

(viii) Investment companies.

(A) Securities of an investment company registered pursuant to the Investment Company Act of 1940, 15 U.S.C. § 80a, are permissible investments if the investment company:

(I) Invests at least ninety percent (90%) of its assets in the types of securities that qualify as an investment under paragraph (i), (ii) or (iii) of this subsection or invests in securities that are determined by the commissioner to be substantively similar to the types of securities set forth in paragraph (i), (ii) or (iii) of this subsection; or

(II) Invests at least ninety percent (90%) of its assets in the types of equity interests that qualify as an investment under paragraph (vi)(A) of this subsection;

(B) Investments made by a trust in investment companies under this paragraph shall not exceed the following limitations:

(I) An investment in an investment company qualifying under subparagraph (A)(I.) of this paragraph shall not exceed ten percent (10%) of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall not exceed twenty-five percent (25%) of the assets in the trust; and

(II) Investments in an investment company qualifying under subparagraph (A)(II) of this paragraph shall not exceed five percent (5%) of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall be included when calculating the permissible aggregate value of equity interests pursuant to paragraph (vi)(A) of this subsection.

(ix) Letters of Credit.

(A) In order for a letter of credit to qualify as an asset of the trust, the trustee shall have the right and the obligation pursuant to the deed of trust or some other binding agreement (as duly approved by the commissioner), to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.

(B) The trust agreement shall provide that the trustee shall be liable for its negligence, willful misconduct or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances where such draw would be required shall be deemed to be negligence and/or willful misconduct.

(f) A specific security provided to a ceding insurer by an assuming insurer pursuant to Section 9 of this regulation shall be applied, until exhausted, to the payment of liabilities of the assuming insurer to the ceding insurer holding the specific security prior to, and as a condition precedent for, presentation of a claim by the ceding insurer for payment by a trustee of a trust established by the assuming insurer pursuant to this section.

**Section 8. Credit for Reinsurance Required by Law Credit for Reinsurance—  
Certified Reinsurers.**

(a) Pursuant to W.S. § 26-5-112(a)(iv) the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of W.S. §26-5-112(a)(i),(ii),(iii) or (v) but only with respect to the insurance of risks located in jurisdictions where such reinsurance is required by the applicable law or regulation of that jurisdiction. As used in this section, "jurisdiction" means any state, district or territory of the United States and any lawful national government, or any subdivision of any such entities. Pursuant to W.S. § 26-5-112(a)(vi), the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that has been certified as a reinsurer in this state at all times for which statutory financial statement credit for reinsurance is claimed under this section. The credit allowed shall be based upon the security held by or on behalf of the ceding insurer in accordance with a rating assigned to the certified reinsurer by the commissioner. The security shall be in a form consistent with the provisions of W.S. §§ 26-5-112(a)(vi) and 26-5-113, and sections 11, 12 or 13 of this Regulation chapter. The amount of security required in order for full credit to be allowed shall correspond with the following requirements:

(i) **Ratings** **Security Required**

<u>Secure – 1</u>	<u>0%</u>
<u>Secure – 2</u>	<u>10%</u>
<u>Secure – 3</u>	<u>20%</u>
<u>Secure – 4</u>	<u>50%</u>
<u>Secure – 5</u>	<u>75%</u>
<u>Vulnerable – 6</u>	<u>100%</u>

(ii) Affiliated reinsurance transactions shall receive the same opportunity for reduced security requirements as all other reinsurance transactions.

(iii) The commissioner shall require the certified reinsurer to post one hundred percent (100%), for the benefit of the ceding insurer or its estate, security upon the entry of an order of rehabilitation, liquidation or conservation against the ceding insurer.

(iv) In order to facilitate the prompt payment of claims, a certified reinsurer shall not be required to post security for catastrophe recoverables for a period of one year from the date of the first instance of a liability reserve entry by the ceding company as a result of a loss from a catastrophic occurrence as recognized by the commissioner. The one year deferral period is contingent upon the certified reinsurer continuing to pay claims in a timely manner. Reinsurance recoverables for only the following lines of business as reported on the NAIC annual financial statement related specifically to the catastrophic occurrence will be included in the deferral:

- (A) Line 1: Fire
- (B) Line 2: Allied Lines
- (C) Line 3: Farmowners multiple peril
- (D) Line 4: Homeowners multiple peril
- (E) Line 5: Commercial multiple peril
- (F) Line 9: Inland Marine
- (G) Line 12: Earthquake
- (H) Line 21: Auto physical damage

(v) Credit for reinsurance under this section shall apply only to reinsurance contracts entered into or renewed on or after the effective date of the certification of the assuming insurer. Any reinsurance contract entered into prior to the effective date of the certification of the assuming insurer that is subsequently amended after the effective date of the certification of the assuming insurer, or a new reinsurance contract, covering any risk for which collateral was provided previously, shall only be subject to this section with respect to losses incurred and reserves reported from and after the effective date of the amendment or new contract.

(vi) Nothing in this section shall prohibit the parties to a reinsurance agreement from agreeing to provisions establishing security requirements that exceed the minimum security requirements established for certified reinsurers under this section.

(b) Certification Procedure.

(i) The commissioner shall post notice on the insurance department's website promptly upon receipt of any application for certification, including instructions on how members of the public may respond to the application. The commissioner may not take final action on the application until at least thirty (30) days after posting the notice required by this paragraph.

(ii) The commissioner shall issue written notice to an assuming insurer that has made application and been approved as a certified reinsurer. Included in the notice shall be the rating assigned the certified reinsurer in accordance with subsection (a) of this section. The commissioner shall publish a list of all certified reinsurers and their ratings.

(iii) In order to be eligible for certification, the assuming insurer shall meet the following requirements:

(A) The assuming insurer must be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction as determined by the commissioner pursuant to subsection (c) of this section.

(B) The assuming insurer shall maintain capital and surplus, or its equivalent, of no less than \$250,000,000 calculated in accordance with subparagraph (iv)(H) of this subsection. This requirement may also be satisfied by an association including incorporated and individual unincorporated underwriters having minimum capital and surplus equivalents (net of liabilities) of at least \$250,000,000 and a central fund containing a balance of at least \$250,000,000.

(C) The assuming insurer shall maintain financial strength ratings from two or more rating agencies deemed acceptable by the commissioner. These ratings shall be based on interactive communication between the rating agency and the assuming insurer and shall not be based solely on publicly available information. These financial strength ratings will be one factor used by the commissioner in determining the rating that is assigned to the assuming insurer. Acceptable rating agencies include the following:

(I) Standard & Poor's;

(II) Moody's Investors Service;

(III) Fitch Ratings;

(IV) A.M. Best Company; or

(V) Any other Nationally Recognized Statistical Rating

Organization.

(D) The certified reinsurer shall comply with any other requirements

reasonably imposed by the commissioner.

(iv) Each certified reinsurer shall be rated on a legal entity basis, with due consideration being given to the group rating where appropriate, except that an association including incorporated and individual unincorporated underwriters that has been approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating. Factors that may be considered as part of the evaluation process include, but are not limited to, the following:

(A) The certified reinsurer’s financial strength rating from an acceptable rating agency. The maximum rating that a certified reinsurer may be assigned will correspond to its financial strength rating as outlined in the table below. The commissioner shall use the lowest financial strength rating received from an approved rating agency in establishing the maximum rating of a certified reinsurer. A failure to obtain or maintain at least two financial strength ratings from acceptable rating agencies will result in loss of eligibility for certification:

<u>Ratings</u>	<u>Best</u>	<u>S&amp;P</u>	<u>Moody’s</u>	<u>Fitch</u>
<u>Secure – 1</u>	<u>A++</u>	<u>AAA</u>	<u>Aaa</u>	<u>AAA</u>
<u>Secure – 2</u>	<u>A+</u>	<u>AA+, AA, AA-</u>	<u>Aa1, Aa2, Aa3</u>	<u>AA+, AA, AA-</u>
<u>Secure – 3</u>	<u>A</u>	<u>A+, A</u>	<u>A1, A2</u>	<u>A+, A</u>
<u>Secure – 4</u>	<u>A-</u>	<u>A-</u>	<u>A3</u>	<u>A-</u>
<u>Secure – 5</u>	<u>B++, B+</u>	<u>BBB+, BBB, BBB-</u>	<u>Baa1, Baa2, Baa3</u>	<u>BBB+, BBB, BBB-</u>
<u>Vulnerable – 6</u>	<u>B, B-, C++, C+, C, C-, D, E, F</u>	<u>BB+, BB, BB-, B+, B, B-, CCC, CC, C, D, R</u>	<u>Ba1, Ba2, Ba3, B1, B2, B3, Caa, Ca, C</u>	<u>BB+, BB, BB-, B+, B, B-, CCC+, CC, CCC-, DD</u>

(B) The business practices of the certified reinsurer in dealing with its ceding insurers, including its record of compliance with reinsurance contractual terms and obligations;

(C) For certified reinsurers domiciled in the U.S., a review of the most

recent applicable NAIC Annual Statement Blank, either Schedule F (for property/casualty reinsurers) or Schedule S (for life and health reinsurers);

(D) For certified reinsurers not domiciled in the U.S., a review annually of Form CR-F (for property/casualty reinsurers) or Form CR-S (for life and health reinsurers) (located at the Department of Insurance website, <https://sites.google.com/a/wyo.gov/doi/home>);

(E) The reputation of the certified reinsurer for prompt payment of claims under reinsurance agreements, based on an analysis of ceding insurers' Schedule F reporting of overdue reinsurance recoverables, including the proportion of obligations that are more than ninety (90) days past due or are in dispute, with specific attention given to obligations payable to companies that are in administrative supervision or receivership;

(F) Regulatory actions against the certified reinsurer;

(G) The report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in paragraph (H) below;

(H) For certified reinsurers not domiciled in the U.S., audited financial statements (audited U.S. GAAP basis if available, audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a U.S. GAAP basis, or, with the permission of the state insurance commissioner, audited IFRS statements with reconciliation to U.S. GAAP certified by an officer of the company), regulatory filings, and actuarial opinion (as filed with the non-U.S. jurisdiction supervisor). Upon the initial application for certification, the commissioner will consider audited financial statements for the last three (3) years filed with its non-U.S. jurisdiction supervisor;

(I) The liquidation priority of obligations to a ceding insurer in the certified reinsurer's domiciliary jurisdiction in the context of an insolvency proceeding;

(J) A certified reinsurer's participation in any solvent scheme of arrangement, or similar procedure, which involves U.S. ceding insurers. The commissioner shall receive prior notice from a certified reinsurer that proposes participation by the certified reinsurer in a solvent scheme of arrangement; and

(K) Any other information deemed relevant by the commissioner.

(v) Based on the analysis conducted under subparagraph (iv)(E) of a certified reinsurer's reputation for prompt payment of claims, the commissioner may make appropriate adjustments in the security the certified reinsurer is required to post to protect its liabilities to U.S. ceding insurers, provided that the commissioner shall, at a minimum, increase the security the certified reinsurer is required to post by one rating level under subparagraph (iv)(A) if the commissioner finds that:

(A) More than fifteen percent (15%) of the certified reinsurer's ceding



insurance clients have overdue reinsurance recoverables on paid losses of ninety (90) days or more which are not in dispute and which exceed \$100,000 for each cedent; or

(B) The aggregate amount of reinsurance recoverables on paid losses which are not in dispute that are overdue by ninety (90) days or more exceeds \$50,000,000.

(vi) The assuming insurer must submit a properly executed Form CR-1 (located at the department of insurance website, <https://sites.google.com/a/wyo.gov/doi/home>) as evidence of its submission to the jurisdiction of this state, appointment of the commissioner as an agent for service of process in this state, and agreement to provide security for one hundred percent (100%) of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers if it resists enforcement of a final U.S. judgment. The commissioner shall not certify any assuming insurer that is domiciled in a jurisdiction that the commissioner has determined does not adequately and promptly enforce final U.S. judgments or arbitration awards.

(vii) The certified reinsurer shall agree to meet applicable information filing requirements as determined by the commissioner, both with respect to an initial application for certification and on an ongoing basis. All information submitted by certified reinsurers which are not otherwise public information subject to disclosure shall be exempted from disclosure under W.S. §§ 16-4-201 through 16-4-205 and shall be withheld from public disclosure. The applicable information filing requirements are, as follows:

(A) Notification within ten (10) days of any regulatory actions taken against the certified reinsurer, any change in the provisions of its domiciliary license or any change in rating by an approved rating agency, including a statement describing the changes and the reasons for them;

(B) Annually, Form CR-F or CR-S, as applicable;

(C) Annually, the report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in subsection (D) below;

(D) Annually, audited financial statements (audited U.S. GAAP basis if available, audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a U.S. GAAP basis, or, with the permission of the state insurance commissioner, audited IFRS statements with reconciliation to U.S. GAAP certified by an officer of the company), regulatory filings, and actuarial opinion (as filed with the certified reinsurer's supervisor). Upon the initial certification, audited financial statements for the last three (3) years filed with the certified reinsurer's supervisor;

(E) At least annually, an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from U.S. domestic ceding insurers;

(F) A certification from the certified reinsurer's domestic regulator that the certified reinsurer is in good standing and maintains capital in excess of the jurisdiction's

highest regulatory action level; and

(G) Any other information that the commissioner may reasonably require.

(viii) Change in Rating or Revocation of Certification.

(A) In the case of a downgrade by a rating agency or other disqualifying circumstance, the commissioner shall upon written notice assign a new rating to the certified reinsurer in accordance with the requirements of paragraph (iv)(A).

(B) The commissioner shall have the authority to suspend, revoke, or otherwise modify a certified reinsurer's certification at any time if the certified reinsurer fails to meet its obligations or security requirements under this section, or if other financial or operating results of the certified reinsurer, or documented significant delays in payment by the certified reinsurer, lead the commissioner to reconsider the certified reinsurer's ability or willingness to meet its contractual obligations.

(C) If the rating of a certified reinsurer is upgraded by the commissioner, the certified reinsurer may meet the security requirements applicable to its new rating on a prospective basis, but the commissioner shall require the certified reinsurer to post security under the previously applicable security requirements as to all contracts in force on or before the effective date of the upgraded rating. If the rating of a certified reinsurer is downgraded by the commissioner, the commissioner shall require the certified reinsurer to meet the security requirements applicable to its new rating for all business it has assumed as a certified reinsurer.

(D) Upon revocation of the certification of a certified reinsurer by the commissioner, the assuming insurer shall be required to post security in accordance with section 10 in order for the ceding insurer to continue to take credit for reinsurance ceded to the assuming insurer. If funds continue to be held in trust in accordance with section 7, the commissioner may allow additional credit equal to the ceding insurer's *pro rata* share of the funds, discounted to reflect the risk of uncollectibility and anticipated expenses of trust administration. Notwithstanding the change of a certified reinsurer's rating or revocation of its certification, a domestic insurer that has ceded reinsurance to that certified reinsurer may not be denied credit for reinsurance for a period of three (3) months for all reinsurance ceded to that certified reinsurer, unless the reinsurance is found by the commissioner to be at high risk of uncollectibility.

(c) Qualified Jurisdictions.

(i) If upon conducting an evaluation under this section with respect to the reinsurance supervisory system of any non-U.S. assuming insurer, the commissioner determines that the jurisdiction qualifies to be recognized as a qualified jurisdiction, the commissioner shall publish notice and evidence of the recognition in an appropriate manner. The commissioner may establish a procedure to withdraw recognition of those jurisdictions that are no longer qualified.

(ii) In order to determine whether the domiciliary jurisdiction of a non-U.S. assuming insurer is eligible to be recognized as a qualified jurisdiction, the commissioner shall evaluate the reinsurance supervisory system of the non-U.S. jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits, and the extent of reciprocal recognition afforded by the non-U.S. jurisdiction to reinsurers licensed and domiciled in the U.S. The commissioner shall determine the appropriate approach for evaluating the qualifications of those jurisdictions, and create and publish a list of jurisdictions whose reinsurers may be approved by the commissioner as eligible for certification. A qualified jurisdiction must agree to share information and cooperate with the commissioner with respect to all certified reinsurers domiciled within that jurisdiction. Additional factors to be considered in determining whether to recognize a qualified jurisdiction in the discretion of the commissioner include, but are not limited to, the following:

(A) The framework under which the assuming insurer is regulated.

(B) The structure and authority of the domiciliary regulator with regard to solvency regulation requirements and financial surveillance.

(C) The substance of financial and operating standards for assuming insurers in the domiciliary jurisdiction.

(D) The form and substance of financial reports required to be filed or made publicly available by reinsurers in the domiciliary jurisdiction and the accounting principles used.

(E) The domiciliary regulator's willingness to cooperate with U.S. regulators in general and the commissioner in particular.

(F) The history of performance by assuming insurers in the domiciliary jurisdiction.

(G) Any documented evidence of substantial problems with the enforcement of final U.S. judgments in the domiciliary jurisdiction. A jurisdiction will not be considered to be a qualified jurisdiction if the commissioner has determined that it does not adequately and promptly enforce final U.S. judgments or arbitration awards.

(H) Any relevant international standards or guidance with respect to mutual recognition of reinsurance supervision adopted by the International Association of Insurance Supervisors or successor organization.

(I) Any other matters deemed relevant by the commissioner.

(iii) A list of qualified jurisdictions shall be published through the NAIC committee process. The commissioner shall consider this list in determining qualified

jurisdictions. If the commissioner approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the commissioner shall provide thoroughly documented justification with respect to the criteria provided under subsections 8(c)(ii)(A) to (I).

(iv) U.S. jurisdictions that meet the requirements for accreditation under the NAIC financial standards and accreditation program shall be recognized as qualified jurisdictions.

(d) Recognition of Certification Issued by an NAIC Accredited Jurisdiction.

(i) If an applicant for certification has been certified as a reinsurer in an NAIC accredited jurisdiction, the commissioner has the discretion to defer to that jurisdiction's certification and to defer to the rating assigned by that jurisdiction if the assuming insurer submits a properly executed Form CR-1 and any additional information that the commissioner requires. The assuming insurer shall be considered a certified reinsurer in this state.

(ii) Any change in the certified reinsurer's status or rating in the other jurisdiction shall apply automatically in this state as of the date it takes effect in the other jurisdiction. The certified reinsurer shall notify the commissioner of any change in its status or rating within 10 days after receiving notice of the change.

(iii) The commissioner may withdraw recognition of the other jurisdiction's rating at any time and assign a new rating in accordance with subsection 8(b)(viii).

(iv) The commissioner may withdraw recognition of the other jurisdiction's certification at any time, with written notice to the certified reinsurer. Unless the commissioner suspends or revokes the certified reinsurer's certification in accordance with subsection 8(b)(viii), the certified reinsurer's certification shall remain in good standing in this state for a period of three (3) months, which shall be extended if additional time is necessary to consider the assuming insurer's application for certification in this state.

(e) Mandatory Funding Clause. In addition to the clauses required under section 14, reinsurance contracts entered into or renewed under this section shall include a proper funding clause, which requires the certified reinsurer to provide and maintain security in an amount sufficient to avoid the imposition of any financial statement penalty on the ceding insurer under this section for reinsurance ceded to the certified reinsurer.

(f) The commissioner shall comply with all reporting and notification requirements that may be established by the NAIC with respect to certified reinsurers and qualified jurisdictions.

**Section 9. Credit for Reinsurance Required by Law.** Pursuant to W.S. § 26-5-112(a)(iv) the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of W.S. §26-5-112(a)(i),(ii),(iii), (v), or (vi) but only with respect to the insurance of risks located in jurisdictions where such reinsurance is required by the applicable law or regulation of that jurisdiction. As used in this section, "jurisdiction" means any state, district, or territory of the United States and any lawful national

government.

**Section 10. Reduction from Liability for Reinsurance Ceded to an Unauthorized Assuming Insurer not Meeting the Requirements of Sections 4 Through 9.**

(a) Pursuant to W.S. §26-5-113 the commissioner shall allow a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of W.S. §26-5-112 in an amount not exceeding the liabilities carried by the ceding insurer. The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the exclusive benefit of the ceding insurer, under a reinsurance contract with such assuming insurer as security for the payment of obligations ~~thereunder~~ under the reinsurance contract. The security ~~must~~ shall be held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer or, in the case of a trust, held in a qualified United States financial institution as defined in W.S. §26-5-114(b). This security may be in the form of any of the following:

(i) Cash.

(ii) Securities listed by the Securities Valuation Office of the ~~National Association of Insurance Commissioners~~ NAIC, including those deemed exempt from filing as defined by the Purposes and Procedures Manual of the Securities Valuation Office, and qualifying as admitted assets.

(iii) Clean, irrevocable, unconditional, and "evergreen" letters of credit issued or confirmed by a qualified United States institution, as defined in W.S. §26-5-114(a) effective no later than December 31 of the year for which the filing is being made, and in the possession of or in trust for the ceding company insurer on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation shall, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification or amendment, whichever first occurs, or

(iv) Any other form of security acceptable to the commissioner.

(b) An admitted asset or a reduction from liability for reinsurance ceded to an unauthorized assuming insurer pursuant to this section ~~9 (a), (b) and (c)~~ shall be allowed only when the requirements of ~~Sections 10, 11 or 12 of this regulation are met.~~ section 14 and the applicable portions of sections 11, 12, or 13 of this regulation have been satisfied.

**Section 11. Trust Agreements Qualified Under Section 910.**

(a) As used in this section:

(i) "Beneficiary" means the entity for whose sole benefit the trust has been established and any successor of the beneficiary by operation of law. If a court of law appoints a

successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court-appointed domiciliary receiver including conservator, rehabilitator, or liquidator.

(ii) "Grantor" means the entity that has established a trust for the sole benefit of the beneficiary. When established in conjunction with a reinsurance agreement, the grantor is the unlicensed, unaccredited assuming insurer.

(iii) "Obligations," as used in subsection (b)(xi) of this section, means:

(A) Reinsured losses and allocated loss expenses paid by the ceding company, but not recovered from the assuming insurer;

(B) Reserves for reinsured losses reported and outstanding;

(C) Reserves for reinsured losses incurred but not reported; and

(D) Reserves for allocated reinsured loss expenses and unearned premiums.

(b) Required conditions.

(i) The trust agreement shall be entered into between the beneficiary, the grantor and a trustee which shall be a qualified United States financial institution as defined in W.S. §-26-5-114(b).

(ii) The trust agreement shall create a trust account into which assets shall be deposited.

(iii) All assets in the trust account shall be held by the trustee at the trustee's office in the United States, ~~except that a bank may apply for the commissioner's permission to use a foreign branch office of such bank as trustee for trust agreements established pursuant to this section. If the commissioner approves the use of such foreign branch office as trustee, then its use must be approved by the beneficiary in writing and the trust agreement must provide that the written notice described in Subsection (b)(iv)(A) of this section must also be presentable, as a matter of legal right, at the trustee's principal office in the United States.~~

(iv) The trust agreement shall provide that:

(A) The beneficiary shall have the right to withdraw assets from the trust account at any time without notice to the grantor, subject only to written notice from the beneficiary to the trustee;

(B) No other statement or document is required to be presented ~~in order~~ to withdraw assets, except that the beneficiary may be required to acknowledge receipt of withdrawn assets;

(C) It is not subject to any conditions or qualifications outside of the trust agreement; and

(D) It shall not contain references to any other agreements or documents except as provided for under paragraph (xi) of this subsection.

(v) The trust agreement shall be established for the sole benefit of the beneficiary.

(vi) The trust agreement shall require the trustee to:

(A) Receive assets and hold all assets in a safe place;

(B) Determine that all assets are in a form that the beneficiary, or the trustee upon direction by the beneficiary, may whenever necessary negotiate any assets without consent or signature from the grantor or any other person or entity;

(C) Furnish to the grantor and the beneficiary a statement of all assets in the trust account upon its inception and at intervals no less frequent than the end of each calendar quarter;

(D) Notify the grantor and the beneficiary within ten (10) days of any deposits to or withdrawals from the trust account;

(E) Upon written demand of the beneficiary, immediately take any and all steps necessary to transfer absolutely and unequivocally all right, title, and interest in the assets held in the trust account to the beneficiary and deliver physical custody of the assets to the beneficiary; and

(F) Allow no substitutions or withdrawals of assets from the trust account, except on written instructions from the beneficiary, except that the trustee may, without the consent of but with notice to the beneficiary, upon call or maturity of any trust asset, withdraw the asset upon condition that the proceeds are paid into the trust account.

(vii) The trust agreement shall provide that at least thirty (30) days, but not more than forty-five (45) days, prior to termination of the trust account, written notification of termination shall be delivered by the trustee to the beneficiary.

(viii) The trust agreement shall be made subject to and governed by the laws of the state in which the trust is ~~established~~ domiciled.

(ix) The trust agreement shall prohibit invasion of the trust corpus for the purpose of paying commission to, or reimbursing the expenses of, the trustee. In order for a letter of credit to qualify as an asset of the trust, the trustee shall have the right and the obligation

pursuant to the deed of trust or some other binding agreement (as duly approved by the commissioner), to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.~~compensation to, or reimbursing the expenses of, the trustee.~~

(x) The trust agreement shall provide that the trustee shall be liable for its own negligence, willful misconduct, or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances where the draw would be required shall be deemed to be negligence, willful misconduct, or both.

(xi) Notwithstanding other provisions of this regulation, when a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities, and accident and health, where it is customary practice to provide a trust agreement for a specific purpose, the trust agreement may, ~~notwithstanding any other conditions in this regulation,~~ provide that the ceding insurer shall ~~undertake to~~ use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:

(A) To pay or reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement regarding any losses and allocated loss expenses paid by the ceding insurer, but not recovered from the assuming insurer, or for unearned premiums due to the ceding insurer if not otherwise paid by the assuming insurer;

(B) ~~To make payment to~~ pay the assuming insurer of any amounts held in the trust account that exceed “one hundred two percent (102%) of the actual amount required to fund the assuming insurer's obligations under the specific reinsurance agreement; or

(C) Where the ceding insurer has received notification of termination of the trust account and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten (10) days prior to the termination date, to withdraw amounts equal to ~~those~~ obligations and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution as defined in W.S. §26-5-114(b) apart from its general assets; and in trust for ~~such~~ the uses and purposes specified in subparagraphs (A) and (B) above as may remain executory after ~~such~~ the withdrawal and for any period after the termination date.

(xii) Notwithstanding other provisions of this regulation, when a trust agreement is established to meet the requirements of section 10 in conjunction with a reinsurance agreement covering life, annuities, or accident and health risks, and where it is customary to provide a trust agreement for a specific purpose, the trust agreement may require the ceding insurer to use and apply amounts drawn upon the trust account without diminution because of the insolvency of the ceding insurer or the assuming insurer only for the following purposes:

(A) To pay or reimburse the ceding insurer for:



(I) The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of the policies; and

(II) The assuming insurer's share under the specific reinsurance agreement of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurer, under the terms and provisions of the policies reinsured under the reinsurance agreement;

(B) To pay to the assuming insurer amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer; or

(C) Where the ceding insurer has received notification of termination of the trust and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten (10) days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer, and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified U.S. financial institution apart from its general assets, in trust for the uses and purposes specified in subparagraphs (A) and (B) of this paragraph as may remain executory after withdrawal and for any period after the termination date.

(xiii) Either the reinsurance agreement or the trust agreement shall stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash in United States dollars, certificates of deposit issued by a United States bank and payable in United States dollars, and investments permitted by the Insurance Code or any combination of the above, provided investments in or issued by an entity controlling, controlled by, or under common control with either the grantor or the beneficiary of the trust shall not exceed five percent (5%) of total investments. The agreement may further specify the types of investments to be deposited. If the reinsurance agreement covers life, annuities, or accident and health risks, then the provisions required by this paragraph shall be included in the reinsurance agreement. ~~The reinsurance agreement entered into in conjunction with the trust agreement may, but need not, contain the provisions required by Subsection (d)(i)(B) of this section, so long as these required conditions are included in the trust agreement.~~

(c) Permitted conditions.

(i) The trust agreement may provide that the trustee may resign upon delivery of a written notice of resignation, effective not less than ninety (90) days after ~~receipt by~~ the beneficiary and grantor ~~of receive~~ the notice and that the trustee may be removed by the grantor by delivery to the trustee and the beneficiary of a written notice of removal, effective not less than ninety (90) days after ~~receipt by~~ the trustee and the beneficiary ~~of thereceive the~~ notice, provided that no ~~such~~ resignation or removal shall be effective until a successor trustee has been duly appointed and approved by the beneficiary and the grantor and all assets in the trust have

been ~~duy~~ transferred to the new trustee.

(ii) The grantor may have the full and unqualified right to vote any shares of stock in the trust account and to receive from time to time payments of any dividends or interest upon any shares of stock or obligations included in the trust account. Any ~~such~~ interest or dividends shall be either forwarded promptly upon receipt to the grantor or deposited in a separate account established in the grantor's name.

(iii) The trustee may be given authority to invest, and accept substitutions of, any funds in the account, provided that no investment or substitution shall be made without prior approval of the beneficiary; unless the trust agreement specifies categories of investments acceptable to the beneficiary and authorizes the trustee to invest funds and to accept substitutions which the trustee determines are at least equal in current fair market value to the assets withdrawn and ~~that~~ are consistent with the restrictions in ~~S~~subsection (d)(i)(B) of this section.

(iv) The trust agreement may provide that the beneficiary may at any time designate a party to which all or part of the trust assets are to be transferred. ~~Such~~This transfer may be conditioned upon the trustee receiving, prior to or simultaneously, other specified assets.

(v) The trust agreement may provide that, upon termination of the trust account, all assets not previously withdrawn by the beneficiary shall, with written approval by the beneficiary, be delivered ~~over~~ to the grantor.

(d) Additional conditions applicable to reinsurance agreements.

(i) A reinsurance agreement, ~~which is entered into in conjunction with a trust agreement and the establishment of a trust account,~~ may contain provisions that:

(A) Require the assuming insurer to enter into a trust agreement and to establish a trust account for the benefit of the ceding insurer; and specifying what the agreement is to cover;

(B) ~~Stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash (United States legal tender), certificates of deposit (issued by a United States bank and payable in United States legal tender), and investments of the types permitted by the Insurance Code or any combination of the above, provided that such investments are issued by an institution that is not the parent, subsidiary or affiliate of either the grantor or the beneficiary. The reinsurance agreement may further specify the types of investments to be deposited. Where a trust agreement is entered into in conjunction with a reinsurance agreement covering risks other than life, annuities and accident and health, then the trust agreement may contain the provisions required by this paragraph in lieu of including such provisions in the reinsurance agreement;~~ Require the assuming insurer, prior to depositing assets with the trustee, to execute assignments or endorsements in blank, or to transfer legal title to the trustee of all shares, obligations or any other assets requiring assignments, in order that the ceding insurer, or the trustee upon the direction of the ceding insurer, may whenever necessary negotiate these assets without consent or signature from the assuming insurer or any other entity;

(C) Require that all settlements of account between the ceding insurer and the assuming insurer be made in cash or its equivalent; and

(D) Stipulate that the assuming insurer and the ceding insurer agree that the assets in the trust account, established pursuant to the provisions of the reinsurance agreement, may be withdrawn by the ceding insurer at any time, notwithstanding any other provisions in the reinsurance agreement, and shall be utilized and applied by the ceding insurer or its successors in interest by operation of law, including without limitation any liquidator, rehabilitator, receiver, or conservator of such company, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for the following purposes:

(I) To pay or reimburse the ceding insurer for:

(1.) ~~The assuming insurer's share of premiums returned to the owners of policies reinsured under the reinsurance agreement because of cancellations of such policies;~~ The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement because of cancellations of thesuch policies;

(2.) ~~To reimburse the ceding insurer for t~~The assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer pursuant to the provisions of the policies reinsured under the reinsurance agreement; and

(3.) Any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer;

(II) To make payment to the assuming insurer of amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.

(III) ~~To fund an account with the ceding insurer in an amount at least equal to the deduction, for reinsurance ceded, from the ceding insurer liabilities for policies ceded under the agreement. The account shall include, but not be limited to, amounts for policy reserves, claims and losses incurred (including losses incurred but not reported), loss adjustment expenses and unearned premium reserves; and~~

(IV) ~~To pay any other amounts the ceding insurer claims are due under the reinsurance agreement.~~

(ii) The reinsurance agreement also may~~also~~ contain provisions that:

(A) Give the assuming insurer the right to seek approval from the ceding insurer, which shall not be unreasonably or arbitrarily withheld, to withdraw from the trust account all or any part of the trust assets and transfer those assets to the assuming insurer, provided:

(I) The assuming insurer shall, at the time of withdrawal, replace the withdrawn assets with other qualified assets having a current fair market value equal to the current fair market value of the assets withdrawn so as to maintain at all times the deposit in the required amount, or

(II) After withdrawal and transfer, the current fair market value of the trust account is no less than one hundred two (102%) percent of the required amount.

~~(iii) The ceding insurer shall not unreasonably or arbitrarily withhold its approval.~~

(B) ~~Provide for:~~ Provide for the return of any amount withdrawn in excess of the actual amounts required for paragraph (i)(D) of this subsection and for interest payments at a rate not in excess of the prime rate of interest on the amounts;

~~(I) The return of any amount withdrawn in excess of the actual amounts required for Subsections (d), (i), (E), (I), (II) and (III), or in the case of Subsection (d)(i)(E)(IV), any amounts that are subsequently determined not to be due; and~~

~~(II) Interest payments, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to Subsection (d)(i)(E)(III).~~

(C) Permit the award by any arbitration panel or court of competent jurisdiction of:

(I) Interest at a rate different from that provided in ~~§~~subparagraph (B)(~~II~~),

(II) Court ~~or~~of arbitration costs,

(III) Attorney's fees, and

(IV) Any other reasonable expenses.

(e) Financial reporting. A trust agreement may be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with this department in compliance with the provisions of this regulation when established on or before the date of filing of the financial statement of the ceding insurer. ~~Further, T~~the reduction for the existence of an acceptable trust account may be up to the current fair market value of acceptable assets available to be withdrawn from the trust account at that time, but ~~such~~the reduction shall be no greater than the specific obligations under the reinsurance agreement that the trust account was established to secure.

(f) Existing agreements. Notwithstanding the effective date of this regulation, any

trust agreement or underlying reinsurance agreement ~~that existed as of, July 1, 1992, in existence prior to~~ the effective date ~~of set forth in~~ W.S. §26-5-117, will continue to be acceptable until the expiration or renewal date of the agreement, at which time the agreements ~~shall will have to be in full compliance~~ fully comply with this regulation for the trust agreement to be acceptable.

(g) The failure of any trust agreement to specifically identify the beneficiary as defined in ~~Subsection (a) of this section shall not be construed to affect any actions or rights which the commissioner may take or possess pursuant to Wyoming law~~ the provisions of the laws of this state.

## **Section 12. Letters of Credit Qualified Under Section 910.**

(a) The letter of credit must be clean, irrevocable, and unconditional and issued or confirmed by a qualified United States financial institution as defined in W.S. § 26-5-114(a). The letter of credit shall contain an issue date and date of expiration and shall stipulate that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds and that no other document need be presented. The letter of credit shall also indicate that it is not subject to any condition or qualifications outside of the letter of credit. ~~In addition,~~ The letter of credit itself shall not contain reference to any other agreements, documents, or entities, except as provided in Subsection (h)(i) below. As used in this section, "beneficiary" means the domestic insurer for whose benefit the letter of credit has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court appointed domiciliary receiver including conservator, rehabilitator, or liquidator.

(b) The heading of the letter of credit may include a boxed section ~~containing which contains~~ the name of the applicant and other appropriate notations to provide a reference for the letter of credit. The boxed section shall be clearly marked to indicate that ~~such~~ the information is for internal identification purposes only.

(c) The letter of credit shall contain a statement to the effect that the obligation of the qualified United States financial institution under the letter of credit is in no way contingent upon reimbursement with respect thereto.

(d) The term of the letter of credit shall be for at least one year and shall contain an "evergreen clause" which prevents the expiration of the letter of credit without due notice from the issuer. The "evergreen clause" shall provide for a period of no less than thirty (30) days' notice prior to the expiration date or nonrenewal.

(e) The letter of credit shall state whether it is subject to and governed by the laws of Wyoming or the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication ~~400~~600) (UCP 600) or International Standby Practices of the International Chamber of Commerce Publication 590 (ISP98), or any successor publication, and all drafts drawn thereunder shall be presentable at an office in the United States of a qualified United States financial institution.

(f) If the letter of credit is made subject to the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication ~~400~~500), or any successor publication, then the letter of credit shall specifically address and ~~make~~provide for an extension of time to draw against the letter of credit in the event that one or more of the occurrences specified in Article ~~49~~17 of Publication ~~400~~500 ~~occur~~ or any other successor publication occur.

(g) ~~If the letter of credit shall be~~ is issued ~~or confirmed~~ by a ~~qualified United States~~ financial institution authorized to issue letters of credit, ~~pursuant to W.S. § 26-5-114(a)~~. ~~If the letter of credit is issued by a qualified United States financial institution authorized to issue letters of credit, other than a qualified United States financial institution as described in §~~ subsection (g) of this section, then the following additional requirements shall be met:

(i) The issuing ~~qualified United States~~ financial institution shall formally designate the confirming qualified United States financial institution as its agent for the receipt and payment of the drafts, and

(ii) The "evergreen clause" shall provide for thirty (30) days notice prior to ~~the~~ expiration date for nonrenewal.

(h) Reinsurance agreement provisions.

(i) The reinsurance agreement in conjunction with which the letter of credit is obtained may contain provisions which:

(A) Require the assuming insurer to provide letters of credit to the ceding insurer and specify what they are to cover.

(B) Stipulate that the assuming insurer and ceding insurer agree that the letter of credit provided by the assuming insurer pursuant to the provisions of the reinsurance agreement may be drawn upon at any time, notwithstanding any other provisions in the agreement, and shall be utilized by the ceding insurer or its successors in interest only for one or more of the following reasons:

(I) To pay or reimburse the ceding insurer for:

(1.) The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurers, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of the policies;

(2.) The assuming insurer's share, under the specific reinsurance agreement, of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurers, under the terms and provisions of the policies reinsured

under the reinsurance agreement; and

(3.) Any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer;

(II) Where the letter of credit will expire without renewal or be reduced or replaced by a letter of credit for a reduced amount and where the assuming insurer's entire obligations under the reinsurance agreement remain unliquidated and undischarged ten (10) days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of the liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer and exceed the amount of any reduced or replacement letter of credit, and deposit those amounts in a separate account in the name of the ceding insurer in a qualified U.S. financial institution apart from its general assets, in trust for such uses and purposes specified in subsection (h)(i)(B)(I) of this section as may remain after withdrawal and for any period after the termination date.

(C) All of the provisions of paragraph (i) of this subsection shall be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer.

~~the The assuming insurer's share of premiums returned to the owners of policies reinsured under the reinsurance agreement on account of cancellations of such policies;~~

(I) ~~To reimburse the ceding insurer for the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer under the terms and provisions of the policies reinsured under the reinsurance agreement;~~

(II) ~~To fund an account with the ceding insurer in an amount at least equal to the deduction, for reinsurance ceded, from the ceding insurer's liabilities for policies ceded under the agreement (such amount shall include, but not be limited to, amounts for policy reserves, claims and losses incurred and unearned premium reserves); and~~

(III) ~~To pay any other amounts the ceding insurer claims are due under the reinsurance agreement.~~

~~(C) All of the foregoing provisions of Paragraph (i)(i) of this subsection should be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer.~~

(ii) Nothing contained in Paragraph (i)(i) of this subsection shall preclude the ceding insurer and assuming insurer from providing for:

(A) An interest payment, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to ~~Paragraph (i)(i)(B)(III)~~ subparagraph (i)(B) of this subsection; ~~and/or~~

(B) The return of any amounts drawn down on the letters of credit in excess of the actual amounts required for the above or, ~~in the case of Paragraph (i)(i)(B)(IV) of this subsection,~~ any amounts that are subsequently determined not to be due.

~~(iii) When a letter of credit is obtained in conjunction with a reinsurance agreement covering risks other than life, annuities and health, where it is customary practice to provide a letter of credit for a specific purpose, then the reinsurance agreement may, in lieu of Paragraph (i)(i)(B) of this subsection, require that the parties enter into a "Trust Agreement" which may be incorporated into the reinsurance agreement or be a separate document.~~

~~(j) A letter of credit may not be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with this department unless an acceptable letter of credit with the filing ceding insurer as beneficiary has been issued on or before the date of filing of the financial statement. Further, the reduction for the letter of credit may be up to the amount available under the letter of credit but no greater than the specific obligation under the reinsurance agreement which the letter of credit was intended to secure.~~

**Section 13. Other Security.** A ceding insurer may take credit for unencumbered funds withheld by the ceding insurer in the United States subject to withdrawal solely by the ceding insurer and under its exclusive control.

**Section 14. Reinsurance Contract.**

(a) Credit will not be granted, nor an asset or reduction from liability allowed, to a ceding insurer for reinsurance effected with assuming insurers meeting the requirements of sections 4, 5, 6, 7, 8, or 9 of this regulation or otherwise in compliance with W.S. §-26-5-112 after the adoption of this regulation unless the reinsurance agreement:

(i) Includes a proper insolvency clause, which stipulates that reinsurance is payable directly to the liquidator or successor without diminution regardless of the status of the ceding company, pursuant to W.S. §-26-5-115; and

(ii) Includes a provision pursuant to W.S. §-26-5-112(c) whereby the assuming insurer, if an unauthorized assuming insurer, has submitted to the jurisdiction of an alternative dispute resolution panel or a court of competent jurisdiction within the United States, has agreed to comply with all requirements necessary to give ~~the~~ such court or panel jurisdiction, has designated an agent upon whom service of process may be effected, and has agreed to abide by the final decision of ~~the~~ such court or panel; and

(iii) Includes a proper reinsurance intermediary clause, if applicable, which stipulates that the credit risk for the intermediary is carried by the assuming insurer.



**Section 15. Contracts Affected.** All new and renewal reinsurance transactions entered into after the effective date of this rule shall conform to the requirements of W.S. §§ 26-5-111 through 26-5-117 and this regulation if credit is to be given to the ceding insurer for ~~the~~ such reinsurance.

**Section 16. Effective Date.** This regulation shall become effective immediately upon filing with the Secretary of State.

(II) CERTIFICATE OF ASSUMING INSURER

**Section 17.** I, \_\_\_\_\_,  
(ii) (name of officer) \_\_\_\_\_ (title of officer)

**Section 18.** of \_\_\_\_\_, the  
assuming insurer under a reinsurance \_\_\_\_\_ (name of assuming insurer)

**Section 19.** agreement(s) with one or more insurers domiciled in \_\_\_\_\_,  
hereby certify that \_\_\_\_\_

1. (name of state)

2. ("Assuming Insurer"):

(II) (name of assuming insurer)

1. Submits to the jurisdiction of any  
court of competent jurisdiction in \_\_\_\_\_

(B) (ceding insurer's state of domicile)

~~**Section 20.** for the adjudication of any issues arising out of the reinsurance agreement(s), agrees to comply with all requirements necessary to give such court jurisdiction, and will abide by the final decision of such court or any appellate court in the event of an appeal. Nothing in this paragraph constitutes or should be understood to constitute a waiver of Assuming Insurer's rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. This paragraph is not intended to conflict with or override the obligation of the parties to the reinsurance agreement(s) to arbitrate their disputes if such an obligation is created in the agreement(s).~~

(a) 2. ~~Designates the Insurance Commissioner of \_\_\_\_\_ as its \_\_\_\_\_~~

1. (ceding insurer's state of domicile)

~~**Section 21.** lawful attorney upon whom may be served any lawful process in any action, suit or proceeding arising out of the reinsurance agreement(s) instituted by or on behalf of the ceding insurer.~~

(a) 3. ~~Submits to the authority of the Insurance Commissioner of \_\_\_\_\_~~

1. ~~to examine its books and records and to bear the \_\_\_\_\_~~

(b) (ceding insurer's state of domicile)

~~**Section 22.** expense of any such examination.~~

(a) 4. ~~Submits with this form a current list of insurers domiciled in \_\_\_\_\_~~

(1.) ~~reinsured by Assuming Insurer and undertakes to submit additions to or \_\_\_\_\_~~

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**Section 23.** —(ceding insurer's state of domicile)

**Section 24.** ~~deletions from the list to the Insurance Commissioner at least once per calendar quarter.~~

**Section 25.** Dated: \_\_\_\_\_

1. \_\_\_\_\_  
(name of assuming insurer)

b. BY: \_\_\_\_\_

1. \_\_\_\_\_  
(name of officer)

2. \_\_\_\_\_  
(title of officer)

## CHAPTER 69

### TERM AND UNIVERSAL LIFE INSURANCE RESERVE FINANCING

**Section 1. Authority.** This regulation is promulgated pursuant to W.S. 16-3-101 *et seq.* 26-2-110, 26-5-112, 26-5-113, and 26-5-116.

**Section 2. Purpose and Intent.** The purpose and intent of this regulation is to establish uniform, national standards governing reserve financing arrangements pertaining to life insurance policies containing guaranteed nonlevel gross premiums, guaranteed nonlevel benefits and universal life insurance policies with secondary guarantees; and to ensure that, with respect to each such financing arrangement, funds consisting of Primary Security and Other Security, as defined in Section 5, are held by or on behalf of ceding insurers in the forms and amounts required herein. In general, reinsurance ceded for reserve financing purposes has one or more of the following characteristics: some or all of the assets used to secure the reinsurance treaty or to capitalize the reinsurer (1) are issued by the ceding insurer or its affiliates; or (2) are not unconditionally available to satisfy the general account obligations of the ceding insurer; or (3) create a reimbursement, indemnification or other similar obligation on the part of the ceding insurer or any of its affiliates (other than a payment obligation under a derivative contract acquired in the normal course and used to support and hedge liabilities pertaining to the actual risks in the policies ceded pursuant to the reinsurance treaty).

**Section 3. Applicability.** This regulation shall apply to reinsurance treaties that cede liabilities pertaining to Covered Policies, as that term is defined in Section 5(b), issued by any life insurance company domiciled in this state. This regulation and Chapter 50 of the Wyoming Insurance Department regulations shall both apply to reinsurance treaties; provided, that in the event of a direct conflict between the provisions of this regulation and Chapter 50 of the Wyoming Insurance Department regulations, the provisions of this regulation shall apply, but only to the extent of the conflict.

**Section 4. Exemptions.** This regulation does not apply to the situations described in subsections (a) through (f).

(a) Reinsurance of:

(i) Policies that satisfy the criteria for exemption set forth in section 6F of the NAIC Valuation of Life Insurance Policies Model Regulation or section 6G of the NAIC Valuation of Life Insurance Policies Model Regulation; and which are issued before the later of:

(A) The effective date of this regulation, and

(B) The date on which the ceding insurer begins to apply the provisions of VM-20 to establish the ceded policies' statutory reserves, but in no event later than January 1, 2020;

(ii) Portions of policies that satisfy the criteria for exemption set forth in section 6E of the NAIC Valuation of Life Insurance Policies Model Regulation and which are issued before the later of:

(A) The effective date of this regulation, and

(B) The date on which the ceding insurer begins to apply the provisions of VM-20 to establish the ceded policies' statutory reserves, but in no event later than Jan. 1, 2020;

(iii) Any universal life policy that meets all of the following requirements:

(A) Secondary guarantee period, if any, is five (5) years or less;

(B) Specified premium for the secondary guarantee period is not less than the net level reserve premium for the secondary guarantee period based on the Commissioners Standard Ordinary (CSO) valuation tables and valuation interest rate applicable to the issue year of the policy; and

(C) The initial surrender charge is not less than one hundred percent (100%) of the first year annualized specified premium for the secondary guarantee period;

(iv) Credit life insurance;

(v) Any variable life insurance policy that provides for life insurance, the amount or duration of which varies according to the investment experience of any separate account or accounts; or

(vi) Any group life insurance certificate unless the certificate provides for a stated or implied schedule of maximum gross premiums required in order to continue coverage in force for a period in excess of one year.

(b) Reinsurance ceded to an assuming insurer that meets the applicable requirements of W.S. 26-5-112(a)(v); or

(c) Reinsurance ceded to an assuming insurer that meets the applicable requirements of W.S. 26-5-112(a)(i), (ii), or (iii), and that, in addition:

(i) Prepares statutory financial statements in compliance with the NAIC Accounting Practices and Procedures Manual without any departures from NAIC statutory accounting practices and procedures pertaining to the admissibility or valuation of assets or liabilities that increase the assuming insurer's reported surplus and are material enough that they need to be disclosed in the financial statement of the assuming insurer pursuant to Statement of Statutory Accounting Principles No. 1 (SSAP 1); and

(ii) Is not in a Company Action Level Event, Regulatory Action Level Event, Authorized Control Level Event, or Mandatory Control Level Event as those terms are defined in W.S. 26-48-101 when its RBC is calculated in accordance with the life risk-based capital report including overview and instructions for companies, as the same may be amended by the NAIC from time to time, without deviation; or

(d) Reinsurance ceded to an assuming insurer that meets the applicable requirements of W.S. 26-5-112(a)(i), (ii), or (iii), and that, in addition:

(i) Is not an affiliate, as that term is defined in W.S. 26-44-101, of:

(A) The insurer ceding the business to the assuming insurer; or

(B) Any insurer that directly or indirectly ceded the business to that ceding insurer;

(ii) Prepares statutory financial statements in compliance with the NAIC Accounting Practices and Procedures Manual;

(iii) Is both:

(A) Licensed or accredited in at least ten (10) states (including its state of domicile); and

(B) Not licensed in any state as a captive, special purpose vehicle, special purpose financial captive, special purpose life reinsurance company, limited purpose subsidiary, or any other similar licensing regime; and

(iv) Is not, or would not be, below five hundred percent (500%) of the Authorized Control Level RBC as that term is defined in W.S. 26-48-101 when its Risk-Based Capital (RBC) is calculated in accordance with the life risk-based capital report including overview and instructions for companies, as the same may be amended by the NAIC from time to time, without deviation, and without recognition of any departures from NAIC statutory accounting practices and procedures pertaining to the admission or valuation of assets or liabilities that increase the assuming insurer's reported surplus; or

(e) Reinsurance ceded to an assuming insurer that meets the requirements of either W.S. 26-5-116(f)(i) or W.S. 26-5-116(f)(ii); or

(f) Reinsurance not otherwise exempt under subsections (a) through (e) if the commissioner, after consulting with the NAIC Financial Analysis Working Group (FAWG) or other group of regulators designated by the NAIC, as applicable, determines under all the facts and circumstances that all of the following apply:

(i) The risks are clearly outside of the intent and purpose of this regulation (as described in section 2 above);

(ii) The risks are included within the scope of this regulation only as a technicality; and

(iii) The application of this regulation to those risks is not necessary to provide appropriate protection to policyholders. The commissioner shall publicly disclose any decision made pursuant to this section 4(f) to exempt a reinsurance treaty from this regulation, as well as the general basis therefor (including a summary description of the treaty).

## **Section 5. Definitions.**

(a) “Actuarial Method” means the methodology used to determine the Required Level of Primary Security, as described in section 6.

(b) “Covered Policies” means the following: Subject to the exemptions described in section 4, Covered Policies are those policies, other than Grandfathered Policies, of the following policy types:

(i) Life insurance policies with guaranteed nonlevel gross premiums and/or guaranteed nonlevel benefits, except for flexible premium universal life insurance policies; or,

(ii) Flexible premium universal life insurance policies with provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period.

(c) “Grandfathered Policies” means policies of the types described in subsections (b)(i) and (b)(ii) above that were:

(i) Issued prior to January 1, 2015; and

(ii) Ceded as of December 31, 2014, as part of a reinsurance treaty that would not have met one of the exemptions set forth in section 4 had that section then been in effect.

(d) “Non-Covered Policies” means any policy that does not meet the definition of Covered Policies, including Grandfathered Policies.

(e) “Required Level of Primary Security” means the dollar amount determined by applying the Actuarial Method to the risks ceded with respect to Covered Policies, but not more than the total reserve ceded.

(f) “Primary Security” means the following forms of security:

(i) Cash pursuant to W.S. 26-5-113(a)(i);

(ii) Securities listed by the Securities Valuation Office meeting the requirements of W.S. 26-5-113(a)(ii), but excluding any synthetic letter of credit, contingent note, credit-linked note, or other similar security that operates in a manner similar to a letter of credit, and excluding any securities issued by the ceding insurer or any of its affiliates; and

(iii) For security held in connection with funds-withheld and modified coinsurance reinsurance treaties:

(A) Commercial loans in good standing of CM3 quality and higher;

(B) Policy Loans; and

(C) Derivatives acquired in the normal course and used to support and hedge liabilities pertaining to the actual risks in the policies ceded pursuant to the reinsurance treaty.

(g) “Other Security” means any security acceptable to the commissioner other than security meeting the definition of Primary Security.

(h) “Valuation Manual” means the valuation manual adopted by the NAIC as described in section 11B(1) of the Standard Valuation Law, with all amendments adopted by the NAIC that are effective for the financial statement date on which credit for reinsurance is claimed.

(i) “VM-20” means “Requirements for Principle-Based Reserves for Life Products,” including all relevant definitions, from the Valuation Manual.

#### **Section 6. The Actuarial Method.**

(a) The Actuarial Method to establish the Required Level of Primary Security for each reinsurance treaty subject to this regulation shall be VM-20, applied on a treaty-by-treaty basis, including all relevant definitions, from the Valuation Manual as then in effect, applied as follows:

(i) For Covered Policies described in section 5(b)(i) above, the Actuarial Method is the greater of the Deterministic Reserve or the Net Premium Reserve (NPR) regardless of whether the criteria for exemption testing can be met. However, if the Covered Policies do not meet the requirements of the Stochastic Reserve exclusion test in the Valuation Manual, then the Actuarial Method is the greatest of the Deterministic Reserve, the Stochastic Reserve, or the NPR. In addition, if such Covered Policies are reinsured in a reinsurance treaty that also contains Covered Policies described in section 5(b)(ii) above, the ceding insurer may elect to instead use paragraph (ii) below as the Actuarial Method for the entire reinsurance agreement. Whether paragraph (i) or (ii) are used, the Actuarial Method shall comply with any requirements or restrictions that the Valuation Manual imposes when aggregating these policy types for purposes of principle-based reserve calculations.



(ii) For Covered Policies described in section 5(b)(ii) above, the Actuarial Method is the greatest of the Deterministic Reserve, the Stochastic Reserve, or the NPR, regardless of whether the criteria for exemption testing can be met.

(iii) Except as provided in paragraph (iv) below, the Actuarial Method shall be applied on a gross basis to all risks with respect to the Covered Policies as originally issued or assumed by the ceding insurer.

(iv) If the reinsurance treaty cedes less than one hundred percent (100%) of the risk with respect to the Covered Policies then the Required Level of Primary Security may be reduced as follows:

(A) If a reinsurance treaty cedes only a quota share of some or all of the risks pertaining to the Covered Policies, the Required Level of Primary Security, as well as any adjustment under subparagraph (C) below, may be reduced to a pro rata portion in accordance with the percentage of the risk ceded;

(B) If the reinsurance treaty in a non-exempt arrangement cedes only the risks pertaining to a secondary guarantee, the Required Level of Primary Security may be reduced by an amount determined by applying the Actuarial Method on a gross basis to all risks, other than risks related to the secondary guarantee, pertaining to the Covered Policies, except that for Covered Policies for which the ceding insurer did not elect to apply the provisions of VM-20 to establish statutory reserves, the Required Level of Primary Security may be reduced by the statutory reserve retained by the ceding insurer on those Covered Policies, where the retained reserve of those Covered Policies should be reflective of any reduction pursuant to the cession of mortality risk on a yearly renewable term basis in an exempt arrangement;

(C) If a portion of the Covered Policy risk is ceded to another reinsurer on a yearly renewable term basis in an exempt arrangement, the Required Level of Primary Security may be reduced by the amount resulting by applying the Actuarial Method including the reinsurance section of VM-20 to the portion of the Covered Policy risks ceded in the exempt arrangement, except that for Covered Policies issued prior to January 1, 2017, this adjustment is not to exceed  $[c_x / (2 * \text{number of reinsurance premiums per year})]$  where  $c_x$  is calculated using the same mortality table used in calculating the Net Premium Reserve; and

(D) For any other treaty ceding a portion of risk to a different reinsurer, including but not limited to stop loss, excess of loss, and other non-proportional reinsurance treaties, there shall be no reduction in the Required Level of Primary Security.

(v) It is possible for any combination of subparagraphs (A), (B), (C), and (D) above to apply. Adjustments to the Required Level of Primary Security shall be done in the sequence that accurately reflects the portion of the risk ceded via the treaty. The ceding insurer shall document the rationale and steps taken to accomplish the adjustments to the Required Level of Primary Security due to the cession of less than one hundred percent (100%) of the risk.

(vi) The Adjustments for other reinsurance will be made only with respect to reinsurance treaties entered into directly by the ceding insurer. The ceding insurer shall make no adjustment as a result of a retrocession treaty entered into by the assuming insurers.

(vii) In no event shall the Required Level of Primary Security resulting from application of the Actuarial Method exceed the amount of statutory reserves ceded.

(viii) If the ceding insurer cedes risks with respect to Covered Policies, including any riders, in more than one reinsurance treaty subject to this Regulation, in no event will the aggregate Required Level of Primary Security for those reinsurance treaties be less than the Required Level of Primary Security calculated using the Actuarial Method as if all risks ceded in those treaties were ceded in a single treaty subject to this Regulation;

(ix) If a reinsurance treaty subject to this Regulation cedes risk on both Covered and Non-Covered Policies, credit for the ceded reserves shall be determined as follows:

(A) The Actuarial Method shall be used to determine the Required Level of Primary Security for the Covered Policies, and section 7 shall be used to determine the reinsurance credit for the Covered Policy reserves; and

(B) Credit for the Non-Covered Policy reserves shall be granted only to the extent that security, in addition to the security held to satisfy the requirements of subparagraph (A), is held by or on behalf of the ceding insurer in accordance with W.S. 26-5-112 and 26-5-113. Any Primary Security used to meet the requirements of this subparagraph may not be used to satisfy the Required Level of Primary Security for the Covered Policies.

(b) Valuation used for Purposes of Calculations: For the purposes of both calculating the Required Level of Primary Security pursuant to the Actuarial Method and determining the amount of Primary Security and Other Security, as applicable, held by or on behalf of the ceding insurer, the following shall apply:

(i) For assets, including any assets held in trust, that would be admitted under the NAIC Accounting Practices and Procedures Manual if they were held by the ceding insurer, the valuations shall be determined according to statutory accounting procedures as if the assets were held in the ceding insurer's general account and without taking into consideration the effect of any prescribed or permitted practices; and

(ii) For all other assets, the valuations are to be those that were assigned to the assets for the purpose of determining the amount of reserve credit taken. In addition, the asset spread tables and asset default cost tables required by VM-20 shall be included in the Actuarial Method if adopted by the NAIC's Life Actuarial (A) Task Force no later than the December 31<sup>st</sup> on or immediately preceding the valuation date for which the Required Level of Primary Security is being calculated. The tables of asset spreads and asset default costs shall be incorporated into the Actuarial Method in the manner specified in VM-20.

**Section 7. Requirements Applicable to Covered Policies to Obtain Credit for Reinsurance; Opportunity for Remediation.**

(a) Requirements: Subject to the exemptions described in section 4 and the provisions of section 7(b), credit for reinsurance shall be allowed with respect to ceded liabilities pertaining to Covered Policies pursuant to W.S. 26-5-112 or 26-5-113 if, and only if, in addition to all other requirements imposed by law or regulation, the following requirements are met on a treaty-by-treaty basis:

(i) The ceding insurer's statutory policy reserves with respect to the Covered Policies are established in full and in accordance with the applicable requirements of W.S. 26-6-201 *et seq.* and related regulations and actuarial guidelines, and credit claimed for any reinsurance treaty subject to this regulation does not exceed the proportionate share of those reserves ceded under the contract;

(ii) The ceding insurer determines the Required Level of Primary Security with respect to each reinsurance treaty subject to this regulation and provides support for its calculation as determined to be acceptable to the commissioner;

(iii) Funds consisting of Primary Security, in an amount at least equal to the Required Level of Primary Security, are held by or on behalf of the ceding insurer, as security under the reinsurance treaty within the meaning of W.S. 26-5-113, on a funds withheld, trust, or modified coinsurance basis;

(iv) Funds consisting of Other Security, in an amount at least equal to any portion of the statutory reserves as to which Primary Security is not held pursuant to paragraph (iii) above, are held by or on behalf of the ceding insurer as security under the reinsurance treaty within the meaning of W.S. 26-5-113; and

(v) Any trust used to satisfy the requirements of this section 7 shall comply with all of the conditions and qualifications of Chapter 50, Section 11, of the Wyoming Insurance Department regulations, except that:

(A) Funds consisting of Primary Security or Other Security held in trust, shall for the purposes identified in section 6(b), be valued according to the valuation rules set forth in section 6(b), as applicable;

(B) There are no affiliate investment limitations with respect to any security held in trust if the security is not needed to satisfy the requirements of section 7(a)(iii);

(C) The reinsurance treaty shall prohibit withdrawals or substitutions of trust assets that would leave the fair market value of the Primary Security within the trust (when aggregated with Primary Security outside the trust that is held by or on behalf of the ceding insurer in the manner required by section 7(a)(iii)) below one hundred two percent (102%) of the level required by section 7(a)(iii) at the time of the withdrawal or substitution; and

(D) The determination of reserve credit under Chapter 50, Section 11(e) of the Wyoming Insurance Department regulations shall be determined according to the valuation rules set forth in section 6(b), as applicable; and

(vi) The reinsurance treaty has been approved by the commissioner.

(b) Requirements at Inception Date and on an On-going Basis; Remediation.

(i) The requirements of section 7(a) shall be satisfied as of the date that risks under Covered Policies are ceded (if the date is on or after the effective date of this regulation) and on an ongoing basis thereafter. Under no circumstances shall a ceding insurer take or consent to any action or series of actions that would result in a deficiency under section 7(a)(iii) or 7(a)(iv) with respect to any reinsurance treaty under which Covered Policies have been ceded, and in the event that a ceding insurer becomes aware at any time that such a deficiency exists, it shall use its best efforts to arrange for the deficiency to be eliminated as expeditiously as possible.

(ii) Prior to the due date of each Quarterly or Annual Statement, each life insurance company that has ceded reinsurance within the scope of section 3 shall perform an analysis, on a treaty-by-treaty basis, to determine, as to each reinsurance treaty under which Covered Policies have been ceded, whether as of the end of the immediately preceding calendar quarter (the valuation date), the requirements of sections 7(a)(iii) and 7(a)(iv) were satisfied. The ceding insurer shall establish a liability equal to the excess of the credit for reinsurance taken over the amount of Primary Security actually held pursuant to section 7(a)(iii), unless either:

(A) The requirements of section 7(a)(iii) and 7(a)(iv) were fully satisfied as of the valuation date as to such reinsurance treaty; or

(B) Any deficiency has been eliminated before the due date of the Quarterly or Annual Statement to which the valuation date relates through the addition of Primary Security and/or Other Security, as the case may be, in an amount and in a form that would have caused the requirements of section 7(a)(iii) and 7(a)(iv) to be fully satisfied as of the valuation date.

(iii) Nothing in section 7(b)(ii) shall be construed to allow a ceding company to maintain any deficiency under section 7(a)(iii) or 7(a)(iv) for any period of time longer than is reasonably necessary to eliminate it.

**Section 8. Severability.** If any provision of this regulation is held invalid, the remainder shall not be affected.

**Section 9. Prohibition against Avoidance.** No insurer that has Covered Policies as to which this regulation applies (as set forth in section 3) shall take any action or series of actions, or enter into any transaction or arrangement or series of transactions or arrangements if

the purpose of the action, transaction or arrangement or series thereof is to avoid the requirements of this regulation, or to circumvent its purpose and intent, as set forth in section 2.

**Section 10. Effective Date.** This regulation shall become effective upon filing with the Secretary of State and shall pertain to all Covered Policies in force as of and after that date.

## CHAPTER 69

### TERM AND UNIVERSAL LIFE INSURANCE RESERVE FINANCING

**Section 1. Authority.** This regulation is promulgated pursuant to W.S. 16-3-101 et seq. 26-2-110, 26-5-112, 26-5-113, and 26-5-116.

**Section 2. Purpose and Intent.** The purpose and intent of this regulation is to establish uniform, national standards governing reserve financing arrangements pertaining to life insurance policies containing guaranteed nonlevel gross premiums, guaranteed nonlevel benefits and universal life insurance policies with secondary guarantees; and to ensure that, with respect to each such financing arrangement, funds consisting of Primary Security and Other Security, as defined in Section 5, are held by or on behalf of ceding insurers in the forms and amounts required herein. In general, reinsurance ceded for reserve financing purposes has one or more of the following characteristics: some or all of the assets used to secure the reinsurance treaty or to capitalize the reinsurer (1) are issued by the ceding insurer or its affiliates; or (2) are not unconditionally available to satisfy the general account obligations of the ceding insurer; or (3) create a reimbursement, indemnification or other similar obligation on the part of the ceding insurer or any of its affiliates (other than a payment obligation under a derivative contract acquired in the normal course and used to support and hedge liabilities pertaining to the actual risks in the policies ceded pursuant to the reinsurance treaty).

**Section 3. Applicability.** This regulation shall apply to reinsurance treaties that cede liabilities pertaining to Covered Policies, as that term is defined in Section 5(b), issued by any life insurance company domiciled in this state. This regulation and Chapter 50 of the Wyoming Insurance Department regulations shall both apply to reinsurance treaties; provided, that in the event of a direct conflict between the provisions of this regulation and Chapter 50 of the Wyoming Insurance Department regulations, the provisions of this regulation shall apply, but only to the extent of the conflict.

**Section 4. Exemptions.** This regulation does not apply to the situations described in subsections (a) through (f).

(a) Reinsurance of:

(i) Policies that satisfy the criteria for exemption set forth in section 6F of the NAIC Valuation of Life Insurance Policies Model Regulation or section 6G of the NAIC Valuation of Life Insurance Policies Model Regulation; and which are issued before the later of:

(A) The effective date of this regulation, and

(B) The date on which the ceding insurer begins to apply the provisions of VM-20 to establish the ceded policies' statutory reserves, but in no event later than January 1, 2020;

(ii) Portions of policies that satisfy the criteria for exemption set forth in section 6E of the NAIC Valuation of Life Insurance Policies Model Regulation and which are issued before the later of:

(A) The effective date of this regulation, and

(B) The date on which the ceding insurer begins to apply the provisions of VM-20 to establish the ceded policies' statutory reserves, but in no event later than Jan. 1, 2020;

(iii) Any universal life policy that meets all of the following requirements:

(A) Secondary guarantee period, if any, is five (5) years or less;

(B) Specified premium for the secondary guarantee period is not less than the net level reserve premium for the secondary guarantee period based on the Commissioners Standard Ordinary (CSO) valuation tables and valuation interest rate applicable to the issue year of the policy; and

(C) The initial surrender charge is not less than one hundred percent (100%) of the first year annualized specified premium for the secondary guarantee period;

(iv) Credit life insurance;

(v) Any variable life insurance policy that provides for life insurance, the amount or duration of which varies according to the investment experience of any separate account or accounts; or

(vi) Any group life insurance certificate unless the certificate provides for a stated or implied schedule of maximum gross premiums required in order to continue coverage in force for a period in excess of one year.

(b) Reinsurance ceded to an assuming insurer that meets the applicable requirements of W.S. 26-5-112(a)(v); or

(c) Reinsurance ceded to an assuming insurer that meets the applicable requirements of W.S. 26-5-112(a)(i), (ii), or (iii), and that, in addition:

(i) Prepares statutory financial statements in compliance with the NAIC Accounting Practices and Procedures Manual without any departures from NAIC statutory accounting practices and procedures pertaining to the admissibility or valuation of assets or liabilities that increase the assuming insurer's reported surplus and are material enough that they need to be disclosed in the financial statement of the assuming insurer pursuant to Statement of Statutory Accounting Principles No. 1 (SSAP 1); and

(ii) Is not in a Company Action Level Event, Regulatory Action Level Event, Authorized Control Level Event, or Mandatory Control Level Event as those terms are defined in W.S. 26-48-101 when its RBC is calculated in accordance with the life risk-based capital report including overview and instructions for companies, as the same may be amended by the NAIC from time to time, without deviation; or

(d) Reinsurance ceded to an assuming insurer that meets the applicable requirements of W.S. 26-5-112(a)(i), (ii), or (iii), and that, in addition:

(i) Is not an affiliate, as that term is defined in W.S. 26-44-101, of:

(A) The insurer ceding the business to the assuming insurer; or

(B) Any insurer that directly or indirectly ceded the business to that ceding insurer;

(ii) Prepares statutory financial statements in compliance with the NAIC Accounting Practices and Procedures Manual;

(iii) Is both:

(A) Licensed or accredited in at least ten (10) states (including its state of domicile); and

(B) Not licensed in any state as a captive, special purpose vehicle, special purpose financial captive, special purpose life reinsurance company, limited purpose subsidiary, or any other similar licensing regime; and

(iv) Is not, or would not be, below five hundred percent (500%) of the Authorized Control Level RBC as that term is defined in W.S. 26-48-101 when its Risk-Based Capital (RBC) is calculated in accordance with the life risk-based capital report including overview and instructions for companies, as the same may be amended by the NAIC from time to time, without deviation, and without recognition of any departures from NAIC statutory accounting practices and procedures pertaining to the admission or valuation of assets or liabilities that increase the assuming insurer's reported surplus; or

(e) Reinsurance ceded to an assuming insurer that meets the requirements of either W.S. 26-5-116(f)(i) or W.S. 26-5-116(f)(ii); or

(f) Reinsurance not otherwise exempt under subsections (a) through (e) if the commissioner, after consulting with the NAIC Financial Analysis Working Group (FAWG) or other group of regulators designated by the NAIC, as applicable, determines under all the facts and circumstances that all of the following apply:

(i) The risks are clearly outside of the intent and purpose of this regulation (as described in section 2 above);



(ii) The risks are included within the scope of this regulation only as a technicality; and

(iii) The application of this regulation to those risks is not necessary to provide appropriate protection to policyholders. The commissioner shall publicly disclose any decision made pursuant to this section 4(f) to exempt a reinsurance treaty from this regulation, as well as the general basis therefor (including a summary description of the treaty).

## **Section 5. Definitions.**

(a) “Actuarial Method” means the methodology used to determine the Required Level of Primary Security, as described in section 6.

(b) “Covered Policies” means the following: Subject to the exemptions described in section 4, Covered Policies are those policies, other than Grandfathered Policies, of the following policy types:

(i) Life insurance policies with guaranteed nonlevel gross premiums and/or guaranteed nonlevel benefits, except for flexible premium universal life insurance policies; or,

(ii) Flexible premium universal life insurance policies with provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period.

(c) “Grandfathered Policies” means policies of the types described in subsections (b)(i) and (b)(ii) above that were:

(i) Issued prior to January 1, 2015; and

(ii) Ceded as of December 31, 2014, as part of a reinsurance treaty that would not have met one of the exemptions set forth in section 4 had that section then been in effect.

(d) “Non-Covered Policies” means any policy that does not meet the definition of Covered Policies, including Grandfathered Policies.

(e) “Required Level of Primary Security” means the dollar amount determined by applying the Actuarial Method to the risks ceded with respect to Covered Policies, but not more than the total reserve ceded.

(f) “Primary Security” means the following forms of security:

(i) Cash pursuant to W.S. 26-5-113(a)(i);

(ii) Securities listed by the Securities Valuation Office meeting the requirements of W.S. 26-5-113(a)(ii), but excluding any synthetic letter of credit, contingent note, credit-linked note, or other similar security that operates in a manner similar to a letter of credit, and excluding any securities issued by the ceding insurer or any of its affiliates; and

(iii) For security held in connection with funds-withheld and modified coinsurance reinsurance treaties:

(A) Commercial loans in good standing of CM3 quality and higher;

(B) Policy Loans; and

(C) Derivatives acquired in the normal course and used to support and hedge liabilities pertaining to the actual risks in the policies ceded pursuant to the reinsurance treaty.

(g) “Other Security” means any security acceptable to the commissioner other than security meeting the definition of Primary Security.

(h) “Valuation Manual” means the valuation manual adopted by the NAIC as described in section 11B(1) of the Standard Valuation Law, with all amendments adopted by the NAIC that are effective for the financial statement date on which credit for reinsurance is claimed.

(i) “VM-20” means “Requirements for Principle-Based Reserves for Life Products,” including all relevant definitions, from the Valuation Manual.

## **Section 6. The Actuarial Method.**

(a) The Actuarial Method to establish the Required Level of Primary Security for each reinsurance treaty subject to this regulation shall be VM-20, applied on a treaty-by-treaty basis, including all relevant definitions, from the Valuation Manual as then in effect, applied as follows:

(i) For Covered Policies described in section 5(b)(i) above, the Actuarial Method is the greater of the Deterministic Reserve or the Net Premium Reserve (NPR) regardless of whether the criteria for exemption testing can be met. However, if the Covered Policies do not meet the requirements of the Stochastic Reserve exclusion test in the Valuation Manual, then the Actuarial Method is the greatest of the Deterministic Reserve, the Stochastic Reserve, or the NPR. In addition, if such Covered Policies are reinsured in a reinsurance treaty that also contains Covered Policies described in section 5(b)(ii) above, the ceding insurer may elect to instead use paragraph (ii) below as the Actuarial Method for the entire reinsurance agreement. Whether paragraph (i) or (ii) are used, the Actuarial Method shall comply with any requirements or restrictions that the Valuation Manual imposes when aggregating these policy types for purposes of principle-based reserve calculations.

(ii) For Covered Policies described in section 5(b)(ii) above, the Actuarial Method is the greatest of the Deterministic Reserve, the Stochastic Reserve, or the NPR, regardless of whether the criteria for exemption testing can be met.

(iii) Except as provided in paragraph (iv) below, the Actuarial Method shall be applied on a gross basis to all risks with respect to the Covered Policies as originally issued or assumed by the ceding insurer.

(iv) If the reinsurance treaty cedes less than one hundred percent (100%) of the risk with respect to the Covered Policies then the Required Level of Primary Security may be reduced as follows:

(A) If a reinsurance treaty cedes only a quota share of some or all of the risks pertaining to the Covered Policies, the Required Level of Primary Security, as well as any adjustment under subparagraph (C) below, may be reduced to a pro rata portion in accordance with the percentage of the risk ceded;

(B) If the reinsurance treaty in a non-exempt arrangement cedes only the risks pertaining to a secondary guarantee, the Required Level of Primary Security may be reduced by an amount determined by applying the Actuarial Method on a gross basis to all risks, other than risks related to the secondary guarantee, pertaining to the Covered Policies, except that for Covered Policies for which the ceding insurer did not elect to apply the provisions of VM-20 to establish statutory reserves, the Required Level of Primary Security may be reduced by the statutory reserve retained by the ceding insurer on those Covered Policies, where the retained reserve of those Covered Policies should be reflective of any reduction pursuant to the cession of mortality risk on a yearly renewable term basis in an exempt arrangement;

(C) If a portion of the Covered Policy risk is ceded to another reinsurer on a yearly renewable term basis in an exempt arrangement, the Required Level of Primary Security may be reduced by the amount resulting by applying the Actuarial Method including the reinsurance section of VM-20 to the portion of the Covered Policy risks ceded in the exempt arrangement, except that for Covered Policies issued prior to January 1, 2017, this adjustment is not to exceed  $[c_x / (2 * \text{number of reinsurance premiums per year})]$  where  $c_x$  is calculated using the same mortality table used in calculating the Net Premium Reserve; and

(D) For any other treaty ceding a portion of risk to a different reinsurer, including but not limited to stop loss, excess of loss, and other non-proportional reinsurance treaties, there shall be no reduction in the Required Level of Primary Security.

(v) It is possible for any combination of subparagraphs (A), (B), (C), and (D) above to apply. Adjustments to the Required Level of Primary Security shall be done in the sequence that accurately reflects the portion of the risk ceded via the treaty. The ceding insurer shall document the rationale and steps taken to accomplish the adjustments to the Required Level of Primary Security due to the cession of less than one hundred percent (100%) of the risk.

(vi) The Adjustments for other reinsurance will be made only with respect to reinsurance treaties entered into directly by the ceding insurer. The ceding insurer shall make no adjustment as a result of a retrocession treaty entered into by the assuming insurers.

(vii) In no event shall the Required Level of Primary Security resulting from application of the Actuarial Method exceed the amount of statutory reserves ceded.

(viii) If the ceding insurer cedes risks with respect to Covered Policies, including any riders, in more than one reinsurance treaty subject to this Regulation, in no event will the aggregate Required Level of Primary Security for those reinsurance treaties be less than the Required Level of Primary Security calculated using the Actuarial Method as if all risks ceded in those treaties were ceded in a single treaty subject to this Regulation;

(ix) If a reinsurance treaty subject to this Regulation cedes risk on both Covered and Non-Covered Policies, credit for the ceded reserves shall be determined as follows:

(A) The Actuarial Method shall be used to determine the Required Level of Primary Security for the Covered Policies, and section 7 shall be used to determine the reinsurance credit for the Covered Policy reserves; and

(B) Credit for the Non-Covered Policy reserves shall be granted only to the extent that security, in addition to the security held to satisfy the requirements of subparagraph (A), is held by or on behalf of the ceding insurer in accordance with W.S. 26-5-112 and 26-5-113. Any Primary Security used to meet the requirements of this subparagraph may not be used to satisfy the Required Level of Primary Security for the Covered Policies.

(b) Valuation used for Purposes of Calculations: For the purposes of both calculating the Required Level of Primary Security pursuant to the Actuarial Method and determining the amount of Primary Security and Other Security, as applicable, held by or on behalf of the ceding insurer, the following shall apply:

(i) For assets, including any assets held in trust, that would be admitted under the NAIC Accounting Practices and Procedures Manual if they were held by the ceding insurer, the valuations shall be determined according to statutory accounting procedures as if the assets were held in the ceding insurer's general account and without taking into consideration the effect of any prescribed or permitted practices; and

(ii) For all other assets, the valuations are to be those that were assigned to the assets for the purpose of determining the amount of reserve credit taken. In addition, the asset spread tables and asset default cost tables required by VM-20 shall be included in the Actuarial Method if adopted by the NAIC's Life Actuarial (A) Task Force no later than the December 31<sup>st</sup> on or immediately preceding the valuation date for which the Required Level of Primary Security is being calculated. The tables of asset spreads and asset default costs shall be incorporated into the Actuarial Method in the manner specified in VM-20.

**Section 7. Requirements Applicable to Covered Policies to Obtain Credit for Reinsurance; Opportunity for Remediation.**

(a) Requirements: Subject to the exemptions described in section 4 and the provisions of section 7(b), credit for reinsurance shall be allowed with respect to ceded liabilities pertaining to Covered Policies pursuant to W.S. 26-5-112 or 26-5-113 if, and only if, in addition to all other requirements imposed by law or regulation, the following requirements are met on a treaty-by-treaty basis:

(i) The ceding insurer's statutory policy reserves with respect to the Covered Policies are established in full and in accordance with the applicable requirements of W.S. 26-6-201 et seq. and related regulations and actuarial guidelines, and credit claimed for any reinsurance treaty subject to this regulation does not exceed the proportionate share of those reserves ceded under the contract;

(ii) The ceding insurer determines the Required Level of Primary Security with respect to each reinsurance treaty subject to this regulation and provides support for its calculation as determined to be acceptable to the commissioner;

(iii) Funds consisting of Primary Security, in an amount at least equal to the Required Level of Primary Security, are held by or on behalf of the ceding insurer, as security under the reinsurance treaty within the meaning of W.S. 26-5-113, on a funds withheld, trust, or modified coinsurance basis;

(iv) Funds consisting of Other Security, in an amount at least equal to any portion of the statutory reserves as to which Primary Security is not held pursuant to paragraph (iii) above, are held by or on behalf of the ceding insurer as security under the reinsurance treaty within the meaning of W.S. 26-5-113; and

(v) Any trust used to satisfy the requirements of this section 7 shall comply with all of the conditions and qualifications of Chapter 50, Section 11, of the Wyoming Insurance Department regulations, except that:

(A) Funds consisting of Primary Security or Other Security held in trust, shall for the purposes identified in section 6(b), be valued according to the valuation rules set forth in section 6(b), as applicable;

(B) There are no affiliate investment limitations with respect to any security held in trust if the security is not needed to satisfy the requirements of section 7(a)(iii);

(C) The reinsurance treaty shall prohibit withdrawals or substitutions of trust assets that would leave the fair market value of the Primary Security within the trust (when aggregated with Primary Security outside the trust that is held by or on behalf of the ceding insurer in the manner required by section 7(a)(iii)) below one hundred two percent (102%) of the level required by section 7(a)(iii) at the time of the withdrawal or substitution; and

(D) The determination of reserve credit under Chapter 50, Section 11(e) of the Wyoming Insurance Department regulations shall be determined according to the valuation rules set forth in section 6(b), as applicable; and

(vi) The reinsurance treaty has been approved by the commissioner.

(b) Requirements at Inception Date and on an On-going Basis; Remediation.

(i) The requirements of section 7(a) shall be satisfied as of the date that risks under Covered Policies are ceded (if the date is on or after the effective date of this regulation) and on an ongoing basis thereafter. Under no circumstances shall a ceding insurer take or consent to any action or series of actions that would result in a deficiency under section 7(a)(iii) or 7(a)(iv) with respect to any reinsurance treaty under which Covered Policies have been ceded, and in the event that a ceding insurer becomes aware at any time that such a deficiency exists, it shall use its best efforts to arrange for the deficiency to be eliminated as expeditiously as possible.

(ii) Prior to the due date of each Quarterly or Annual Statement, each life insurance company that has ceded reinsurance within the scope of section 3 shall perform an analysis, on a treaty-by-treaty basis, to determine, as to each reinsurance treaty under which Covered Policies have been ceded, whether as of the end of the immediately preceding calendar quarter (the valuation date), the requirements of sections 7(a)(iii) and 7(a)(iv) were satisfied. The ceding insurer shall establish a liability equal to the excess of the credit for reinsurance taken over the amount of Primary Security actually held pursuant to section 7(a)(iii), unless either:

(A) The requirements of section 7(a)(iii) and 7(a)(iv) were fully satisfied as of the valuation date as to such reinsurance treaty; or

(B) Any deficiency has been eliminated before the due date of the Quarterly or Annual Statement to which the valuation date relates through the addition of Primary Security and/or Other Security, as the case may be, in an amount and in a form that would have caused the requirements of section 7(a)(iii) and 7(a)(iv) to be fully satisfied as of the valuation date.

(iii) Nothing in section 7(b)(ii) shall be construed to allow a ceding company to maintain any deficiency under section 7(a)(iii) or 7(a)(iv) for any period of time longer than is reasonably necessary to eliminate it.

**Section 8. Severability.** If any provision of this regulation is held invalid, the remainder shall not be affected.

**Section 9. Prohibition against Avoidance.** No insurer that has Covered Policies as to which this regulation applies (as set forth in section 3) shall take any action or series of actions, or enter into any transaction or arrangement or series of transactions or arrangements if

the purpose of the action, transaction or arrangement or series thereof is to avoid the requirements of this regulation, or to circumvent its purpose and intent, as set forth in section 2.

**Section 10. Effective Date.** This regulation shall become effective upon filing with the Secretary of State and shall pertain to all Covered Policies in force as of and after that date.