

CREDIT FOR REINSURANCE MODEL LAW

Section 2. Credit Allowed a Domestic Ceding Insurer

Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a reduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of Subsections A, B, C, D, E, ~~or F~~ or G of this section; provided further, that the commissioner may adopt by regulation pursuant to Section 5B specific additional requirements relating to or setting forth: (1) the valuation of assets or reserve credits; (2) the amount and forms of security supporting reinsurance arrangements described in Section 5B; and/or (3) the circumstances pursuant to which credit will be reduced or eliminated.

Drafting Note: This new regulatory authority is being added in response to reinsurance arrangements entered into, directly or indirectly, with life/health insurer-affiliated captives, special purpose vehicles or similar entities that may not have the same statutory accounting requirements or solvency requirements as US-based multi-state life/health insurers. To assist in achieving national uniformity, commissioners are asked to strongly consider adopting regulations that are substantially similar in all material respects to NAIC adopted model regulations in the handling and treatment of such reinsurance arrangements.

Credit shall be allowed under Subsections A, B or C of this section only as respects cessions of those kinds or classes of business which the assuming insurer is licensed or otherwise permitted to write or assume in its state of domicile or, in the case of a U.S. branch of an alien assuming insurer, in the state through which it is entered and licensed to transact insurance or reinsurance. Credit shall be allowed under Subsections C or D of this section only if the applicable requirements of Subsection ~~GH~~ have been satisfied.

-
- F. (1) Credit shall be allowed when the reinsurance is ceded to an assuming insurer meeting each of the conditions set forth below.
- (a) The assuming insurer must have its head office or be domiciled in, as applicable, and be licensed in a jurisdiction that has been recognized as a reciprocal jurisdiction by the commissioner pursuant to paragraph (2) of this subsection. A “Reciprocal Jurisdiction” is a jurisdiction that meets one of the following:
- (i) A non-U.S. jurisdiction that has entered into ~~an treaty or~~ an international reinsurance agreement with the United States, each within its legal authority, or, in the case of an international reinsurance agreement between the United States and European Union, is a member state of the European Union, and has been determined by the Commissioner to be in compliance with all material terms of the agreement, including the reciprocal treatment of United States insurers and reinsurers, regarding credit for reinsurance, all of the terms of which relevant to credit for reinsurance are in effect, and which the commissioner has recognized as a Reciprocal Jurisdiction in accordance with the terms and conditions of such treaty or agreement, any contemporaneous statement or statements by the duly authorized department of the United States, and pursuant to regulations issued by the commissioner; ~~or~~ For purposes of this subsection, an international reinsurance agreement is a treaty or international agreement, including an agreement entered into pursuant to Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C. §§ 313 and 314, that is currently in effect or in a period of provisional application and entitles certain reinsurers with a domicile or head office in a party state or a party’s member state to assume reinsurance from United States ceding insurers; or

- (ii) A qualified jurisdiction, as determined by the commissioner pursuant to [Subsection 2E(3) of Credit for Reinsurance Model Law], which is not also a party to a treaty or international agreement referred to in subsection (i) above (or in the case that the European Union is a party to such treaty or international agreement, is a member state thereof) and which meets certain additional requirements as specified by the commissioner in regulation.
- (b) The assuming insurer must have and maintain on an ongoing basis minimum capital and surplus, or its equivalent, calculated according to the methodology of its ~~domiciliary~~domiciliary jurisdiction, in an amount to be ~~determined by the commissioner pursuant to~~set forth in state regulation. If the assuming ~~re~~insurer is an association, including incorporated and individual unincorporated underwriters, it must have and maintain on an ongoing basis minimum capital and surplus equivalents (net of liabilities), calculated according to the methodology applicable in its domiciliary jurisdiction, and a central fund containing a balance in amounts to be ~~determined by the commissioner pursuant to~~set forth in state regulation.
- (c) The assuming insurer must have and maintain on an ongoing basis a minimum solvency or capital ratio, as applicable, ~~to be determined by the commissioner pursuant to~~which will be set forth in state regulation. If the assuming ~~re~~insurer is an association, including incorporated and individual unincorporated underwriters, it must have and maintain on an ongoing basis a minimum solvency or capital ratio in the ~~territory~~Reciprocal Jurisdiction where the assuming ~~re~~insurer has its head office or is domiciled, as applicable, and is also licensed.
- (d) The assuming insurer must agree and provide adequate assurance to the commissioner, in a form specified by the commissioner pursuant to regulation, as follows:
 - (i) The assuming insurer must provide prompt written notice and explanation to the commissioner if it falls below the minimum requirements set forth in subparagraphs (b) ~~and~~or (c), or if any regulatory action is taken against it for serious noncompliance with applicable law ~~as determined by the commissioner~~;
 - (ii) The assuming insurer must consent in writing to the jurisdiction of the courts of this state and to the appointment of the commissioner as agent for service of process. Either by law, regulation or request of the commissioner, may also require that such consent shall be provided and included in each reinsurance agreement ~~under the commissioner's jurisdiction~~. Nothing in this provision shall limit or in any way alter the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms, except with respect to insolvency or delinquency proceedings;
 - (iii) The assuming insurer must consent in writing to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer or its legal successor, that have been declared enforceable in the ~~territory~~jurisdiction where the judgment was obtained;
 - (iv) Each reinsurance agreement must include a provision requiring the assuming ~~re~~insurer to provide security in an amount equal to one hundred percent (100%) of the assuming ~~re~~insurer's liabilities

attributable to reinsurance ceded pursuant to that agreement if the assuming reinsurer resists enforcement of a final judgment that is enforceable under the law of the ~~territory~~jurisdiction in which it was obtained or a properly enforceable arbitration award, whether obtained by the ceding insurer or by its legal successor on behalf of its resolution estate, ~~if applicable~~; and

- (v) ~~Each reinsurance agreement must include a representation by~~ The assuming insurer must confirm that it is not ~~then~~ presently participating in any solvent scheme of arrangement which involves this state's ceding insurers, and agrees to notify the ceding insurer and the commissioner and to provide security in an amount equal to one hundred percent (100%) of liabilities attributable to the ceding insurer consistent with the terms of the scheme should the assuming reinsurer enter into such an arrangement consistent with the terms of any treaty or international agreement respecting reinsurance credit to which the United States is a party. For purposes of this Subsection, the term "solvent scheme of arrangement" means a statutory or regulatory compromise procedure subject to requisite majority creditor approval and extraterritorial judicial sanction to finally commute liabilities of duly noticed classed members or creditors of a solvent debtor; or to reorganize or restructure the debts and obligations of a solvent debtor on a final basis; all of which may be subject to foreign judicial recognition and enforcement of the arrangement.
 - (e) The assuming insurer or its legal ~~predecessor or~~ successor, ~~where applicable,~~ must provide, on behalf of itself and any legal predecessors, certain documentation to the commissioner as specified by the commissioner in regulation.
 - (f) The assuming insurer must maintain a practice of prompt payment of claims under reinsurance agreements, pursuant to criteria set forth in regulation.
 - (g) The assuming insurer's supervisory authority must confirm to the commissioner on an annual basis, ~~at a time determined by the commissioner, as of the preceding December 31 or at the annual date otherwise statutorily reported to the Reciprocal Jurisdiction,~~ that the assuming reinsurer complies with the requirements set forth in subparagraphs (b) and (c).
 - (h) The assuming insurer must satisfy any other requirements deemed relevant by the commissioner. To the extent that information or agreement is not required by a treaty or international agreement referred to in Subsection F(1)(a)(i), the failure to satisfy such other requirements will not alter the ability of the ceding insurer to take credit for such reinsurance. Nothing in this provision precludes an assuming insurer from providing the commissioner with information on a voluntary basis.
- (2) The commissioner shall create and publish a list of Reciprocal Jurisdictions.
- (a) A list of Reciprocal Jurisdictions shall be published through the NAIC Committee Process. The commissioner shall consider this list in determining Reciprocal Jurisdictions, and the commissioner has the discretion to defer to this list. The commissioner may approve a jurisdiction that does not appear on the list of Reciprocal Jurisdictions in accordance with criteria to be developed under regulations issued by the commissioner.

- (b) The commissioner may remove a jurisdiction from the list of Reciprocal Jurisdictions upon a determination that the jurisdiction no longer meets the requirements of a Reciprocal Jurisdiction in accordance with a process set forth in regulations issued by the commissioner. Upon removal of a Reciprocal Jurisdiction from this list credit for reinsurance ceded to an assuming insurer which has its home office or is domiciled in that jurisdiction shall be allowed, if otherwise allowed pursuant to [cite to state law equivalent to Credit for Reinsurance Model Law].
- (3) The commissioner shall timely create and publish a list of assuming insurers that have satisfied the conditions set forth in this subsection and to which cessions shall be granted credit in accordance with this subsection. The commissioner may add an assuming insurer to such list if an NAIC accredited jurisdiction has added such assuming insurer to a list of such assuming insurers or if, upon initial eligibility, the assuming insurer submits the information to the commissioner as required under Paragraph (1)(d) of this subsection and complies with any additional requirements that the commissioner may impose by regulation.
- (4) If the commissioner determines that an assuming insurer no longer meets ~~the~~ one or more of the requirements under this subsection, the commissioner may revoke or suspend the eligibility of the assuming insurer for recognition under this subsection in accordance with procedures set forth in regulation. ~~Revocation of an assuming insurer's eligibility by the commissioner will require the assuming insurer maintain security in a form acceptable to the commissioner and consistent with the provisions of Section 3.~~
- (a) While an assuming insurer's eligibility is suspended, no reinsurance agreement issued, amended or renewed after the effective date of the suspension qualifies for credit except to the extent that the assuming insurer's obligations under the contract are secured in accordance with Section 3.
- (b) If an assuming insurer's eligibility is revoked, no credit for reinsurance may be granted after the effective date of the revocation with respect to any reinsurance agreements entered into by the assuming insurer, including reinsurance agreements entered into prior to the date of revocation, except to the extent that the assuming insurer's obligations under the contract are secured in a form acceptable to the commissioner and consistent with the provisions of Section 3.
- (5) ~~The commissioner shall require an assuming insurer under this subsection to post one hundred percent (100%) security, for the benefit of the ceding insurer or its estate, upon the entry of an order of rehabilitation, liquidation or conservation against the ceding insurer. Upon the entry of an order of rehabilitation, liquidation or conservation against the ceding insurer, the supervising court shall require an assuming insurer under this subsection to post one hundred percent (100%) security for the benefit of the ceding insurer or its estate.~~
- (6) Nothing in this subsection shall limit or in any way alter the capacity of parties to a reinsurance agreement to agree on requirements for security or other terms in that reinsurance agreement consistent herewith.
- (7) ~~This subsection shall apply only to reinsurance agreements entered into, amended, or renewed on or after the [date of adoption of model revisions], and only with respect to losses incurred and reserves reported from and after the later of (i) the [date of adoption], or (ii) the effective date of such new reinsurance agreement, amendment, or renewal. This subsection shall not apply to reinsurance agreements entered into before the subsection's application, or to losses incurred or to reserves posted before the subsection's application. This subsection shall not apply to reinsurance agreements entered into before the~~

subsection's application, or to losses incurred or to liabilities ceded before the subsection's application.

Section 5. Rules and Regulations

- A. The commissioner may adopt rules and regulations implementing the provisions of this law.

Drafting Note: It is recognized that credit for reinsurance also can be affected by other sections of the enacting state's code, e.g., a statutory insolvency clause or an intermediary clause. It is recommended that states that do not have a statutory insolvency clause or an intermediary clause consider incorporating such clauses in their legislation.

- B. The commissioner is further authorized to adopt rules and regulations applicable to reinsurance arrangements described in Paragraph (1) of this Section 5B.

Drafting Note: This new regulatory authority is being added in response to reinsurance arrangements entered into, directly or indirectly, with life/health insurer-affiliated captives, special purpose vehicles or similar entities that may not have the same statutory accounting requirements or solvency requirements as US-based multi-state life/health insurers. To assist in achieving national uniformity, commissioners are asked to strongly consider adopting regulations that are substantially similar in all material respects to NAIC adopted model regulations in the handling and treatment of such policies and reinsurance arrangements.

- (1) A regulation adopted pursuant to this Section 5B, may apply only to reinsurance relating to:
 - (a) Life insurance policies with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits;
 - (b) 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) Variable annuities with guaranteed death or living benefits;
 - (d) Long-term care insurance policies; or
 - (e) Such other life and health insurance and annuity products as to which the NAIC adopts model regulatory requirements with respect to credit for reinsurance.
- (2) A regulation adopted pursuant to Paragraph 1(a) or 1(b) of this Section 5B, may apply to any treaty containing (i) policies issued on or after January 1, 2015, and/or (ii) policies issued prior to January 1, 2015, if risk pertaining to such pre-2015 policies is ceded in connection with the treaty, in whole or in part, on or after January 1, 2015.

Drafting Note: The NAIC's Actuarial Guideline XLVIII (AG 48) became effective January 1, 2015, and covers policies ceded on or after this date unless they were ceded as part of a reserve financing arrangement as of December 31, 2014. One regulation contemplated by this revision to the NAIC Credit for Reinsurance Model Law is intended to substantially replicate the requirements for the amounts and forms of security held under the rules provided in AG 48. AG 48 was written to sunset upon a state's adoption (pursuant to the enabling authority of the preceding paragraph) of a regulation with terms substantially similar to AG 48. The preceding paragraph is intended to provide continuity of rules applicable to those policies and reinsurance arrangements, including continuity as to the policies covered by such rules. The preceding paragraph is not intended to change the scope of, or collateral requirements for policies and treaties covered under AG 48.

- (3) A regulation adopted pursuant to this Section 5B may require the ceding insurer, in calculating the amounts or forms of security required to be held under regulations promulgated under this authority, to use the Valuation Manual adopted by the NAIC under Section 11B(1) of the NAIC Standard Valuation Law, including all amendments adopted by the NAIC and in effect on the date as of which the calculation is made, to the extent applicable.
- (4) A regulation adopted pursuant to this Section 5B shall not apply to cessions to an assuming insurer that:

- (a) ~~Meets the conditions set forth in Section 2F of the Credit for Reinsurance Model Law in this state or, if this state has not adopted provisions substantially equivalent to Section 2F of the Credit for Reinsurance Model Law, the assuming insurer is operating in accordance with provisions substantially equivalent to Section 2F of the Credit for Reinsurance Model Law in a minimum of five (5) other states; or~~
- ~~(a)~~(b) Is certified in this state or, if this state has not adopted provisions substantially equivalent to Section 2E of the Credit for Reinsurance Model Law, certified in a minimum of five (5) other states; or
- ~~(b)~~(c) Maintains at least \$250 million in capital and surplus when determined in accordance with the NAIC *Accounting Practices and Procedures Manual*, including all amendments thereto adopted by the NAIC, excluding the impact of any permitted or prescribed practices; and is

 - (i) licensed in at least 26 states; or
 - (ii) licensed in at least 10 states, and licensed or accredited in a total of at least 35 states.
- (5) The authority to adopt regulations pursuant to this Section 5B does not limit the commissioner's general authority to adopt regulations pursuant to Section 5A of this law.