SUBCHAPTER F. REINSURANCE
28 TAC §§7.614 - 7.616

INTRODUCTION. The Texas Department of Insurance (TDI) proposes to amend 28 TAC §7.614, concerning adoption of forms by reference, and adopt new 28 TAC §7.615 and §7.616, concerning credit for reinsurance related to reciprocal jurisdictions and reserving practices related to credit for reinsurance, respectively.

These amendments are proposed to ensure TDI retains its authority to regulate credit for reinsurance matters associated with covered agreements, to align TDI's rules with the current approach to regulate reserve financing arrangements for certain life insurance policies, and to align TDI's rules with updates to the National Association of Insurance Commissioners (NAIC) accreditation requirements.

EXPLANATION. Proposed amendments to §7.614 adopt by reference the form an assuming insurer must use under new §7.615. This form is required to be adopted by the Commissioner under Insurance Code §493.108, as added by House Bill 1689, 87th Legislature, 2021. The amendments also update the submission method for the forms listed in the section.

Proposed new §7.615 is substantially similar to NAIC Model Regulation #786, which authorizes credit for reinsurance related to reciprocal jurisdictions. It implements Insurance Code §493.108, which authorizes credit ceded to certain assuming reinsurers that have their principal office in or are domiciled in a reciprocal jurisdiction, as defined by the statute. Section 493.108, which becomes effective on January 1, 2022, requires that the Commissioner:

- establish minimum capital and surplus, or equivalent, amounts and minimum solvency or capital ratios;

- prescribe a form for assuming insurers to use to provide adequate assurance that they meet certain standards; and

- prescribe and publish a list of reciprocal jurisdictions and a list of eligible assuming insurers.

Proposed new §7.616 is substantially similar to NAIC Model Regulation #787. The purpose of Model Regulation #787 is to establish uniform standards governing reserve financing arrangements for life insurance policies with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits and universal life insurance policies with secondary guarantees, and to ensure that the security for these financing arrangements is held by or on behalf of ceding insurers in the forms and amounts authorized.

The proposed amended and new sections will be effective January 1, 2022 and are described in the following paragraphs.

Section 7.614. Amended §7.614 adopts by reference Form RJ-1, titled "Certificate of Reinsurer Domiciled in Reciprocal Jurisdiction," which is referenced in NAIC Model Regulation #786. The adoption of that form by reference discharges one of the Commissioner's obligations under Insurance Code §493.108. The amendments also update the submission method for the forms listed in §7.614.

Section 7.615. Proposed new §7.615 implements Insurance Code §493.108 which authorizes credit for reinsurance ceded to certain assuming reinsurers that have their principal office in or are domiciled in a reciprocal jurisdiction, as defined by the statute. Subsection (a) of this proposed new section requires the Commissioner to allow credit for certain reinsurance cessions as provided in Insurance Code §493.108. Subsection (b) describes "reciprocal jurisdictions" and "covered agreement." Subsection (c) states requirements that assuming insurers must meet so that ceding insurers can receive credit for the reinsurance ceded to those assuming insurers. Subsection (d) requires the Commissioner to create and publish a list of reciprocal jurisdictions. Subsection (e) requires the Commissioner to prescribe and publish a list of eligible assuming insurers. Subsection (f) provides that the Commissioner may revoke or suspend the eligibility of assuming insurers on certain conditions. Subsection (g) requires the Commissioner to notify the ceding insurer, the assuming insurer, and others if the Commissioner revokes or suspends eligibility under subsection (f). Subsection (h) addresses security requirements if a ceding insurer is subject to conservation, rehabilitation, or liquidation.

Section 7.616. Proposed new §7.616 establishes standards governing reserve financing arrangements for certain life insurance policies. Subsection (a) of the proposed new section defines terms used in the section, including "actuarial method," "other security," "primary security," and "required level of primary security." Subsection (b) establishes the applicability of the rule to certain types of reinsurance treaties. Subsection (c) exempts from the rule certain types of reinsurance treaties. Subsection (d) establishes the actuarial methods and valuations to be used to calculate the required level of primary security and other security for various types of reinsurance agreements. Subsection (e) establishes additional requirements to obtain credit for reinsurance, including requirements for ceding insurers and reinsurance agreements. Subsection (e) also provides ceding insurers the opportunity to remediate deficiencies resulting under the rule so that credit for reinsurance may be allowed.

NAIC. The proposed amended §7.614 and new §7.615 and §7.616 include provisions related to NAIC rules, regulations, directives, or standards. Under Insurance Code §36.004, TDI must consider whether authority exists to enforce or adopt such a proposal. TDI must also consider, under Insurance Code §36.007, whether a proposed rule adopts or enforces an agreement that infringes on the authority of this state to regulate the business of insurance in this state. If so, the rule has no effect unless the Texas Legislature approves the agreement. TDI has determined that neither Insurance Code §36.004 nor §36.007 prohibit adoption or enforcement of the proposed rules because they are expressly authorized by statute or are necessary to preserve TDI's accreditation. Also, this proposal does not implement an interstate, a national, or an international agreement, so §36.007 is not implicated.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Jamie Walker, deputy commissioner, Financial Regulation Division, has determined that during each year of the first five years the proposed sections are in effect, there will be no measurable fiscal impact on state and local governments as a result of administering the sections, other than that imposed by the statute. Ms. Walker made this determination because the proposed sections do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed sections.

Ms. Walker does not anticipate a measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed sections are in effect, Ms. Walker expects that administering the sections will have the public benefits of (a) ensuring that TDI's rules conform to Insurance Code §493.108 and best practices for insurers, (b) maintaining TDI's accreditation with the NAIC, (c) providing TDI with the ability to better regulate the solvency of regulated entities, and (d) avoiding federal preemption of the state regulation of certain reinsurance transactions.

Ms. Walker expects that the proposed sections will not increase the costs imposed on regulated entities, and will likely result in overall cost savings.

Insurance Code §493.108, which is based on NAIC Model Act #785, compels the adoption of §7.614 and §7.615 to ensure that Texas regulations do not conflict with and are consistent with covered agreements negotiated by the U.S. Trade Representative and the Federal Insurance Office (FIO), an office within the U.S. Department of the Treasury.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (31 U.S.C. §313 and §314) authorized the federal government to negotiate covered agreements with foreign governments to provide for the preemption of state laws that treat foreign insurers differently from U.S. insurers.

These covered agreements resulted after the regulators of foreign reinsurers objected to, among other requirements, the states' reinsurance collateral requirements. Those regulators argued that the collateral requirements reduce capital available to their reinsurers. Ultimately, the federal government and the European Union signed a covered agreement that, in addition to other requirements and under certain conditions, eliminates those collateral requirements. The federal government and the United Kingdom entered into a similar covered agreement.

A covered agreement provides the federal government with the framework to evaluate state insurance laws or regulations that treat non-U.S. insurers differently from U.S. insurers. NAIC Model #786, on which §7.614 and §7.615 are based, is the nationally developed model that the FIO has confirmed is consistent with the in-force covered agreements and satisfies the federal government's interest in this issue. Therefore, §7.614 and §7.615 establish rules that, with respect to this issue, equitably regulate non-U.S. and U.S. insurers to the satisfaction of the federal government so as to avoid federal preemption. Also, those sections and Insurance Code §493.108, which respond to the foreign regulators' objections, may minimize the need for other jurisdictions to seek covered agreements with the federal government.

Further, in avoiding regulatory inconsistencies that might otherwise emerge across states resulting from the elimination of the collateral requirements under the covered agreements, NAIC Model Regulation #786 will provide cost savings to regulated entities, because regulatory uniformity simplifies compliance.

For example, §7.614 adopts a form that regulated entities will have to complete and submit to TDI if they want to be considered eligible assuming insurers under Insurance Code §493.108. The form is based on NAIC Model Form RJ-1. Completion and submission of the form will likely impose only a negligible cost, if any, offset by the regulatory efficiency gained in adopting the model.

Another example relates to the amounts necessary to satisfy the capital and surplus requirements, central fund amount requirements, and minimum solvency or capital ratio requirements. Section 7.615 establishes these specific amounts as set out in NAIC Model Regulation #786.

Thus, proposed §7.614 and §7.615 will result in cost savings to regulated entities by avoiding federal preemption and establishing simplified and uniform requirements for reinsurance.

Additionally, no insurer is required to claim credit for reinsurance or provide reinsurance under Insurance Code §493.108. Rather, other avenues for credit for reinsurance are available under Insurance Code Chapter 493, Subchapter F. So, proposed §7.614 and §7.615 present a credit-for-reinsurance option that regulated entities can consider while engaging in the business of insurance in this state.

Likewise, Ms. Walker expects that proposed §7.616 will not increase the costs imposed on regulated entities. Section 7.616 is substantially similar to Actuarial Guideline 48 (AG48), already in place. AG48 is provided in the Accounting Practices and Procedures Manual, which is implemented in Texas through 28 TAC §7.18. So, this new section does not require regulated entities to make calculations not already made under AG48. Also, §7.616, based on NAIC Model Regulation #787, will further coordinate the regulation of multistate insurers. This coordinated regulation avoids inconsistencies and cost increases that an insurer might otherwise face if the regulatory requirements for these calculations were not uniform across state lines.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed sections will not have an adverse economic effect on small or micro-businesses, or on rural communities. This is because the proposed sections apply only to insurers that do not qualify as small or micro-businesses and do not apply to rural communities. So, under Government Code §2006.002(c), TDI is not required to prepare an economic impact statement or a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that the proposed sections do not impose a possible cost on regulated entities.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed sections rule is in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will create new regulations;
- will not expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposed sections that are received by TDI not later than 5:00 p.m., central time, on September 27, 2021. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC-GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposed rules, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC-GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by the department no later than 5:00 p.m., central time, on September 27, 2021. If TDI holds a public hearing, TDI will consider written comments and those presented at the hearing.

STATUTORY AUTHORITY. TDI proposes amended §7.614 and new §7.615 and §7.616 under Insurance Code §§493.108, 493.054, 493.003, 425.162, 36.004, 36.002, and 36.001.

Insurance Code §493.108 authorizes the Commissioner to adopt by rule certain requirements, including minimum capital and surplus requirements, central fund amount requirements, minimum solvency or capital ratio requirements, assurance form requirements, security form requirements, documentation requirements, prompt payment requirements, and process and procedure requirements.

Insurance Code §493.054(c) authorizes the Commissioner to adopt reasonable rules relating to the statutory accounting and financial statement requirements and the treatment of reinsurance contracts between insurers, and any contingencies arising from reinsurance contracts.

Insurance Code §493.003 provides the Commissioner general rulemaking authority for Chapter 493 and allows the Commissioner to adopt necessary and reasonable rules under Insurance Code Chapter 493 to protect the public interest.

Insurance Code §425.162 authorizes the Commissioner to adopt rules, minimum standards, or limitations that are fair and reasonable as appropriate to supplement and implement Insurance Code Chapter 425, Subchapter C.

Insurance Code §36.004(c) authorizes the Commissioner to adopt rules to require compliance with a rule, regulation, directive, or standard adopted by the NAIC if the rule is necessary to preserve TDI's NAIC accreditation. Before the adoption of the rule, the Commissioner must provide the standing committee of the senate and house of representatives with primary jurisdiction over TDI with written notice of the Commissioner's intent to adopt the rule.

Insurance Code §36.002(2)(D) authorizes the Commissioner to adopt reasonable rules that are appropriate to accomplish the purposes of Insurance Code Chapter 493, relating to authorized reinsurance; credit and accounting.

Insurance Code §36.001 authorizes the Commissioner to adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Proposed amended §7.614 and new §7.615 implement Insurance Code §493.108. Proposed new §7.616 implements Insurance Code §493.054.

SUBCHAPTER F. REINSURANCE.
28 TAC §7.614

TEXT.

§7.614. Posting of Information, Submissions, and Adoption of Forms by Reference.

(a) Information and filings required under this subchapter must be submitted to the Commissioner or TDI on paper or in an electronic format that is acceptable to TDI. TDI will specify acceptable electronic submission formats and methods on the TDI website or the form.

(b) TDI adopts by reference the following standard forms for use by all insurers that are subject to the provisions of this subchapter and Insurance Code Chapter 493. Bracketed information in the forms, including TDI submission locations, submission formats and methods, and contact information, is subject to change, and persons submitting the forms must confirm that they are using the most recent online version before submitting. These forms are available on the TDI website. These forms are more specifically identified as follows:

(1) Form AR-1, Certificate of Accredited Assuming Insurer;

(2) Form CR-1, Certificate of Certified Reinsurer;

(3) Form CR-F Reinsurance - Property/Casualty Business; [~~and~~]

(4) Form CR-S Reinsurance - Life Insurance, Annuities, Deposit Funds and Other Liabilities, and Accident and Health Insurance; and

(5) Form RJ-1, Certificate of Reinsurer Domiciled in Reciprocal Jurisdiction.

(c) All submissions to the Commissioner or TDI required in this subchapter must be sent to the appropriate [~~physical, mailing, or electronic~~] address:

(1) specified on the applicable TDI form being used;

(2) listed on the TDI website for a particular submission; or

(3) if the address for the submission is not listed, sent [~~:~~]

[~~(A)~~] electronically[~~,~~] to CLRfilings@tdi.texas.gov[~~;~~]

[~~(B) by hand delivery, to Company Licensing and Registration, Texas Department of Insurance, 333 Guadalupe, Mail Code 103-CL, Austin, Texas78701; or~~]

[~~(C) by mail, to Company Licensing and Registration, Texas Department of Insurance, P.O. Box 149104, Mail Code 103-CL, Austin, Texas 78714-9104~~].

§7.615. Credit for Reinsurance--Reciprocal Jurisdictions.

(a) The Commissioner, under Insurance Code §493.108, concerning Credit Allowed for Certain Eligible Assuming Insurers, shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that:

(1) is licensed to write reinsurance by a reciprocal jurisdiction described by subsection (b) of this section;

(2) has its principal office or is domiciled in that reciprocal jurisdiction; and

(3) meets the other conditions of this section.

(b) A "reciprocal jurisdiction" is a jurisdiction listed by the Commissioner under subsection (d) of this section, that is:

(1) a jurisdiction located outside of the United States that is subject to an in-force covered agreement with the United States, each within its legal authority, or, in the case of a covered agreement between the United States and the European Union, is a member state of the European Union. For purposes of this subsection, a "covered agreement" is an agreement entered into under the 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 addresses the elimination, under specified conditions, of collateral requirements as a condition for entering into any reinsurance agreement with a

ceding insurer domiciled in this state or for allowing the ceding insurer to recognize credit for reinsurance;

(2) a jurisdiction located in the United States that meets the requirements for accreditation under the NAIC financial standards and accreditation program; or

(3) a qualified jurisdiction listed by the Commissioner, under Insurance Code §493.1035, concerning Qualified Jurisdictions, and §7.624 of this title (relating to Qualified Jurisdictions), that is not described in paragraph (1) or (2) of this subsection and that the Commissioner determines meets the following additional requirements. The qualified jurisdiction:

(A) must provide that an insurer that has its principal office or is domiciled in the qualified jurisdiction will receive credit for reinsurance ceded to a U.S.-domiciled assuming insurer in the same manner credit is received for reinsurance assumed by insurers domiciled in the qualified jurisdiction;

(B) may not require a U.S.-domiciled assuming insurer to establish or maintain a local presence as a condition for entering into a reinsurance agreement with any ceding insurer regulated by the non-U.S. jurisdiction or allowing the ceding insurer to recognize credit for the reinsurance;

(C) must recognize the U.S. state regulatory approach to group supervision and group capital by providing written confirmation. The confirmation must be by a competent regulatory authority in the qualified jurisdiction and state that insurers and insurance groups that are domiciled or maintain their principal office in this state or another jurisdiction accredited by the NAIC are subject only to worldwide prudential insurance group supervision, including worldwide group governance, solvency and capital, and reporting, as applicable, by the Commissioner or the commissioner of the domiciliary state and will not be subject to group supervision at the level of the worldwide parent undertaking of the insurance or reinsurance group by the qualified jurisdiction; and

(D) must provide written confirmation by a competent regulatory authority in the qualified jurisdiction that information about insurers and their parents, subsidiaries, or affiliated entities, if applicable, will be provided to the Commissioner in accordance with a memorandum of understanding or similar document between the Commissioner and the qualified jurisdiction, including the International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding that the NAIC coordinates.

(c) Credit for reinsurance will be allowed if the reinsurance is ceded from an insurer domiciled in this state to an assuming insurer meeting the following conditions.

(1) The assuming insurer must be licensed to transact reinsurance by, and have its principal office in or be domiciled in, a reciprocal jurisdiction.

(2) The assuming insurer must have and maintain on an ongoing basis minimum capital and surplus, or its equivalent, calculated at least annually as of the preceding December 31 or at the annual date otherwise statutorily reported to the reciprocal jurisdiction in the amounts stated in subparagraphs (A) and (B) of this paragraph. Satisfaction of this requirement must be confirmed as required by paragraph (7) of this subsection, according to the methodology of the assuming insurer's domiciliary jurisdiction. The amounts are:

(A) not less than $250,000,000; or

(B) if the assuming insurer is an association, including incorporated and individual unincorporated underwriters:

(i) minimum capital and surplus equivalents (net of liabilities) or own funds of the equivalent of at least $250,000,000; and

(ii) a central fund containing a balance of the equivalent of at least $250,000,000.

(3) The assuming insurer must have and maintain on an ongoing basis a minimum solvency or capital ratio, as applicable, as follows:

(A) if the assuming insurer has its principal office or is domiciled in a reciprocal jurisdiction described by subsection (b)(1) of this section, the ratio specified in the applicable covered agreement;

(B) if the assuming insurer is domiciled in a reciprocal jurisdiction described by subsection (b)(2) of this section, a risk-based capital ratio of 300% of the authorized control level, calculated with use of the formula developed by the NAIC; or

(C) if the assuming insurer is domiciled in a reciprocal jurisdiction described by subsection (b)(3) of this section, a solvency or capital ratio that the Commissioner, after consulting with the reciprocal jurisdiction and considering any recommendations published through the NAIC committee process, determines to be an effective measure of solvency.

(4) The assuming insurer must agree to the following requirements and provide adequate assurance of its agreement by presenting a properly executed Form RJ-1, adopted by reference in §7.614 of this title (relating to Posting of Information, Submissions, and Adoption of Forms by Reference).

(A) The assuming insurer must agree to provide prompt written notice and explanation to the Commissioner if it fails to meet the minimum requirements of paragraph (2) or (3) of this subsection, or if any regulatory action is taken against it for serious noncompliance with applicable law.

(B) The assuming insurer must consent in writing to the jurisdiction of this state's courts and the appointment of the Commissioner as agent for service of process.

(i) The Commissioner may require that the consent be provided and included in each reinsurance agreement under the Commissioner's jurisdiction.

(ii) Nothing in this provision limits or in any way alters the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms, except to the extent the agreement to an alternative dispute resolution mechanism is unenforceable under applicable insolvency or delinquency laws.

(C) The assuming insurer must agree in writing to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer that have been declared enforceable in the jurisdiction where the judgment was obtained.

(D) Each reinsurance agreement must require the assuming insurer to provide security in an amount equal to 100% of the assuming insurer's liabilities attributable to reinsurance ceded under the relevant agreement if the assuming insurer resists enforcement of a final judgment that is enforceable under the law of the 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 estate, if applicable.

(E) The assuming insurer must confirm that it is not presently participating in any solvent scheme of arrangement involving this state's ceding insurers. The assuming insurer must agree to notify the ceding insurer and the Commissioner and to provide 100% security to the ceding insurer consistent with the terms of the scheme should the assuming insurer enter into a solvent scheme of arrangement. The security must be in a form consistent with the provisions of Insurance Code §493.104, concerning Credit for Funds Security Reinsurance Obligations, and §493.105, concerning Acceptability of Certain Letters of Credit, and §7.609 of this title (relating to Trust Agreement Requirements) and §7.610 of this title (relating to Letter of Credit Requirements). In this section, the term "solvent scheme of arrangement" means a foreign or alien statutory or regulatory compromise procedure subject to majority creditor approval and judicial sanction in the assuming insurer's domiciliary jurisdiction that finally commutes liabilities of duly noticed class members or creditors of a solvent debtor, or reorganizes or restructures the debts and obligations of a solvent debtor on a final basis, and which may be subject to judicial recognition and enforcement by a governing authority outside the ceding insurer's domiciliary jurisdiction.

(F) The assuming insurer must agree in writing to comply with paragraph (5) of this subsection.

(5) The assuming insurer or its legal successor on behalf of itself and any legal predecessors must provide to the Commissioner, on the Commissioner's request, the following documentation:

(A) for the two years before entering into the reinsurance agreement and subsequently on an annual basis, the assuming insurer's annual audited financial statements, including the external audit report, prepared under the law of the jurisdiction of the assuming insurer's principal office or domiciliary jurisdiction, as applicable;

(B) for the two years before entering into the reinsurance agreement, the solvency and financial condition reports or actuarial opinion, if filed with the assuming insurer's supervisor;

(C) before entering into the reinsurance agreement and subsequently not more than semiannually, an updated list of all disputed and overdue reinsurance claims outstanding for 90 days or more, regarding reinsurance assumed from ceding insurers domiciled in the United States; and

(D) before entering into the reinsurance agreement and subsequently not more than semiannually, information about the assuming insurer's assumed reinsurance by ceding insurer, ceded reinsurance by the assuming insurer, and reinsurance recoverable on paid and unpaid losses by the assuming insurer to allow for the evaluation of the prompt payment criteria under paragraph (6) of this subsection.

(6) The assuming insurer must maintain a practice of prompt payment of claims under reinsurance agreements. The lack of prompt payment is evidenced by any of the following criteria:

(A) more than 15% of the reinsurance recoverables from the assuming insurer is overdue and in dispute as reported to the Commissioner;

(B) more than 15% of the assuming insurer's ceding insurers or reinsurers have undisputed reinsurance recoverables on paid losses that are overdue by 90 days or more and exceed for each ceding insurer $100,000, or as otherwise specified in a covered agreement; or

(C) the undisputed aggregate amount of reinsurance recoverable on paid losses is overdue by 90 days or more and exceeds $50,000,000, or as otherwise specified in a covered agreement.

(7) The assuming insurer's supervisory authority must confirm to the Commissioner annually that the assuming insurer complies with paragraphs (2) and (3) of this subsection.

(8) Nothing in this subsection precludes an assuming insurer from voluntarily providing the Commissioner with information.

(d) The Commissioner shall timely create and publish on TDI's website a list of reciprocal jurisdictions.

(1) The Commissioner's list shall include any reciprocal jurisdiction described by subsection (b)(1) and (2) of this section. The Commissioner shall consider any other reciprocal jurisdiction on the list of reciprocal jurisdictions published through the NAIC committee process. The Commissioner may approve a jurisdiction that does not appear on the NAIC list of reciprocal jurisdictions as provided by applicable law or rule or under criteria published through the NAIC committee process.

(2) The Commissioner may remove a jurisdiction from the Commissioner's list of reciprocal jurisdictions if the Commissioner determines that the jurisdiction no longer meets any requirement of a reciprocal jurisdiction under applicable law, rule, or in accordance with a process published through the NAIC committee process. However, the Commissioner may not remove from the Commissioner's list a reciprocal jurisdiction described by subsection (b)(1) and (2) of this section. On removal of a reciprocal jurisdiction from the Commissioner's list, credit for reinsurance ceded to an assuming insurer domiciled in that jurisdiction must be allowed if otherwise allowed under Insurance Code Chapter 493 or this subchapter.

(e) The Commissioner shall timely create and publish on TDI's website a list of assuming insurers that have satisfied the conditions of this section. Cessions to an assuming insurer on the list must be granted credit in accordance with this section.

(1) If an NAIC accredited jurisdiction has determined that an assuming insurer meets the conditions in subsection (c) of this section, the Commissioner may defer to that jurisdiction's determination, and add the assuming insurer to the Commissioner's

list of assuming insurers. The Commissioner may accept financial documentation filed with another NAIC accredited jurisdiction or the NAIC to satisfy the requirements of subsection (c) of this section.

(2) When an assuming insurer requests that the Commissioner defer to another NAIC accredited jurisdiction's determination, the assuming insurer must submit a properly executed Form RJ-1 adopted by reference in §7.614 of this title and any additional information the Commissioner requires. If TDI receives a request, TDI will notify other states through the NAIC committee process and provide relevant information about the Commissioner's eligibility determination.

(f) If the Commissioner determines that an assuming insurer no longer meets any requirement under this section, the Commissioner may revoke or suspend the eligibility of the assuming insurer from the Commissioner's list of eligible assuming insurers.

(1) While an assuming insurer's eligibility is suspended, the assuming reinsurer's reinsurance agreements issued, amended, or renewed after the effective date of the suspension do not qualify for credit except to the extent that the assuming insurer's obligations under the agreements are secured in accordance with Insurance Code §493.104 and §7.608(b) of this title (relating to Insurance Ceded to Assuming Insurers not Authorized in Texas, or Accredited, Trusteed, or Certified under this Subchapter), §7.610 of this title (relating to Letter of Credit Requirements), and §7.611 of this title (relating to Indemnity Reinsurance Agreements--Required Provisions).

(2) If an assuming insurer's eligibility is revoked, no credit for the assuming reinsurer's reinsurance, including reinsurance agreements entered into before the date of revocation, may be granted after the effective date of the revocation except to the extent that the assuming insurer's obligations under the agreements are secured in a form

acceptable to the Commissioner and consistent with Insurance Code §493.104 and §§7.608(b), 7.610, and 7.611 of this title.

(g) Before denying statement credit, imposing a requirement to post security under subsection (f) of this section, or adopting any similar requirement that has substantially the same regulatory impact as security, the Commissioner shall:

(1) communicate with the ceding insurer, the assuming insurer, and the assuming insurer's supervisory authority that the assuming insurer no longer satisfies one of the conditions in subsection (c) of this section;

(2) allow the assuming insurer 30 days after the initial communication under paragraph (1) of this subsection to submit a plan to remedy the defect, and 90 days after that communication to remedy the defect, except in exceptional circumstances in which a shorter period is necessary for policyholder and other consumer protection;

(3) after the expiration of the 90-day period or, if applicable, the shorter period for exceptional circumstances described by paragraph (2) of this subsection, if the Commissioner determines that the assuming insurer took no or insufficient action to remedy the defect, the Commissioner may impose any requirement in this subsection; and

(4) provide a written explanation to the assuming insurer of any requirement in this subsection.

(h) If a ceding insurer is subject to a legal process of rehabilitation, liquidation, or conservation, the ceding insurer or its representative may seek and, if determined appropriate by the court in which the proceedings are pending, obtain an order requiring that the assuming insurer post security for all outstanding liabilities.

§7.616. Term and Universal Life Insurance Reserve Financing.

(a) Definitions. The following words and terms have the following meanings when used in this section unless the context clearly indicates otherwise.

(1) Actuarial method--the methodology used to determine the required level of primary security under subsection (d) of this section.

(2) Covered policy--subject to the exemptions described in subsection (c) of this section, a covered policy, other than a grandfathered policy, that is one of the following policy types:

(A) a life insurance policy with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits, or both, but not a flexible premium universal life insurance policy except as provided by subparagraph (B) of this paragraph; or

(B) a flexible premium universal life insurance policy with provisions allowing a policyholder to keep the policy in force over a secondary guarantee period.

(3) Grandfathered policy--a policy described by paragraph (2)(A) and (B) of this subsection that is:

(A) issued before January 1, 2015; and

(B) ceded, as of December 31, 2014, as part of a reinsurance agreement that would not have been exempt under subsection (c) of this section had that subsection been in effect for the reinsurance agreement.

(4) Non-covered policy--a policy that does not meet the definition of covered policy, including grandfathered policy.

(5) Other security--any security, other than primary security, acceptable to the Commissioner.

(6) Primary security--

(A) cash as described by Insurance Code §493.104;

(B) securities listed by the Securities Valuation Office as described by Insurance Code §493.104, excluding:

(i) any synthetic letters of credit, contingent notes, credit-linked notes, or other similar securities that operate in a manner similar to a letter of credit; and

(ii) any securities issued by the ceding insurer or any of its affiliates; and

(C) for security held in connection with funds-withheld and modified coinsurance reinsurance agreements:

(i) commercial loans in good standing with a risk-based capital risk category of CM3 or higher category;

(ii) policy loans; and

(iii) derivatives acquired in the normal course and used to support and hedge liabilities related to the actual risks in the policies ceded under the reinsurance agreement.

(7) Required level of primary security--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.

(8) Valuation manual--the valuation manual defined by Insurance Code §425.052 and described by §3.9901 of this title (relating to Valuation Manual) in effect for the financial statement date on which credit for reinsurance is claimed.

(9) VM-20--"Requirements for Principle-Based Reserves for Life Products," including all relevant definitions, from the valuation manual.

(b) Applicability. This section applies only to reinsurance agreements that cede liabilities related to covered policies issued by a life insurance company domiciled in this state. In the event of a direct conflict between this section and another provision in Chapter 7, Subchapter F, of this title, this section applies to the extent of the conflict.

(c) Exemptions and public disclosure. This section does not apply to:

(1) reinsurance of:

(A) policies that satisfy the criteria for exemption in §3.4506 of this title (relating to Calculation of Minimum Valuation Standard for Policies with Guaranteed Nonlevel Gross Premiums or Guaranteed Nonlevel Benefits (Other than Universal Life Policies)), subsections (f) or (g) of this section; and that are issued before the later of:

(i) the effective date of this section, or

(ii) the date on which the ceding insurer begins to apply VM-20 to establish the ceded policies' statutory reserves, but not later than January 1, 2020;

(B) portions of policies that satisfy the criteria for exemption in §3.4506(e) of this title and that are issued before the later of:

(i) the effective date of this section, and

(ii) the date on which the ceding insurer begins to apply VM-20 to establish the ceded policies' statutory reserves, but not later than January 1, 2020;

(C) any universal life policy that meets all of the following requirements:

(i) secondary guarantee period, if any, is five years or less;

(ii) 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 valuation tables and valuation interest rate applicable to the issue year of the policy; and

(iii) the initial surrender charge is not less than 100% of the first-year annualized specified premium for the secondary guarantee period;

(D) credit life insurance;

(E) 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

(F) any group life insurance certificate unless the certificate provides for a stated or implied schedule of maximum gross premiums required to continue coverage in force for more than one year;

(2) reinsurance ceded to an assuming insurer that meets the applicable requirements of Insurance Code Chapter 493, Subchapter D;

(3) reinsurance ceded to an assuming insurer that meets the applicable requirements of Insurance Code §493.102, concerning Credit for Reinsurance Generally, and §493.103, concerning Accredited Reinsurer, and that:

(A) prepares statutory financial statements that comply with the NAIC Accounting Practices and Procedures Manual, without any departures from NAIC statutory accounting practices and procedures related to the admissibility or valuation of assets or liabilities that:

(i) increase the assuming insurer's reported surplus, and

(ii) are material enough that they must be disclosed in the financial statement of the assuming insurer under Statement of Statutory Accounting Principles No. 1; and

(B) is not in a company action level event, regulatory action level event, authorized control level event, or mandatory control level event as described in §7.402 of this title (relating to Risk-Based Capital and Surplus Requirements for Insurers and HMOs) when the assuming insurer's Risk-Based Capital is calculated in accordance with the life risk-based capital report including overview and instructions for companies, under §7.402 of this title;

(4) reinsurance ceded to an assuming insurer that meets the applicable requirements of Insurance Code §493.102 and §493.103, and that:

(A) is not an affiliate, as defined in Insurance Code §823.003, concerning Classification as Affiliate or Subsidiary, of:

(i) the insurer ceding the business to the assuming insurer; or

(ii) any insurer that directly or indirectly ceded the business to that ceding insurer;

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

(C) is both:

(i) licensed or accredited in at least 10 states, including the assuming insurer's state of domicile; and

(ii) 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

(D) is not or would not be below 500% of the authorized control level risk-based capital as that term is described in §7.402 of this title when its risk-based capital is calculated in accordance with the life risk-based capital report, including overview and instructions for companies under §7.402 of this title, and without recognition of any departures from NAIC statutory accounting practices and procedures related to the admission or valuation of assets or liabilities that increase the assuming insurer's reported surplus;

(5) reinsurance ceded to an assuming insurer that:

(A) meets the conditions of Insurance Code §493.108;

(B) is certified under Insurance Code Chapter 493, Subchapter C; or

(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 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; or

(6) reinsurance not otherwise exempt under paragraphs (1) - (5) of this subsection if the Commissioner, after consulting with the NAIC Financial Analysis Working Group or other group of regulators designated by the NAIC, as applicable, determines under all the facts and circumstances that:

(A) the risks are clearly outside the intent and purpose of this section;

(B) the risks are included within the scope of this section only as a technicality; and

(C) the application of this section to those risks is not necessary to provide appropriate protection to policyholders.

(7) The Commissioner will publicly disclose any decision made under this subsection to exempt a reinsurance agreement from this section. The disclosure will include the general basis for the decision and a summary description of the reinsurance agreement.

(d) The actuarial method.

(1) Requirements generally. The actuarial method to establish the required level of primary security for each reinsurance agreement subject to this section is VM-20, applied on a reinsurance agreement-by-reinsurance agreement basis, including all relevant definitions, from the valuation manual as then in effect, applied as follows:

(A) For covered policies described in subsection (a)(2)(A) of this section, the actuarial method is the greater of the deterministic reserve or the net premium reserve regardless of whether the criteria for exemption testing can be met, except:

(i) 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 net premium reserve; and

(ii) if the covered policies are reinsured in a reinsurance agreement that contains covered policies described in subsection (a)(2)(B) of this section, in addition to those described in subsection (a)(2)(A) of this section, the ceding insurer may elect to use the method set out in subparagraph (B) of this paragraph as the actuarial method for the entire reinsurance agreement. Whether the method set out in subparagraph (A) or (B) of this paragraph is used, the actuarial method must comply with any requirements or restrictions that the valuation manual imposes when aggregating these policy types for purposes of principle-based reserve calculations.

(B) For covered policies described in subsection (a)(2)(B) of this section, the actuarial method is the greatest of the deterministic reserve, the stochastic reserve, or the net premium reserve, regardless of whether the criteria for exemption testing can be met.

(C) Except as provided in subparagraph (D) of this paragraph, the actuarial method must be applied on a gross basis to all risks related to the covered policies as originally issued or assumed by the ceding insurer.

(D) If the reinsurance agreement cedes less than 100% of the risk related to the covered policies, the required level of primary security may be reduced as follows:

(i) if a reinsurance agreement cedes only a quota share of some or all of the risks related to the covered policies, the required level of primary security and any adjustment under clause (iii) of this subparagraph may be reduced to a pro rata portion in accordance with the percentage of the risk ceded;

(ii) if the reinsurance agreement in a nonexempt arrangement cedes only the risks related 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 reflect any reduction under the cession of mortality risk on a yearly renewable term basis in an exempt arrangement;

(iii) 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 determined 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 before January 1, 2017, this adjustment may not exceed {cx/ (2 * number of reinsurance premiums per year)} where cx is calculated using the same mortality table used in calculating the net premium reserve; and

(iv) for any other reinsurance agreement ceding a portion of risk to a different reinsurer, including stop loss, excess of loss, and other nonproportional reinsurance agreements, the required level of primary security may not be reduced.

(v) if any combination of clauses (i), (ii), (iii), and (iv) of this subparagraph applies, the adjustments to the required level of primary security must be made in the sequence that accurately reflects the portion of the risk ceded under the reinsurance agreement. The ceding insurer should document the rationale and steps taken to accomplish the adjustments to the required level of primary security due to the cession of less than 100% of the risk.

(vi) the adjustments for other reinsurance may be made with respect only to reinsurance agreements that the ceding insurer directly entered into. The ceding insurer may make no adjustment as a result of a retrocession treaty that the assuming insurers enter into.

(E) The required level of primary security resulting from application of the actuarial method may never exceed the amount of statutory reserves ceded.

(F) If the ceding insurer cedes risks with respect to covered policies, including any riders, in more than one reinsurance agreement subject to this section, the aggregate required level of primary security for those reinsurance agreements may not be less than the required level of primary security calculated using the actuarial method as if all risks ceded in those reinsurance agreements were ceded in a single agreement subject to this section.

(G) If a reinsurance agreement subject to this section cedes risks on both covered and non-covered policies, credit for the ceded reserves will be determined as follows:

(i) the actuarial method must be used to determine the required level of primary security for the covered policies, and subsection (e) of this section must be used to determine the reinsurance credit for the covered policy reserves; and

(ii) credit for the non-covered policy reserves will be granted only to the extent that security, in addition to the security held to satisfy the requirements of clause (i) of this subparagraph, is held by or on behalf of the ceding insurer in accordance with Insurance Code §§493.102, 493.104, and 493.108, as well as §493.1033, concerning Credit Allowed for Certain Certified Reinsurers; §493.1034, concerning, concerning Certain Associations May Be Certified Reinsurers; §493.1035, concerning Qualified Jurisdictions, §493.1036, concerning Requirements for Certified Reinsurer; §493.1037, concerning Certification by National Association of Insurance Commissioners;

and §493.1038, concerning Suspension or Revocation of Accreditation or Certification; Inactive Status. Any primary security used to meet the requirements of this clause may not be used to satisfy the required level of primary security for the covered policies.

(2) Valuation used for purposes of calculations. For calculating the required level of primary security under 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 valuations apply:

(A) for assets, including assets held in trust, that would be admitted under the NAIC Accounting Practices and Procedures Manual if the ceding insurer held the assets, the valuations are to 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

(B) for all other assets, the valuations are those assigned to the assets for determining the amount of reserve credit taken. In addition, the asset spread tables and asset default cost tables required by VM-20 must be included in the actuarial method if the tables are adopted by the NAIC's Life Actuarial (A) Task Force not later than the December 31st 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 must be incorporated into the actuarial method in accordance with VM-20.

(e) Requirements applicable to covered policies to obtain credit for reinsurance; opportunity for remediation.

(1) General requirements. Subject to subsections (c) and (e)(2) of this section, credit for reinsurance will be allowed with respect to ceded liabilities related to covered policies under Insurance Code §§493.102, 493.1033 - 493.1038, 493.104, and

493.108, only if, in addition to all other requirements imposed by law or rule, the following requirements are met on a reinsurance agreement-by-reinsurance agreement basis:

(A) the ceding insurer's statutory policy reserves with respect to the covered policies are established in full and in accordance with Insurance Code Chapter 425, Subchapter B, and related rules and actuarial guidelines. Credit claimed for any reinsurance agreement subject to this section may not exceed the proportionate share of those reserves ceded under the reinsurance agreement;

(B) the ceding insurer determines the required level of primary security with respect to each reinsurance agreement subject to this section and provides support for its calculation that the Commissioner finds acceptable;

(C) 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 agreement within the meaning of Insurance Code §493.104 on a funds withheld, trust, or modified coinsurance basis;

(D) 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 under subparagraph (C) of this paragraph, are held by or on behalf of the ceding insurer as security under the reinsurance agreement within the meaning of Insurance Code §493.104;

(E) any trust used to satisfy the requirements of this subsection must comply with all of the conditions and qualifications of §7.609 of this title, except that:

(i) funds consisting of primary security or other security held in trust, musts be valued for subsection (d)(2) of this section according to the valuation rules in subsection (d)(2) of this section, as applicable;

(ii) there are no affiliate investment limitations for any security held in the trust if the security is not needed to satisfy the requirements of paragraph (1)(C) of this subsection;

(iii) the reinsurance agreement must prohibit withdrawals or substitutions of trust assets that would leave the fair market value of the primary security in the trust when aggregated with primary security outside the trust that is held by or on behalf of the ceding insurer in the manner subsection (e)(1)(C) of this section requires at less than 102% of the level that subsection (e)(1)(C) of this section requires at the time of the withdrawal or substitution; and

(iv) the determination of reserve credit under §7.609 of this title will be determined according to the valuation rules in subsection (d)(2) of this section, as applicable; and

(F) the Commissioner has approved the reinsurance agreement.

(2) Requirements at inception date and on an ongoing basis; remediation.

(A) The requirements of subsection (e)(1) of this section must be satisfied as of the date that risks under covered policies are ceded if that date is on or after the effective date of this section and on an ongoing basis after that date. A ceding insurer may never take or consent to any action or series of actions that would result in a deficiency under subsection (e)(1)(C) or (D) of this section with respect to any reinsurance agreement under which covered policies have been ceded. In the event a ceding insurer becomes aware at any time that such a deficiency exists, it must use its best efforts to arrange to eliminate the deficiency as expeditiously as possible.

(B) Before the due date of each quarterly or annual statement, each life insurance company that has ceded reinsurance within the scope of subsection (b) of this section must perform an analysis, on a reinsurance agreement-by-reinsurance agreement basis, to determine, as to each reinsurance agreement under which covered policies have been ceded, whether as of the end of the immediately preceding calendar quarter (the valuation date) the requirements of subsection (e)(1)(C) and (D) of this section were satisfied. The ceding insurer must establish a liability equal to the excess of the credit for reinsurance taken over the amount of primary security actually held under subsection (e)(1)(C) of this section, unless:

(i) the requirements of subsection (e)(1)(C) and (D) of this section were fully satisfied as of the valuation date as to the reinsurance agreement; or

(ii) 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 or other security, or both, in the amount and in the form that would have caused the requirements of subsection (e)(1)(C) and (D) of this section to be fully satisfied as of the valuation date.

(C) Nothing in subsection (e)(2)(B) of this section may be construed to allow a ceding company to maintain any deficiency under subsection (e)(1)(C) and (D) of this section longer than is reasonably necessary to eliminate the deficiency.

CERTIFICATION. This agency certifies that legal counsel has reviewed the proposal and found it to be within the agency's authority to adopt.

Issued in Austin, Texas, on August 11, 2021.

DocuSigned by:
James Person
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James Person, General Counsel
Texas Department of Insurance