

## **806 KAR 5:025. Credit for reinsurance.**

RELATES TO: KRS 304.5-140

STATUTORY AUTHORITY: KRS 304.2-110, 304.5-140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Commissioner to make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS Chapter 304. KRS 304.5-140 authorizes the commissioner to promulgate administrative regulations to implement the provisions of that section. This administrative regulation implements KRS 304.5-140 by establishing credit for reinsurance.

### **Section 1. Definitions.**

(1) "Beneficiary" means:

- (a) The entity for whose sole benefit the trust has been established and any successor of the beneficiary by operation of law; and
- (b) If a court of law appoints a successor in interest to the named beneficiary, the named beneficiary shall be the court appointed domiciliary receiver, including the conservator, rehabilitator, or liquidator.

(2) "Evergreen clause" means a provision in a letter of credit or its confirmation that prevents the expiration of the letter of credit or its confirmation without written notice to the beneficiary from the issuing or confirming bank or trust company as provided by this administrative regulation.

(3) "Grantor" means:

- (a) The entity that has established a trust for the sole benefit of the beneficiary; and
- (b) If the trust is established in conjunction with a reinsurance agreement, the unlicensed, unaccredited assuming insurer.

(4) "Liabilities" means the assuming insurer's gross liabilities attributable to reinsurance ceded by U.S. domiciled insurers excluding liabilities that are otherwise secured by acceptable means.

(5) "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:

(a) Represents ownership of one (1) 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. 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. Sections 1709 and 1715b, 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. Section 1703; or

(b) Is secured by one (1) 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 paragraph (a) of this subsection.

(6) "Obligations" 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.

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

Section 2. Reinsurer Licensed in Kentucky. The commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that is authorized to transact insurance or reinsurance in Kentucky as of any date on which statutory financial statement credit for reinsurance is claimed.

Section 3. Accredited Reinsurers. The commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that is accredited as a reinsurer in Kentucky as of the date on which statutory financial statement credit for reinsurance is claimed.

(1) To gain accreditation, a reinsurer shall:

- (a) File a properly executed Form AR-1 as evidence of its submission to Kentucky's jurisdiction and authority to examine its books and records;
- (b) File 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 (1) state, or, in the case of a U.S. branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one (1) state;
- (c) File annually 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
- (d) Maintain a surplus as regards policyholders in an amount not less than \$20,000,000, or obtain 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.

(2) If the commissioner determines that the assuming insurer has failed to meet or maintain any of the qualifications established by Section 3(1), the commissioner may suspend or revoke the accreditation.

(3) 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 4. Reinsurer Domiciled in Another State. The commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that satisfies all requirements of KRS 304.5-140(3)(c) and files a properly executed Form AR-1.

Section 5. Reinsurers Maintaining Trust Funds.

(1) 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 in accordance with this section in a qualified U.S. financial institution as defined in KRS 304.5-140(1)(b), for the payment of 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.

(2) 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 satisfy all requirements of KRS 304.5-140(1)(d)(5), (6), and include that 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.

(3)

(a) Notwithstanding any other provision in the trust agreement, if the trust fund is inadequate because it contains an amount less than the amount required by this section, 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.

(b) The assets shall be distributed, 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.

(4) Liabilities shall include:

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

1. Losses and allocated loss expenses paid by the ceding insurer, recoverable from the assuming insurer;
2. Reserves for losses reported and outstanding;
3. Reserves for losses incurred but not reported;
4. Reserves for allocated loss expenses; and
5. Unearned premiums.

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

1. Aggregate reserves for life policies and contracts net of policy loans and net due and deferred premiums;
2. Aggregate reserves for accident and health policies;
3. Deposit funds and other liabilities without life or disability contingencies; and
4. Liabilities for policy and contract claims.

(5) Assets deposited in trusts established pursuant to KRS 304.5-140(3)(d) 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 KRS 304.5-140(1)(a), clean, irrevocable, unconditional and "evergreen" letters of credit issued or confirmed by a qualified U.S. financial institution, as defined in KRS 304.5-140(1)(a), 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 (5) percent of total investments. No more than twenty (20) percent of the total of the investments in the trust shall be foreign investments authorized under paragraphs (a)5., (c), (e)2., or (f) of this subsection, and no more than ten (10) percent of the total of the investments in the trust shall be securities denominated in foreign currencies. For purposes of applying the preceding sentence, a depository receipt denominated in U.S. 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 KRS 304.5-140 shall be invested only as follows:

(a) 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:

1. The United States or by any agency or instrumentality of the United States;
2. A state of the United States;
3. A territory, possession, or other governmental unit of the United States;
4. An agency or instrumentality of a governmental unit referred to in subparagraphs 2. and 3. 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
5. 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;

(b) 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:

1. 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;
2. Are insured by at least one (1) 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
3. Have been designated as Class One or Class Two by the Securities Valuation Office of the NAIC;

(c) 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;

(d) An investment made pursuant to the provisions of paragraph (a), (b), or (c) of this subsection shall be subject to the following additional limitations:

1. An investment in or loan upon the obligations of an institution other than an institution that issues mortgage-related securities shall not exceed five (5) percent of the assets of the trust;
2. An investment in any one (1) mortgage-related security shall not exceed five (5) percent of the assets of the trust;
3. The aggregate total investment in mortgage-related securities shall not exceed twenty-five (25) percent of the assets of the trust; and
4. 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 (b)1. and (b) 3. of this subsection, but shall not exceed two (2) percent of the assets of the trust.

(e) Equity Interests.

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

- a. Its obligations and preferred shares, if any, are eligible as investments under this subsection; and
- b. 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. §§ 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 (1) percent of the assets of the trust even though the equity interests are not so registered and are not issued by an insurance company;

2. 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:

- a. 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
- b. 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;

3. An investment in or loan upon any one (1) institution's outstanding equity interests shall not exceed one (1) percent 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 (10) percent of the assets in the trust;

(f) 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.

(g) Investment Companies.

1. 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:

- a. Invests at least ninety (90) percent of its assets in the types of securities that qualify as an investment under paragraph (a), (b), or (c) 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 (a), (b), or (c) of this subsection; or
- b. Invests at least ninety (90) percent of its assets in the types of equity interests that qualify as an investment under paragraph (e)1. of this subsection;
2. Investments made by a trust in investment companies under this paragraph shall not exceed the following limitations:
- a. An investment in an investment company qualifying under subparagraph 1.a. of this paragraph shall not exceed ten (10) percent of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall not exceed twenty-five (25) percent of the assets in the trust; and
- b. Investments in an investment company qualifying under subparagraph 1.b. of this paragraph shall not exceed five (5) percent 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 (e)1. of this subsection.
- (h) Letters of Credit.
1. 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.
2. 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 a draw would be required shall be deemed to be negligence, willful misconduct, or both.
- (6) A specific security provided to a ceding insurer by an assuming insurer pursuant to Section 7 of this administrative 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 6. Certified Reinsurers.

(1) 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 KRS 304.5-140(3)(e) and Sections 10, 11, or 12 of this administrative regulation. The amount of security required in order for full credit to be allowed shall correspond with the following requirements:

(a) Ratings Security Required:

|                |          |
|----------------|----------|
| Secure – 1     | 0%;      |
| Secure – 2     | 10%;     |
| Secure – 3     | 20%;     |
| Secure – 4     | 50%;     |
| Secure – 5     | 75%; and |
| Vulnerable – 6 | 100%.    |

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

(c) The commissioner shall require the certified reinsurer to post 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.

(d) 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 (1) 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 (1) 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 shall be included in the deferral:

1. Line 1: Fire;
2. Line 2: Allied Lines;
3. Line 3: Farm owners multiple peril;
4. Line 4: Homeowners multiple peril;
5. Line 5: Commercial multiple peril;
6. Line 9: Inland Marine;
7. Line 12: Earthquake; and
8. Line 21: Auto physical damage.

(e) 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.

(f) 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.

(2) Certification process.

(a) Upon receipt of an application for certification, the commissioner shall promptly post notice at [insurance.ky.gov](http://insurance.ky.gov), including instructions on how members of the public may respond to the application.

(b) No fewer than thirty (30) days after posting the notice required by paragraph (a) of this subsection, the commissioner shall issue written notice to an assuming insurer that has made application and been approved as a certified reinsurer, which shall include the rating assigned the certified reinsurer in accordance with subsection (1) of this section.

(c) To be eligible for certification, the assuming insurer shall:

1. Be domiciled and licensed to transact insurance or reinsurance in a Qualified Jurisdiction, as determined by the commissioner pursuant to subsection (3) of this section.
2. Maintain capital and surplus, or its equivalent, of no less than \$250,000,000 calculated in accordance with subparagraph (d)8. 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.

3. Maintain financial strength ratings from two (2) 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 shall be one (1) factor used by the commissioner in determining the rating that is assigned to the assuming insurer. Acceptable rating agencies include the following:

- a. Standard & Poor's;
- b. Moody's Investors Service;
- c. Fitch Ratings;
- d. A.M. Best Company; or
- e. Any other Nationally Recognized Statistical Rating Organization.

4. Comply with any other requirements reasonably imposed by the commissioner.

(d) 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 considered as part of the evaluation process shall include:

1. The certified reinsurer's financial strength rating from an acceptable rating agency. 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 (2) financial strength ratings from acceptable rating agencies shall result in loss of eligibility for certification;
2. The business practices of the certified reinsurer in dealing with its ceding insurers, including its record of compliance with reinsurance contractual terms and obligations;
3. For certified reinsurers domiciled in the U.S., a review of the most recent applicable NAIC Annual Statement Blank, either Schedule F or Schedule S;
4. For certified reinsurers not domiciled in the U.S., a review annually of Form CR-F or Form CR-S;
5. 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;
6. Regulatory actions against the certified reinsurer;
7. The report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in subparagraph 8. of this paragraph;
8. For certified reinsurers not domiciled in the U.S., audited financial statements, regulatory filings, and actuarial opinion, as filed with the non-U.S. jurisdiction supervisor, with a translation into English. Upon the initial application for certification, the commissioner shall consider audited financial statements for the last two (2) years filed with its non-U.S. jurisdiction supervisor;
9. The liquidation priority of obligations to a ceding insurer in the certified reinsurer's domiciliary jurisdiction in the context of an insolvency proceeding;
10. 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
11. Any other information deemed relevant by the commissioner.

(e) Based on the analysis conducted under subparagraph (d)5. 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 (1) rating level under subparagraph (d)1. if the commissioner finds that:

1. More than fifteen (15) percent 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
2. 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.

(f) The assuming insurer shall submit a properly executed Form CR-1 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 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.

(g) 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 that is not otherwise public information subject to disclosure shall be exempted from disclosure under the Kentucky Open Records Act, KRS 61.872 to 61.884, and shall be withheld from public disclosure. The applicable information filing requirements are, as follows:

1. 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 therefore;
2. Annually, Form CR-F or CR-S, as applicable;
3. Annually, the report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in subsection (4) of this section;
4. Annually, the most recent audited financial statements, regulatory filings, and actuarial opinion, as filed with the certified reinsurer's supervisor, with a translation into English. Upon the initial certification, audited financial statements for the last two (2) years filed with the certified reinsurer's supervisor;
5. At least annually, an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from U.S. domestic ceding insurers;
6. 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
7. Any other information that the commissioner may reasonably require.

(h) Change in Rating or Revocation of Certification.

1. 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 subparagraph (d)1..
2. 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.

3. 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.

4. 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 7 of this administrative regulation 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 5 of this administrative regulation, 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 shall 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.

(i) The commissioner shall publish a list of all certified reinsurers and their ratings.

(3) Qualified Jurisdictions.

(a) 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 recognition in an appropriate manner. The commissioner may establish a procedure to withdraw recognition of those jurisdictions that are no longer qualified.

(b) 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 the jurisdictions, and create and publish a list of jurisdictions whose reinsurers may be approved by the commissioner as eligible for certification. A qualified jurisdiction shall 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:

1. The framework under which the assuming insurer is regulated.
2. The structure and authority of the domiciliary regulator with regard to solvency regulation requirements and financial surveillance.
3. The substance of financial and operating standards for assuming insurers in the domiciliary jurisdiction.
4. 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.
5. The domiciliary regulator's willingness to cooperate with U.S. regulators in general and the commissioner in particular.
6. The history of performance by assuming insurers in the domiciliary jurisdiction.

7. Any documented evidence of substantial problems with the enforcement of final U.S. judgments in the domiciliary jurisdiction. A jurisdiction shall 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.

8. 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.

9. Any other matters deemed relevant by the commissioner.

(c) 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 subsection (3)(b)1. to 9. of this section

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

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

(a) 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 CR1 and any additional information as the commissioner requires. The assuming insurer shall be considered to be a certified reinsurer in this state.

(b) 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 ten (10) days after receiving notice of the change.

(c) The commissioner may withdraw recognition of the other jurisdiction's rating at any time and assign a new rating in accordance with subsection (2)(h) of this section.

(d) The commissioner may withdraw recognition of the other jurisdiction's certification at any time by providing written notice to the certified reinsurer. Unless the commissioner suspends or revokes the certified reinsurer's certification in accordance with subsection (2)(h) 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.

(5) Mandatory Funding Clause. In addition to the clauses required under Section 13 of this administrative regulation, 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.

(6) 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 7.

(1) Pursuant to KRS 304.5-140(4), the commissioner shall allow a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of KRS 304.5-140(3) 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 the 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 KRS 304.5-140(1)(b). This security shall be in the form of any of the following:

- (a) Cash;
  - (b) Securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners, including those deemed exempt from filing as defined by the Purposes and Procedures Manual of the Securities Valuation Office, and qualifying as admitted assets;
  - (c) Clean, irrevocable, unconditional and "evergreen" letters of credit issued or confirmed by a qualified United States institution, as defined in KRS 304.5-140(10)(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
  - (d) Any other form of security acceptable to the commissioner.
- (2) 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 13 of this administrative regulation and the applicable portions of Sections 10, 11, or 12 of this administrative regulation have been satisfied.

#### Section 8. Requirements for Trust Agreements Qualified under KRS 304.5-140(3).

- (1) 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 KRS 304.5-140(1)(b).
- (2) The trust agreement shall create a trust account into which assets shall be deposited.
- (3)
- (a) Except as provided by paragraph (b) of this subsection, assets in the trust account shall be held by the trustee at the trustee's office in the United States.
  - (b) A bank may apply for the executive director's permission to use a foreign branch office of the bank as trustee for trust agreements. If the executive director approves the use of a foreign branch office as trustee, its use shall be approved by the beneficiary in writing. The trust agreement shall provide that the written notice described in subsection (4)(a) of this section shall be presentable, as a matter of legal right, at the trustee's principal office in the United States.
- (4) The trust agreement shall provide that:
- (a) The beneficiary shall:
    - 1. Have the right to withdraw assets from the trust account at any time after giving written notice to the trustee; and
    - 2. Not be required to give notice to the grantor;
  - (b) The beneficiary:
    - 1. May be required to acknowledge receipt of withdrawn assets; and
    - 2. Shall not be required to present other statements or documents in order to withdraw assets.
  - (c) The agreement shall not be subject to conditions or qualifications outside of the trust agreement; and

- (d) The agreement shall not contain references to other agreements or documents except as provided by subsection (11) of this section.
- (5) The trust agreement shall be established for the sole benefit of the beneficiary.
- (6) The trust agreement shall require the trustee to:
- (a) Receive 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 negotiate any assets whenever necessary, 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 both at the 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 all steps necessary to:
    1. Transfer absolutely and unequivocally all right, title, and interest in the assets held in the trust account to the beneficiary; and
    2. Deliver physical custody of the assets to the beneficiary; and
  - (f) Allow no substitutions or withdrawals of assets from the trust account, except upon:
    1. Written instructions from the beneficiary; or
    2. The call or maturity of a trust asset, in which case the trustee may withdraw the asset so long as the proceeds are paid into the trust account without the consent of the beneficiary and after notice to the beneficiary.
- (7) 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.
- (8) The trust agreement shall be made subject to and governed by the laws of the state in which the trust is established.
- (9) The trust agreement shall prohibit invasion of the trust corpus for the purpose of paying compensation 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.
- (10) The trust agreement shall provide that the trustee shall be liable for its own negligence, willful misconduct, or lack of good faith.
- (11)
- (a) The trust agreement may 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 for the purposes permitted by paragraphs (b) through (d) of this subsection, if:
    1. A trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities, and accident and health; and
    2. It is customary practice to provide a trust agreement for a specific purpose.
  - (b) To pay or reimburse the ceding insurer for the:
    1. 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
    2. Unearned premiums due to the ceding insurer if not otherwise paid by the assuming insurer;
  - (c) To make payment to the assuming insurer of any amounts held in the trust account that exceed 102% of the actual amount required to fund the assuming insurer's

obligations under the specific reinsurance agreement; or

(d)

1. To withdraw amounts equal to the obligations and deposit them in a separate account as provided by subparagraph 2. of this paragraph, if the:
  - a. Ceding insurer has received notification of termination of the trust account; and
  - b. Assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten (10) days prior to the termination date.
2. Amounts withdrawn pursuant to subparagraph 1. of this paragraph shall be deposited:
  - a. In the name of the ceding insurer; and
  - b. In a qualified United States financial institution, as defined in KRS 304.5-140(1), apart from its general assets; and
  - c. In trust for the uses and purposes specified in paragraphs (a) and (b) of this subsection that may remain executory after the withdrawal for any period after the termination date.

(12) The reinsurance agreement entered into in conjunction with the trust agreement may contain the provisions required by Section 10(1)(b) of this administrative regulation, so long as the conditions required by this section are included in the trust agreement.

(13) The reinsurance agreement or 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 thereof, 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 (5) percent 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.

#### Section 9. Permitted Conditions for Trust Agreements Qualified under KRS 304.5-140(3).

(1) The trust agreement may provide that the:

(a) Trustee may resign only if written notice of resignation is:

1. Given to the beneficiary and grantor; and
2. Effective not less than ninety (90) days after receipt of the notice.

(b) Grantor may remove the trustee if written notice is:

1. Given to the trustee and beneficiary;
2. Effective not less than ninety (90) days after receipt of the notice;

(c) Resignation or removal of the trustee shall not be effective until:

1. A successor trustee has been duly appointed and approved by the beneficiary and the grantor; and
2. All assets in the trust have been duly transferred to the new trustee.

(2)

(a) The grantor may have the full and unqualified right to:

1. Vote any shares of stock in the trust account; and
2. Receive from time to time payments of any dividends or interest upon any shares of stock or obligations included in the trust account.

(b) Interest or dividends shall be:

1. Forwarded promptly upon receipt to the grantor; or
2. Deposited in a separate account established in the grantor's name.

(3) The trustee may be given authority to invest and accept substitutions of funds in the account with prior approval of the beneficiary, unless the trust agreement:

(a) Specifies categories of investments acceptable to the beneficiary; and

(b) Authorizes the trustee to invest funds and accept substitutions that the trustee determines are:

1. At least equal in market value to the assets withdrawn; and
2. Consistent with the restrictions in Section 10(1)(b) of this administrative regulation.

(4) The trust agreement may:

- (a) Provide that the beneficiary may designate a party to which all or part of the trust assets are to be transferred; and
- (b) Condition the transfer upon the trustee receiving, prior to or simultaneously, other specified assets.

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

Section 10. Additional Conditions for Reinsurance Agreements Qualified under KRS 304.5-140(3).

(1) 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:

1. Enter into a trust agreement;
2. Establish a trust account for the benefit of the ceding insurer; and
3. Specify what the agreement is to cover.

(b) Except as provided by paragraph (e) of this subsection, stipulate that assets deposited in the trust account shall:

1. Be valued according to the current fair market value of the assets; and
2. Consist of:
  - a. Cash that is United States legal tender;
  - b. Certificates of deposit, issued by a United States bank and payable in United States legal tender;
  - c. Investments permitted by the insurance code; or
  - d. A combination of the assets specified in clauses a. through c. of this subparagraph;

(c) As provided by paragraph (b) of this subsection, specify the types of investments to be deposited.

(d) Investments permitted by paragraph (b) of this subsection shall be issued by an institution that is not the parent, subsidiary, or affiliate of the grantor or beneficiary.

(e) If a trust agreement is entered into in conjunction with a reinsurance agreement that covers risks other than life, annuities, or accident and health, the trust agreement, rather than the reinsurance agreement, may contain the provisions required by paragraphs (c) and (d) of this subsection.

(f) Require the assuming insurer, prior to depositing assets with the trustee, to:

1. Execute assignments or endorsements in blank; or
2. Transfer legal title to the trustee of shares, obligations, or other assets requiring assignments, so that the ceding insurer, or the trustee on the direction of the ceding insurer, may negotiate the assets without the consent or signature of the assuming insurer or any other entity whenever necessary.

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

(h)

1. As provided by subparagraph 2 of this paragraph, 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.

2. The assets 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 the company, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for the following purposes:

- a. To reimburse the ceding insurer for the assuming insurer's share of premiums returned to the owners of policies reinsured under the reinsurance agreement because of cancellations of the policies;
- b. To reimburse the ceding insurer for 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;
- c. 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 amounts for policy reserves, claims and losses incurred, including losses incurred but not reported, loss adjustment expenses, and unearned premium reserves; and
- d. To pay any other amounts the ceding insurer claims are due under the reinsurance agreement.

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

(a) Give the assuming insurer the right to seek approval from the ceding insurer to withdraw all or part of the trust assets from the trust account and transfer the withdrawn assets to the assuming insurer provided that:

1. The assuming insurer shall at the time of withdrawal replace the withdrawn assets with other qualified assets having a market value equal to the market value of the assets withdrawn so as to maintain the deposit in the required amount at all times; or
2. After withdrawal and transfer, the market value of the trust account is no less than 102% of the required amount.
3. The ceding insurer shall not unreasonably or arbitrarily withhold its approval.

(b) Provide for:

1. The return of any amount withdrawn in excess of the actual amounts required for subsection (1)(h)1., 2., and 3. of this section or for payments under subsection (1)(h)4. of this section, amounts that are subsequently determined not to be due; and
2. Interest payments at a rate not in excess of the prime rate of interest on the amounts held pursuant to subsection (1)(e)3.

(c) Permit the award by an arbitration panel or court of competent jurisdiction of:

1. Interest at a rate different from that provided in paragraph (b)2. of this subsection;
2. Court or arbitration costs;
3. Attorney's fees; and
4. Other reasonable expenses.

(3)

(a) If established on or before the date of filing the financial statement of the ceding insurer, a trust agreement may be used to reduce a liability for reinsurance ceded to an unauthorized assuming insurer in financial statements that are required to be filed with the office pursuant to this administrative regulation.

(b) The amount of a reduction for the existence of an acceptable trust account:

1. May be lesser than or equal to the current fair market value of acceptable assets that are available to be withdrawn from the trust account at the time of withdrawal; and
2. Shall not be greater than the specific obligations under the reinsurance agreement that the trust account was established to secure.

- (4) A trust agreement or underlying reinsurance agreement in existence prior to January 1, 1996, shall:
  - (a) Be acceptable until January 1, 1997; and
  - (b) Beginning January 1, 1997, not be acceptable if it does not comply with the provisions of this administrative regulation.
- (5) The failure of a trust agreement to specifically identify the beneficiary shall not be construed to affect actions or rights which the commissioner may take or possess pursuant to the provisions of the laws of this state.

Section 11. Letters of Credit Qualified under KRS 304.5-140(3).

- (1) A letter of credit shall:
  - (a) Be clean, irrevocable, and unconditional;
  - (b) Issued or confirmed by a qualified United States financial institution;
  - (c) Contain an issue date, and date of expiration;
  - (d) State that it is not subject to a condition or qualification not contained in the letter of credit;
  - (e) Stipulate that in order to obtain funds, the beneficiary need only draw and present a sight draft under the letter of credit; and
  - (f) Except as provided by subsection (9)(a) of this section, not contain a reference to other agreements, documents, or entities.
- (2) The heading of a letter of credit may include a boxed section that:
  - (a) Contains the name of the applicant, and other appropriate notations that provide a reference for the letter of credit; and
  - (b) Is clearly marked to indicate that the information is only for internal identification purposes.
- (3) The letter of credit shall contain a statement that the obligation of the qualified United States financial institution under the letter of credit is not contingent upon reimbursement with respect thereto.
- (4) The term of the letter of credit shall be for at least one (1) year and shall contain an evergreen clause. The evergreen clause shall provide for a period of not less than thirty (30) days' notice prior to the date of expiration or nonrenewal.
- (5) The letter of credit shall state:
  - (a) Whether it is governed by the:
    - 1. Laws of Kentucky;
    - 2. The Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce Publication 600;
    - 3. International Standby Practices of the International Chamber of Commerce Publication 590; or
    - 4. Any successor publication; and
  - (b) That a draft drawn under the letter of credit shall be presentable at an office in the United States of a qualified United States financial institution.
- (6) A letter of credit shall provide for an extension of time to draw against it if it:
  - (a) Is made subject to subsection (5)(a)2., 3., or 4. of this section; and
  - (b) An occurrence specified in Article 36 of "Publication 600" of the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce occurs.
- (7) The letter of credit shall be issued or confirmed by a qualified United States financial institution authorized to issue letters of credit, pursuant to KRS 304.5-140(1)(a).
- (8) If a letter of credit is issued by a United States financial institution authorized to issue letters of credit, other than a qualified United States financial institution described in subsection (7) of this section, the following additional requirements shall be met:

- (a) The issuing 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
- (b) The evergreen clause shall provide for thirty (30) days' notice prior to expiration date for nonrenewal.

(9) Reinsurance agreement provisions.

- (a) The reinsurance agreement for which the letter of credit is obtained may contain provisions that:

- 1. Require the assuming insurer to provide letters of credit to the ceding insurer and specify what shall be covered.
- 2. Stipulate that the assuming insurer and ceding insurer shall agree that, the letter of credit provided by the assuming insurer pursuant to the provisions of the reinsurance agreement:
  - a. May be drawn upon at any time, notwithstanding other provisions in the agreement; and
  - b. Shall be utilized by the ceding insurer or its successors in interest only for one (1) or more of the reasons specified in subparagraph 3 of this paragraph.
- 3.
  - a. To reimburse the ceding insurer for the assuming insurer's share of premiums returned to the owners of policies reinsured under the reinsurance agreement on account of cancellations of the policies;
  - b. 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;
  - c. 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; and
  - d. To pay other amounts the ceding insurer claims are due under the reinsurance agreement.
- 4. The provisions of this paragraph shall be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer.

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

- 1. An interest payment, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to paragraph (a)2. of this subsection; or
- 2. The return of any amounts drawn down on the letters of credit in excess of the actual amounts required for the reasons established in paragraph (a)3.a. through 3c. of this subsection or, in the case of paragraph (a)3.d. of this subsection, any amounts that are subsequently determined not to be due.

- (c) In lieu of the stipulation permitted by paragraph (a)2. of this subsection, a reinsurance agreement may require that the parties enter into a "Trust Agreement", that may be incorporated into the reinsurance agreement or be a separate document, if:

- 1. A letter of credit is obtained in conjunction with a reinsurance agreement covering risks other than life, annuities and health; and
- 2. It is customary practice to provide a letter of credit for a specific purpose.

(10)

- (a) A letter of credit shall not be used to reduce a liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with the 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.

- (b) The reduction for the letter of credit may be up to the amount available under the letter of credit but not greater than the specific obligation under the reinsurance

agreement which the letter of credit was intended to secure.

Section 12. 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 13. Reinsurance Contract. Upon the effective date of this administrative regulation, credit shall not be granted to a ceding insurer for reinsurance effected with assuming insurers meeting the requirements of KRS 304.5-140 unless the reinsurance agreement includes a:

- (1) Proper insolvency clause pursuant to KRS 304.5-140(5) and 304.33-350 of the Insurance Code; and
- (2) Provision pursuant to KRS 304.5-140(2)(f), if the assuming insurer, is an unauthorized assuming insurer, and has:
  - (a) Submitted to the jurisdiction of an alternative dispute resolution panel or court of competent jurisdiction within the United States;
  - (b) Agreed to comply with all requirements necessary to give the court or panel jurisdiction;
  - (c) Designated an agent upon whom service of process may be effected; and
  - (d) Agreed to abide by the final decision of the court or panel.

Section 14. Contracts Affected. All new and renewal reinsurance transactions entered into after the effective date of this administrative regulation shall conform to the requirements of KRS 304.5-140 and this administrative regulation if credit is to be given to the ceding insurer for reinsurance.

Section 15. Incorporation by Reference.

- (1) The following material is incorporated by reference:
  - (a) "Certificate of Assuming Insurer," Form AR-1 December 95;
  - (b) "Certificate of Certified Reinsurer," Form CR-1 (09/19);
  - (c) "Form CR-F" (09/19); and
  - (d) "Form CR-S" (09/19).
- (2) It may be inspected, copied, or obtained from the Department of Insurance, 500 Mero St., Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. to 4:30 p.m.  
(22 Ky.R. 1755; Am. 2035; 23 Ky.R. 140; eff. 7-5-96; TAm eff. 8-9-2007; Crt eff. 2-28-2020; 46 Ky.R. 2322, 2811, 2933; eff. 9-1-2020.)