

1 Public Protection Cabinet
2 Department of Insurance
3 Division of Financial Standards and Examinations
4 (Amendment)

5 806 KAR 5:025. Credit for reinsurance.

6 RELATES TO: KRS 304.5-140

7 STATUTORY AUTHORITY: KRS 304.2-110, 304.5-140

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

13 Section 1. Definitions.

14 (1) "Beneficiary" means:

15 (a) The entity for whose sole benefit the trust has been established and any successor of the
16 beneficiary by operation of law; and

17 (b) If a court of law appoints a successor in interest to the named beneficiary, the named beneficiary
18 shall be the court appointed domiciliary receiver, including the conservator, rehabilitator, or liquidator.

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

1 (3) "Grantor" means:

2 (a) The entity that has established a trust for the sole benefit of the beneficiary; and

3 (b) If the trust is established in conjunction with a reinsurance agreement, the unlicensed,
4 unaccredited assuming insurer.

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

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

9 (a) Represents ownership of one (1) or more promissory notes or certificates of interest or
10 participation in the notes, including any rights designed to assure servicing of, or the receipt or
11 timeliness of receipt by the holders of the notes, certificates, or participation of amounts payable under,
12 the notes, certificates, or participation, that:

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

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

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

5 (6) "Obligations" means:

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

8 (b) Reserves for reinsured losses reported and outstanding;

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

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

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

13 (8) "Solvent scheme of arrangement" means a foreign or alien statutory or regulatory compromise
14 procedure subject to requisite majority creditor approval and judicial sanction in the assuming insurer's
15 home jurisdiction either to finally commute liabilities of duly noticed classed members or creditors of a
16 solvent debtor, or to reorganize or restructure the debts and obligations of a solvent debtor on a final
17 basis, and which may be subject to judicial recognition and enforcement of the arrangement by a
18 governing authority outside the ceding insurer's home jurisdiction.

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

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

1 (1) To gain accreditation, a reinsurer shall:

2 (a) File a properly executed Form AR-1 as evidence of its submission to Kentucky's jurisdiction and
3 authority to examine its books and records;

4 (b) File a certified copy of a certificate of authority or other acceptable evidence that it is licensed to
5 transact insurance or reinsurance in at least one (1) state, or, in the case of a U.S. branch of an alien
6 assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one (1)
7 state;

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

12 (d) Maintain a surplus as regards policyholders in an amount not less than \$20,000,000, or obtain
13 affirmative approval of the commissioner upon a finding that it has adequate financial capacity to meet
14 its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers.

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

18 (3) Credit shall not be allowed a domestic ceding insurer under this section if the assuming insurer's
19 accreditation has been revoked by the commissioner, or if the reinsurance was ceded while the assuming
20 insurer's accreditation was under suspension by the commissioner.

21
22 Section 4. Reinsurer Domiciled in Another State. The commissioner shall allow credit for
23 reinsurance ceded by a domestic insurer to an assuming insurer that satisfies all requirements of KRS

1 304.5-140(3)(c) and files a properly executed Form AR-1.

2 Section 5. Reinsurers Maintaining Trust Funds. (1) The commissioner shall allow credit for
3 reinsurance ceded by a domestic insurer to an assuming insurer which, as of any date of which
4 statutory financial statement credit for reinsurance is claimed, and thereafter for so long as credit for
5 reinsurance is claimed, maintains a trust fund in an amount in accordance with this section in a qualified
6 U.S. financial institution as defined in KRS 304.5-140(1)(b), for the payment of valid claims of its U.S.
7 domiciled ceding insurers, their assigns and successors in interest. The assuming insurer shall report
8 annually to the commissioner substantially the same information as that required to be reported on
9 the National Association of Insurance Commissioners (NAIC) annual statement form by licensed
10 insurers, to enable the commissioner to determine the sufficiency of the trust fund.

11 (2) Credit for reinsurance shall not be granted unless the form of the trust and any amendments to
12 the trust have been approved by either the commissioner of the state where the trust is domiciled or the
13 commissioner of another state who, pursuant to the terms of the trust instrument, has accepted
14 responsibility for regulatory oversight of the trust. The form of the trust and any trust amendments also
15 shall be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust
16 are domiciled. The trust instrument shall satisfy all requirements of KRS 304.5-140(1)(d)(5), and (6),
17 and include that contested claims shall be valid and enforceable out of funds in trust to the extent
18 remaining unsatisfied thirty (30) days after entry of the final order of any court of competent jurisdiction
19 in the United States.

20 (3) (a) Notwithstanding any other provision in the trust agreement, if the trust fund is inadequate
21 because it contains an amount less than the amount required by this section, or if the grantor of the trust
22 has been declared insolvent or placed into receivership, rehabilitation, liquidation, or similar
23 proceedings under the laws of its state or country of domicile, the trustee shall comply with an order

1 of the commissioner with regulatory oversight over the trust or with an order of a court of competent
2 jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight over the trust
3 or other designated receiver all of the assets of the trust fund.

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

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

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

13 (4) Liabilities shall include:

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

16 1. Losses and allocated loss expenses paid by the ceding insurer, recoverable from the assuming
17 insurer;

18 2. Reserves for losses reported and outstanding;

19 3. Reserves for losses incurred but not reported;

20 4. Reserves for allocated loss expenses; and

21 5. Unearned premiums.

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

23 1. Aggregate reserves for life policies and contracts net of policy loans and net due and deferred

1 premiums;

2 2. Aggregate reserves for accident and health policies;

3 3. Deposit funds and other liabilities without life or disability contingencies; and

4 4. Liabilities for policy and contract claims.

5 (5) Assets deposited in trusts established pursuant to KRS 304.5-140(3)(d) and this section shall be

6 valued according to their current fair market value and shall consist only of cash in

7 U.S. dollars, certificates of deposit issued by a U.S. financial institution, as defined in KRS 304.5-

8 140(1)(a), clean, irrevocable, unconditional and "evergreen" letters of credit issued or confirmed by a

9 qualified U.S. financial institution, as defined in KRS 304.5-140(1)(a), and investments of the type

10 specified in this subsection, but investments in or issued by an entity controlling, controlled by, or under

11 common control with either the grantor or beneficiary of the trust shall not exceed five (5) percent of

12 total investments. No more than twenty (20) percent of the total of the investments in the trust shall be

13 foreign investments authorized under paragraphs (a)5., (c), (e)2., or (f) of this subsection, and no more

14 than ten (10) percent of the total of the investments in the trust shall be securities denominated in foreign

15 currencies. For purposes of applying the preceding sentence, a depository receipt denominated in U.S.

16 dollars and representing rights conferred by a foreign security shall be classified as a foreign investment

17 denominated in a foreign currency. The assets of a trust established to satisfy the requirements of KRS

18 304.5-140 shall be invested only as follows:

19 (a) Government obligations that are not in default as to principal or interest, that are valid and legally

20 authorized, and that are issued, assumed, or guaranteed by:

21 1. The United States or by any agency or instrumentality of the United States;

22 2. A state of the United States;

23 3. A territory, possession, or other governmental unit of the United States;

1 4. An agency or instrumentality of a governmental unit referred to in subparagraphs 2. and
2 3. of this paragraph if the obligations shall be by law (statutory or otherwise) payable, as to both
3 principal and interest, from taxes levied or by law required to be levied or from adequate special
4 revenues pledged or otherwise appropriated or by law required to be provided for making these
5 payments, but shall not be obligations eligible for investment under this paragraph if payable solely out
6 of special assessments on properties benefited by local improvements; or

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

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

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

17 2. Are insured by at least one (1) authorized insurer, other than the investing insurer or a parent,
18 subsidiary, or affiliate of the investing insurer, licensed to insure obligations in this state and, after
19 considering the insurance, are rated AAA, or the equivalent, by a securities rating agency recognized
20 by the Securities Valuation Office of the NAIC; or

21 3. Have been designated as Class One or Class Two by the Securities Valuation Office of the NAIC;

22 (c) Obligations issued, assumed, or guaranteed by a solvent non-U.S. institution chartered in a
23 country that is a member of the Organization for Economic Cooperation and Development or

1 obligations of U.S. corporations issued in a non-U.S. currency, provided that in either case the
2 obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities
3 Valuation Office of the NAIC.

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

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

8 2. An investment in any one (1) mortgage-related security shall not exceed five (5) percent of the
9 assets of the trust;

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

12 4. Preferred or guaranteed shares issued or guaranteed by a solvent U.S. institution are permissible
13 investments if all of the institution's obligations are eligible as investments under paragraphs (b)1. and
14 (b)3. of this subsection, but shall not exceed two (2) percent of the assets of the trust.

15 (e) Equity Interests.

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

18 a. Its obligations and preferred shares, if any, are eligible as investments under this subsection; and

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

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

3 2. Investments in common shares of a solvent institution organized under the laws of a country that
4 is a member of the Organization for Economic Cooperation and Development, if:

5 a. All its obligations are rated A or higher, or the equivalent, by a rating agency recognized by the
6 Securities Valuation Office of the NAIC; and

7 b. The equity interests of the institution are registered on a securities exchange regulated by the
8 government of a country that is a member of the Organization for Economic Cooperation and
9 Development;

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

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

17 (g) Investment Companies.

18 1. Securities of an investment company registered pursuant to the Investment Company Act of 1940,
19 15 U.S.C. § 80a, are permissible investments if the investment company:

20 a. Invests at least ninety (90) percent of its assets in the types of securities that qualify as an
21 investment under paragraph (a), (b), or (c) of this subsection or invests in securities that are determined
22 by the commissioner to be substantively similar to the types of securities set forth in paragraph (a), (b),
23 or (c) of this subsection; or

1 b. Invests at least ninety (90) percent of its assets in the types of equity interests that qualify as an
2 investment under paragraph (e)1. of this subsection;

3 2. Investments made by a trust in investment companies under this paragraph shall not exceed the
4 following limitations:

5 a. An investment in an investment company qualifying under subparagraph 1.a. of this paragraph
6 shall not exceed ten (10) percent of the assets in the trust and the aggregate amount of investment in
7 qualifying investment companies shall not exceed twenty-five (25) percent of the assets in the trust; and

8 b. Investments in an investment company qualifying under subparagraph 1.b. of this paragraph shall
9 not exceed five (5) percent of the assets in the trust and the aggregate amount of investment in qualifying
10 investment companies shall be included when calculating the permissible aggregate value of equity
11 interests pursuant to paragraph (e)1. of this subsection.

12 (h) Letters of Credit.

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

18 2. The trust agreement shall provide that the trustee shall be liable for its negligence, willful
19 misconduct, or lack of good faith. The failure of the trustee to draw against the letter of credit in
20 circumstances where a draw would be required shall be deemed to be negligence, willful misconduct,
21 or both.

22 (6) A specific security provided to a ceding insurer by an assuming insurer pursuant to Section 7 of
23 this administrative regulation shall be applied, until exhausted, to the payment of liabilities of the
24 assuming insurer to the ceding insurer holding the specific security prior to, and as a condition

1 precedent for, presentation of a claim by the ceding insurer for payment by a trustee of a trust established
2 by the assuming insurer pursuant to this section.

3 Section 6. Certified Reinsurers. (1) The commissioner shall allow credit for reinsurance ceded by
4 a domestic insurer to an assuming insurer that has been certified as a reinsurer in this state at all times
5 for which statutory financial statement credit for reinsurance is claimed under this section. The credit
6 allowed shall be based upon the security held by or on behalf of the ceding insurer in accordance with
7 a rating assigned to the certified reinsurer by the commissioner. The security shall be in a form consistent
8 with the provisions of KRS 304.5-140(3)(e) and Sections 10, 11, or 12 of this administrative regulation.
9 The amount of security required in order for full credit to be allowed shall correspond with the following
10 requirements:

11 (a) Ratings Security Required:

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

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

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

17 (d) In order to facilitate the prompt payment of claims, a certified reinsurer shall not be required to

1 post security for catastrophe recoverable for a period of one (1) year from the date of the first instance
2 of a liability reserve entry by the ceding company as a result of a loss from a catastrophic occurrence
3 as recognized by the commissioner. The one (1) year deferral period is contingent upon the certified
4 reinsurer continuing to pay claims in a timely manner. Reinsurance recoverables shall only be included
5 in the deferral for [for only] the [following] lines of business set forth in KRS 304.5-140(3)(m)3. [as
6 reported on the NAIC annual financial statement related specifically to the catastrophic occurrence shall
7 be included in the deferral:

- 8 ~~1. Line 1: Fire;~~
- 9 ~~2. Line 2: Allied Lines;~~
- 10 ~~3. Line 3: Farm owners multiple peril;~~
- 11 ~~4. Line 4: Homeowners multiple peril;~~
- 12 ~~5. Line 5: Commercial multiple peril;~~
- 13 ~~6. Line 9: Inland Marine;~~
- 14 ~~7. Line 12: Earthquake; and~~
- 15 ~~8. Line 21: Auto physical damage.]~~

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

23 (f) Nothing in this section shall prohibit the parties to a reinsurance agreement from agreeing to

1 provisions establishing security requirements that exceed the minimum security requirements
2 established for certified reinsurers under this section.

3 (2) Certification process.

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

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

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

11 1. Be domiciled and licensed to transact insurance or reinsurance in a Qualified Jurisdiction, as
12 determined by the commissioner pursuant to subsection (3) of this section.

13 2. Maintain capital and surplus, or its equivalent, of no less than \$250,000,000 calculated in
14 accordance with subparagraph (d)8. of this subsection. This requirement may also be satisfied by an
15 association including incorporated and individual unincorporated underwriters having minimum capital
16 and surplus equivalents, net of liabilities, of at least \$250,000,000 and a central fund containing a
17 balance of at least \$250,000,000.

18 3. Maintain financial strength ratings from two (2) or more rating agencies deemed acceptable by
19 the commissioner. These ratings shall be based on interactive communication between the rating agency
20 and the assuming insurer and shall not be based solely on publicly available information. These financial
21 strength ratings shall be one (1) factor used by the commissioner in determining the rating that is
22 assigned to the assuming insurer. Acceptable rating agencies include the following:

23 a. Standard & Poor's;

- 1 b. Moody's Investors Service;
 - 2 c. Fitch Ratings;
 - 3 d. A.M. Best Company; or
 - 4 e. Any other Nationally Recognized Statistical Rating Organization.
- 5 4. Comply with any other requirements reasonably imposed by the commissioner.

6 (d) Each certified reinsurer shall be rated on a legal entity basis, with due consideration being given
7 to the group rating where appropriate, except that an association including incorporated and individual
8 unincorporated underwriters that has been approved to do business as a single certified reinsurer may
9 be evaluated on the basis of its group rating. Factors considered as part of the evaluation process shall
10 include:

11 1. The certified reinsurer's financial strength rating from an acceptable rating agency. The
12 commissioner shall use the lowest financial strength rating received from an approved rating agency in
13 establishing the maximum rating of a certified reinsurer. A failure to obtain or maintain at least two
14 (2) financial strength ratings from acceptable rating agencies shall result in loss of eligibility for
15 certification;

16 2. The business practices of the certified reinsurer in dealing with its ceding insurers, including its
17 record of compliance with reinsurance contractual terms and obligations;

18 3. For certified reinsurers domiciled in the U.S., a review of the most recent applicable NAIC
19 Annual Statement Blank, either Schedule F or Schedule S;

20 4. For certified reinsurers not domiciled in the U.S., a review annually of Form CR-F or Form CR-
21 S;

22 5. The reputation of the certified reinsurer for prompt payment of claims under reinsurance
23 agreements, based on an analysis of ceding insurers' Schedule F reporting of overdue reinsurance

1 recoverables, including the proportion of obligations that are more than ninety (90) days past due or are
2 in dispute, with specific attention given to obligations payable to companies that are in administrative
3 supervision or receivership;

4 6. Regulatory actions against the certified reinsurer;

5 7. The report of the independent auditor on the financial statements of the insurance enterprise, on
6 the basis described in subparagraph 8. of this paragraph;

7 8. For certified reinsurers not domiciled in the U.S., audited financial statements, regulatory filings,
8 and actuarial opinion, as filed with the non-U.S. jurisdiction supervisor, with a translation into English.
9 Upon the initial application for certification, the commissioner shall consider audited financial
10 statements for the last two (2) years filed with its non-U.S. jurisdiction supervisor;

11 9. The liquidation priority of obligations to a ceding insurer in the certified reinsurer's domiciliary
12 jurisdiction in the context of an insolvency proceeding;

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

16 11. Any other information deemed relevant by the commissioner.

17 (e) Based on the analysis conducted under subparagraph (d)5. of this subsection, of a certified
18 reinsurer's reputation for prompt payment of claims, the commissioner may make appropriate
19 adjustments in the security the certified reinsurer is required to post to protect its liabilities to U.S.
20 ceding insurers, provided that the commissioner shall, at a minimum, increase the security the certified
21 reinsurer is required to post by one (1) rating level under subparagraph (d)1. of this subsection, if the
22 commissioner finds that:

23 1. More than fifteen (15) percent of the certified reinsurer's ceding insurance clients have overdue

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

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

5 (f) The assuming insurer shall submit a properly executed Form CR-1 as evidence of its submission
6 to the jurisdiction of this state, appointment of the commissioner as an agent for service of process in
7 this state, and agreement to provide security for 100% of the assuming insurer's liabilities attributable to
8 reinsurance ceded by U.S. ceding insurers if it resists enforcement of a final U.S. judgment. The
9 commissioner shall not certify any assuming insurer that is domiciled in a jurisdiction that the
10 commissioner has determined does not adequately and promptly enforce final U.S. judgments or
11 arbitration awards.

12 (g) The certified reinsurer shall agree to meet applicable information filing requirements as determined
13 by the commissioner, both with respect to an initial application for certification and on an ongoing
14 basis. All information submitted by certified reinsurers that is not otherwise public information subject
15 to disclosure shall be exempted from disclosure under the Kentucky Open Records Act, KRS 61.872 to
16 61.884, and shall be withheld from public disclosure. The applicable information filing requirements
17 are, as follows:

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

21 2. Annually, Form CR-F or CR-S, as applicable;

22 3. Annually, the report of the independent auditor on the financial statements of the insurance
23 enterprise, on the basis described in subsection (4) of this section;

1 4. Annually, the most recent audited financial statements, regulatory filings, and actuarial opinion,
2 as filed with the certified reinsurer's supervisor, with a translation into English. Upon the initial
3 certification, audited financial statements for the last two (2) years filed with the certified reinsurer's
4 supervisor;

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

7 6. A certification from the certified reinsurer's domestic regulator that the certified reinsurer is in
8 good standing and maintains capital in excess of the jurisdiction's highest regulatory action level; and

9 7. Any other information that the commissioner may reasonably require.

10 (f) Change in Rating or Revocation of Certification.

11 1. In the case of a downgrade by a rating agency or other disqualifying circumstance, the
12 commissioner shall, upon written notice, assign a new rating to the certified reinsurer in accordance
13 with the requirements of subparagraph (d)1 of this subsection.

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

19 3. If the rating of a certified reinsurer is upgraded by the commissioner, the certified reinsurer may
20 meet the security requirements applicable to its new rating on a prospective basis, but the commissioner
21 shall require the certified reinsurer to post security under the previously applicable security
22 requirements as to all contracts in force on or before the effective date of the upgraded rating. If the
23 rating of a certified reinsurer is downgraded by the commissioner, the commissioner shall require the

1 certified reinsurer to meet the security requirements applicable to its new rating for all business it has
2 assumed as a certified reinsurer.

3 4. Upon revocation of the certification of a certified reinsurer by the commissioner, the assuming
4 insurer shall be required to post security in accordance with Section 7 of this administrative regulation
5 in order for the ceding insurer to continue to take credit for reinsurance ceded to the assuming insurer.
6 If funds continue to be held in trust in accordance with Section 5 of this administrative regulation,
7 the commissioner may allow additional credit equal to the ceding insurer's pro rata share of the funds,
8 discounted to reflect the risk of uncollectibility and anticipated expenses of trust administration.
9 Notwithstanding the change of a certified reinsurer's rating or revocation of its certification, a domestic
10 insurer that has ceded reinsurance to that certified reinsurer shall not be denied credit for reinsurance
11 for a period of three (3) months for all reinsurance ceded to that certified reinsurer, unless the
12 reinsurance is found by the commissioner to be at high risk of uncollectibility.

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

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

19 (b) To determine whether the domiciliary jurisdiction of a non-U.S. assuming insurer is eligible to
20 be recognized as a qualified jurisdiction, the commissioner shall evaluate the reinsurance supervisory
21 system of the non-U.S. jurisdiction, both initially and on an ongoing basis, and shall consider the
22 rights, benefits, and the extent of reciprocal recognition afforded by the non-
23 U.S. jurisdiction to reinsurers licensed and domiciled in the U.S. The commissioner shall determine the

1 appropriate approach for evaluating the qualifications of the jurisdictions, and shall create and publish a
2 list of jurisdictions whose reinsurers may be approved by the commissioner as eligible for certification.
3 A qualified jurisdiction shall agree to share information and cooperate with the commissioner with
4 respect to all certified reinsurers domiciled within that jurisdiction. Additional factors to be considered
5 in determining whether to recognize a qualified jurisdiction, in the discretion of the commissioner,
6 include:

- 7 1. The framework under which the assuming insurer is regulated.
- 8 2. The structure and authority of the domiciliary regulator with regard to solvency regulation
9 requirements and financial surveillance.
- 10 3. The substance of financial and operating standards for assuming insurers in the domiciliary
11 jurisdiction.
- 12 4. The form and substance of financial reports required to be filed or made publicly available by
13 reinsurers in the domiciliary jurisdiction and the accounting principles used.
- 14 5. The domiciliary regulator's willingness to cooperate with U.S. regulators in general and the
15 commissioner in particular.
- 16 6. The history of performance by assuming insurers in the domiciliary jurisdiction.
- 17 7. Any documented evidence of substantial problems with the enforcement of final U.S. judgments
18 in the domiciliary jurisdiction. A jurisdiction shall not be considered to be a qualified jurisdiction if the
19 commissioner has determined that it does not adequately and promptly enforce final U.S. judgments or
20 arbitration awards.
- 21 8. Any relevant international standards or guidance with respect to mutual recognition of re-
22 insurance supervision adopted by the International Association of Insurance Supervisors or successor
23 organization.

1 9. Any other matters deemed relevant by the commissioner.

2 (c) A list of qualified jurisdictions shall be published through the NAIC Committee Process. The
3 commissioner shall consider this list in determining qualified jurisdictions. If the commissioner
4 approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the
5 commissioner shall provide thoroughly documented justification with respect to the criteria provided
6 under subsection (3)(b)1. to 9. of this section

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

9 (4) Recognition of Certification Issued by an NAIC Accredited Jurisdiction. (a) If an applicant for
10 certification has been certified as a reinsurer in an NAIC accredited jurisdiction, the commissioner has
11 the discretion to defer to that jurisdiction's certification, and to defer to the rating assigned by that
12 jurisdiction, if the assuming insurer submits a properly executed Form CR1 and any additional
13 information as the commissioner requires. The assuming insurer shall be considered to be a certified
14 reinsurer in this state.

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

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

21 (d) The commissioner may withdraw recognition of the other jurisdiction's certification at anytime
22 by providing written notice to the certified reinsurer. Unless the commissioner suspends or revokes the
23 certified reinsurer's certification in accordance with subsection (2)(h) of this section, the certified

1 reinsurer's certification shall remain in good standing in this state for a period of three (3) months,
2 which shall be extended if additional time is necessary to consider the assuming insurer's application
3 for certification in this state.

4 (5) Mandatory Funding Clause. In addition to the clauses required under Section 14 [~~13~~] of this
5 administrative regulation, reinsurance contracts entered into or renewed under this section shall
6 include a proper funding clause, which requires the certified reinsurer to provide and maintain security
7 in an amount sufficient to avoid the imposition of any financial statement penalty on the ceding insurer
8 under this section for reinsurance ceded to the certified reinsurer.

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

11 Section 7. (1) Pursuant to KRS 304.5-140(4), the commissioner shall allow a reduction from
12 liability for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements
13 of KRS 304.5-140(3) in an amount not exceeding the liabilities carried by the ceding insurer. The
14 reduction shall be in the amount of funds held by or on behalf of the cedinginsurer, including funds held
15 in trust for the exclusive benefit of the ceding insurer, under a reinsurance contract with the assuming
16 insurer as security for the payment of obligations under the reinsurance contract. The security shall be
17 held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding
18 insurer or, in the case of a trust, heldin a qualified United States financial institution as defined in KRS
19 304.5-140(1)(b). This security shall be in the form of any of the following:

20 (a) Cash;

21 (b) Securities listed by the Securities Valuation Office of the National Association of Insurance
22 Commissioners, including those deemed exempt from filing as defined by the Purposes and Procedures
23 Manual of the Securities Valuation Office, and qualifying as admitted assets;

1 (c) Clean, irrevocable, unconditional and "evergreen" letters of credit issued or confirmed by a
2 qualified United States institution, as defined in KRS 304.5-140(1)0(a), effective no later than
3 December 31 of the year for which filing is being made, and in the possession of, or in trust for, the
4 ceding insurer on or before the filing date of its annual statement. Letters of credit meeting applicable
5 standards of issuer acceptability as of the dates of their issuance or confirmation shall, notwithstanding
6 the issuing or confirming institution's subsequent failure to meet applicable standards of issuer
7 acceptability, continue to be acceptable as security until their expiration, extension, renewal,
8 modification, or amendment, whichever first occurs; or

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

10 (2) An admitted asset or a reduction from liability for reinsurance ceded to an unauthorized assuming
11 insurer pursuant to this section shall be allowed only when the requirements of Section 14 [13] of this
12 administrative regulation and the applicable portions of Sections 10, 11, or 12 of this administrative
13 regulation have been satisfied.

14 Section 8. Requirements for Trust Agreements Qualified under KRS 304.5-140(3). (1) The trust
15 agreement shall be entered into between the beneficiary, the grantor, and a trustee, which shall be a
16 qualified United States financial institution as defined in KRS 304.5-140(1)(b).

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

18 (3)(a) Except as provided by paragraph (b) of this subsection, assets in the trust account
19 shall be held by the trustee at the trustee's office in the United States.

20 (b) A bank may apply for the executive director's permission to use a foreign branch office of the
21 bank as trustee for trust agreements. If the commissioner [~~executive director~~] approves the use of a
22 foreign branch office as trustee, its use shall be approved by the beneficiary in writing. The trust
23 agreement shall provide that the written notice described in subsection (4)(a) of this section shall be

1 presentable, as a matter of legal right, at the trustee's principal office in the United States.

2 (4) The trust agreement shall provide that:

3 (a) The beneficiary shall:

4 1. Have the right to withdraw assets from the trust account at any time after giving written notice to
5 the trustee; and

6 2. Not be required to give notice to the grantor;

7 (b) The beneficiary:

8 1. May be required to acknowledge receipt of withdrawn assets; and

9 2. Shall not be required to present other statements or documents in order to withdraw assets.

10 (c) The agreement shall not be subject to conditions or qualifications outside of the trust agreement;
11 and

12 (d) The agreement shall not contain references to other agreements or documents, except as
13 provided by subsection (11) of this section.

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

15 (6) The trust agreement shall require the trustee to:

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

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

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

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

- 1 (e) Upon written demand of the beneficiary, immediately take all steps necessary to:
- 2 1. Transfer absolutely and unequivocally all right, title, and interest in the assets held in the trust
- 3 account to the beneficiary; and
- 4 2. Deliver physical custody of the assets to the beneficiary; and
- 5 (f) Allow no substitutions or withdrawals of assets from the trust account, except upon:
- 6 1. Written instructions from the beneficiary; or
- 7 2. The call or maturity of a trust asset, in which case the trustee may withdraw the asset so long as
- 8 the proceeds are paid into the trust account without the consent of the beneficiary and after notice to
- 9 the beneficiary.
- 10 (7) The trust agreement shall provide that at least thirty (30) days, but not more than forty-five (45)
- 11 days, prior to termination of the trust account, written notification of termination shall be delivered by
- 12 the trustee to the beneficiary.
- 13 (8) The trust agreement shall be made subject to and governed by the laws of the state in which the
- 14 trust is established.
- 15 (9) The trust agreement shall prohibit invasion of the trust corpus for the purpose of paying
- 16 compensation to or reimbursing the expenses of the trustee. In order for a letter of credit to qualify as
- 17 an asset of the trust, the trustee shall have the right and the obligation pursuant to the deed of trust or
- 18 some other binding agreement, as duly approved by the commissioner, to immediately draw down the
- 19 full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the
- 20 letter of credit will otherwise expire without being renewed or replaced.
- 21 (10) The trust agreement shall provide that the trustee shall be liable for its own negligence,
- 22 willful misconduct, or lack of good faith.
- 23 (11)(a) The trust agreement may provide that the ceding insurer shall undertake to use and apply

1 amounts drawn upon the trust account, without diminution because of the insolvency of the ceding
2 insurer or the assuming insurer for the purposes permitted by paragraphs (b) through (d) of this
3 subsection, if:

4 1. A trust agreement is established in conjunction with a reinsurance agreement covering risks other
5 than life, annuities, and accident and health; and

6 2. It is customary practice to provide a trust agreement for a specific purpose.

7 (b) To pay or reimburse the ceding insurer for the:

8 1. Assuming insurer's share under the specific reinsurance agreement regarding any losses and
9 allocated loss expenses paid by the ceding insurer, but not recovered from the assuming insurer; or

10 2. Unearned premiums due to the ceding insurer if not otherwise paid by the assuming insurer;

11 (c) To make payment to the assuming insurer of any amounts held in the trust account that exceed
12 one hundred and two (102) percent of the actual amount required to fund the assuming insurer's
13 obligations under the specific reinsurance agreement; or

14 (d) 1. To withdraw amounts equal to the obligations and deposit them in a separate account as
15 provided by subparagraph 2. of this paragraph, if the:

16 a. Ceding insurer has received notification of termination of the trust account; and

17 b. Assuming insurer's entire obligations under the specific reinsurance agreement remain
18 unliquidated and undischarged ten (10) days prior to the termination date.

19 2. Amounts withdrawn pursuant to subparagraph 1. of this paragraph shall be deposited:

20 a. In the name of the ceding insurer; and

21 b. In a qualified United States financial institution, as defined in KRS 304.5-140(1), apart from its
22 general assets; and

23 c. In trust for the uses and purposes specified in paragraphs (a) and (b) of this subsection that may

1 remain executory after the withdrawal for any period after the termination date.

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

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

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

15 (1) The trust agreement may provide that the:

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

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

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

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

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

- 23 1. A successor trustee has been duly appointed and approved by the beneficiary and the grantor;

1 and

2 2. All assets in the trust have been duly transferred to the new trustee.

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

4 1. Vote any shares of stock in the trust account; and

5 2. Receive from time to time payments of any dividends or interest upon any shares of stock or
6 obligations included in the trust account.

7 (b) Interest or dividends shall be:

8 1. Forwarded promptly upon receipt to the grantor; or

9 2. Deposited in a separate account established in the grantor's name.

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

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

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

14 1. At least equal in market value to the assets withdrawn; and

15 2. Consistent with the restrictions in Section 10(1)(b) of this administrative regulation.

16 (4) The trust agreement may:

17 (a) Provide that the beneficiary may designate a party to which all or part of the trust assets are to be
18 transferred; and

19 (b) Condition the transfer upon the trustee receiving, prior to or simultaneously, other specified
20 assets.

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

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

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

4 (a) Require the assuming insurer to:

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

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

- 10 1. Be valued according to the current fair market value of the assets; and
- 11 2. Consist of:
 - 12 a. Cash that is United States legal tender;
 - 13 b. Certificates of deposit, issued by a United States bank and payable in United States legal tender;
 - 14 c. Investments permitted by the insurance code; or
 - 15 d. A combination of the assets specified in clauses a. through c. of this subparagraph;
- 16 (c) As provided by paragraph (b) of this subsection, specify the types of investments to be deposited.
- 17 (d) Investments permitted by paragraph (b) of this subsection shall be issued by an institution that is
18 not the parent, subsidiary, or affiliate of the grantor or beneficiary.

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

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

- 23 1. Execute assignments or endorsements in blank; or

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

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

6 (h) 1. As provided by subparagraph 2 of this paragraph, stipulate that the assuming insurer and the
7 ceding insurer agree that the assets in the trust account, established pursuant to the provisions of
8 the reinsurance agreement, may be withdrawn by the ceding insurer at any time, notwithstanding
9 any other provisions in the reinsurance agreement.

10 2. The assets shall be utilized and applied by the ceding insurer or its successors in interest by
11 operation of law, including without limitation any liquidator, rehabilitator, receiver, or conservator of
12 the company, without diminution because of insolvency on the part of the ceding insurer or the assuming
13 insurer, only for the following purposes:

14 a. To reimburse the ceding insurer for the assuming insurer's share of premiums returned to the
15 owners of policies reinsured under the reinsurance agreement because of cancellations of the policies;

16 b. To reimburse the ceding insurer for the assuming insurer's share of surrenders and benefits or
17 losses paid by the ceding insurer pursuant to the provisions of the policies reinsured under the
18 reinsurance agreement;

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

23 d. To pay any other amounts the ceding insurer claims are due under the reinsurance agreement.

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

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

5 1. The assuming insurer shall at the time of withdrawal replace the withdrawn assets with other
6 qualified assets having a market value equal to the market value of the assets withdrawn so as to
7 maintain the deposit in the required amount at all times; or

8 2. After withdrawal and transfer, the market value of the trust account is no less than one hundred
9 and two (102) percent of the required amount.

10 3. The ceding insurer shall not unreasonably or arbitrarily withhold its approval.

11 (b) Provide for:

12 1. The return of any amount withdrawn in excess of the actual amounts required for subsection
13 (1)(h)1., 2., and 3. of this section or for payments under subsection (1)(h)4. of this section, amounts that
14 are subsequently determined not to be due; and

15 2. Interest payments at a rate not in excess of the prime rate of interest on the amounts held pursuant
16 to subsection (1)(e)3. of this section.

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

18 1. Interest at a rate different from that provided in paragraph (b)2. of this subsection;

19 2. Court or arbitration costs;

20 3. Attorney's fees; and

21 4. Other reasonable expenses.

22 (3)(a) If established on or before the date of filing the financial statement of the ceding insurer, a
23 trust agreement may be used to reduce a liability for reinsurance ceded to an unauthorized assuming

1 insurer in financial statements that are required to be filed with the office pursuant to this administrative
2 regulation.

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

4 1. May be lesser than or equal to the current fair market value of acceptable assets that are available
5 to be withdrawn from the trust account at the time of withdrawal; and

6 2. Shall not be greater than the specific obligations under the reinsurance agreement that the trust
7 account was established to secure.

8 (4) A trust agreement or underlying reinsurance agreement in existence prior to January 1, 1996,
9 shall:

10 (a) Be acceptable until January 1, 1997; and

11 (b) Beginning January 1, 1997, not be acceptable if it does not comply with the provisions of this
12 administrative regulation.

13 (5) The failure of a trust agreement to specifically identify the beneficiary shall not be construed to
14 affect actions or rights which the commissioner may take or possess pursuant to the provisions of the
15 laws of this state.

16 Section 11. Letters of Credit Qualified under KRS 304.5-140(3). (1) A letter of credit shall:

17 (a) Be clean, irrevocable, and unconditional;

18 (b) Issued or confirmed by a qualified United States financial institution;

19 (c) Contain an issue date, and date of expiration;

20 (d) State that it is not subject to a condition or qualification not contained in the letter of credit;

21 (e) Stipulate that in order to obtain funds, the beneficiary need only draw and present a sightdraft
22 under the letter of credit; and

23 (f) Except as provided by subsection (9)(a) of this section, not contain a reference to other

1 agreements, documents, or entities.

2 (2) The heading of a letter of credit may include a boxed section that:

3 (a) Contains the name of the applicant, and other appropriate notations that provide a reference for
4 the letter of credit; and

5 (b) Is clearly marked to indicate that the information is only for internal identification purposes.

6 (3) The letter of credit shall contain a statement that the obligation of the qualified United States
7 financial institution under the letter of credit is not contingent upon reimbursement with respect thereto.

8 (4) The term of the letter of credit shall be for at least one (1) year and shall contain an evergreen
9 clause. The evergreen clause shall provide for a period of not less than thirty (30) days' notice prior
10 to the date of expiration or nonrenewal.

11 (5) The letter of credit shall state:

12 (a) Whether it is governed by the:

13 1. Laws of Kentucky;

14 2. The Uniform Customs and Practice for Documentary Credits of the International Chamber of
15 Commerce Publication 600;

16 3. International Standby Practices of the International Chamber of Commerce Publication 590; or

17 4. Any successor publication; and

18 (b) That a draft drawn under the letter of credit shall be presentable at an office in the United States
19 of a qualified United States financial institution.

20 (6) A letter of credit shall provide for an extension of time to draw against it if it:

21 (a) Is made subject to subsection (5)(a)2., 3., or 4. of this section; and

22 (b) An occurrence specified in Article 36 of "Publication 600" of the Uniform Customs and Practice
23 for Documentary Credits of the International Chamber of Commerce occurs.

1 (7) The letter of credit shall be issued or confirmed by a qualified United States financial institution
2 authorized to issue letters of credit, pursuant to KRS 304.5-140(1)(a).

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

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

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

10 (9) Reinsurance agreement provisions.

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

12 1. Require the assuming insurer to provide letters of credit to the ceding insurer and specify what
13 shall be covered.

14 2. Stipulate that the assuming insurer and ceding insurer shall agree that, the letter of credit provided
15 by the assuming insurer pursuant to the provisions of the reinsurance agreement:

16 a. May be drawn upon at any time, notwithstanding other provisions in the agreement; and

17 b. Shall be utilized by the ceding insurer or its successors in interest only for one (1) or more of the
18 reasons specified in subparagraph 3 of this paragraph.

19 3.a. To reimburse the ceding insurer for the assuming insurer's share of premiums returned to the
20 owners of policies reinsured under the reinsurance agreement on account of cancellations of the policies;

21 b. To reimburse the ceding insurer for the assuming insurer's share of surrenders and benefits or
22 losses paid by the ceding insurer under the terms and provisions of the policies reinsured under the
23 reinsurance agreement;

1 c. To fund an account with the ceding insurer in an amount at least equal to the deduction,
2 for reinsurance ceded, from the ceding insurer's liabilities for policies ceded under the agreement; and

3 d. To pay other amounts the ceding insurer claims are due under the reinsurance agreement.

4 4. The provisions of this paragraph shall be applied without diminution because of insolvency on the
5 part of the ceding insurer or assuming insurer.

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

8 1. An interest payment, at a rate not in excess of the prime rate of interest, on the amounts held
9 pursuant to paragraph (a)2. of this subsection; or

10 2. The return of any amounts drawn down on the letters of credit in excess of the actual amounts
11 required for the reasons established in paragraph (a)3.a. through 3c. of this subsection or, in the case of
12 paragraph (a)3.d. of this subsection, any amounts that are subsequently determined not to be due.

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

16 1. A letter of credit is obtained in conjunction with a reinsurance agreement covering risks other
17 than life, annuities and health; and

18 2. It is customary practice to provide a letter of credit for a specific purpose.

19 (10)(a) A letter of credit shall not be used to reduce a liability for reinsurance ceded to an
20 unauthorized assuming insurer in financial statements required to be filed with the department unless
21 an acceptable letter of credit with the filing ceding insurer as beneficiary has been issued on or before
22 the date of filing of the financial statement.

23 (b) The reduction for the letter of credit may be up to the amount available under the letter of credit

1 but not greater than the specific obligation under the reinsurance agreement which the letter of credit
2 was intended to secure.

3 Section 12. Other Security. A ceding insurer may take credit for unencumbered funds withheld by
4 the ceding insurer in the United States subject to withdrawal solely by the ceding insurer and under its
5 exclusive control.

6 Section 13. Reciprocal jurisdictions.

7 (1) Pursuant to KRS 304.5-140 (3)(f)1., the commissioner shall allow credit for reinsurance ceded
8 by a domestic insurer to an assuming insurer that is licensed to write reinsurance by, and has its head
9 office or is domiciled in, a reciprocal jurisdiction, and that shall meet the other requirements of this
10 administrative regulation.

11 (2) A reciprocal jurisdiction shall mean a jurisdiction as described in KRS 304.5-140, that shall be
12 designated by the commissioner pursuant to subsection (8) of this section, and shall meet one of the
13 following:

14 (a) A non-U.S. jurisdiction that is set forth in 304.5-140(1)(c), (d)

15 (b) A U.S. jurisdiction that meets the requirements for accreditation under the NAIC financial
16 standards and accreditation program; or

17 (c) A qualified jurisdiction, as determined by the commissioner pursuant to KRS 304.5-140(3)(g),
18 which is not otherwise described in subsection (1) or (2) above and meets all the following additional
19 requirements as determined by the commissioner:

20 1. Provides that an insurer which has its head office or is domiciled in a qualified jurisdiction shall
21 receive credit for reinsurance ceded to a U.S.-domiciled assuming insurer in the same manner as credit for
22 reinsurance is received for reinsurance assumed by insurers domiciled in such qualified jurisdiction;

23 2. Does not require a U.S.-domiciled assuming insurer to establish or maintain a local

1 presence as a condition for entering into a reinsurance agreement with any ceding insurer subject to
2 regulation by the non-U.S. jurisdiction or as a condition to allow the ceding insurer to recognize credit for
3 the reinsurance;

4 3. Recognizes the U.S. state regulatory approach to group supervision and group capital, by
5 providing written confirmation by a competent regulatory authority, in the qualified jurisdiction, that
6 insurers and insurance groups that are domiciled or maintain their headquarters in this state or another
7 jurisdiction accredited by the NAIC shall be subject only to worldwide prudential insurance group
8 supervision including worldwide group governance, solvency and capital, and reporting, as applicable, by
9 the commissioner or the commissioner of the domiciliary state and shall not be subject to group
10 supervision at the level of the worldwide parent undertaking of the insurance or reinsurance group by the
11 qualified jurisdiction; and

12 4. Provides written confirmation by a competent regulatory authority in the qualified jurisdiction
13 that information regarding insurers and their parent, subsidiary, or affiliated entities, if applicable, shall
14 be provided to the commissioner in accordance with a memorandum of understanding or similar document
15 between the commissioner and the qualified jurisdiction, including but not limited to the International
16 Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral
17 memoranda of understanding coordinated by the NAIC.

18 (3) Credit Allowance. (a) Credit shall be allowed when the reinsurance is ceded from an insurer
19 domiciled in this state to an assuming insurer when each of the conditions below are met:

20 1. The assuming insurer shall be licensed to transact reinsurance by, and have its head office or be
21 domiciled in, a reciprocal jurisdiction;

22 2. The assuming insurer shall have and maintain on an ongoing basis minimum capital and surplus,
23 or its equivalent, calculated on at least an annual basis as of the preceding December 31 or at the annual

1 date otherwise statutorily reported to the reciprocal jurisdiction, and confirmed as set forth in KRS 304.5-
2 140(3)(f)6., according to the methodology of its domiciliary jurisdiction, in the following amounts:

3 a. No less than \$250,000,000; or

4 b. If the assuming insurer is an association, including incorporated and individual unincorporated
5 underwriters:

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

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

9 (4) The assuming insurer shall have and maintain on an ongoing basis a minimum solvency or
10 capital ratio, as applicable, as follows:

11 (a) If the assuming insurer has its head office or is domiciled in a reciprocal jurisdiction set
12 forth in subsection (2)(a) of this section, the ratio specified in the applicable covered agreement;

13 (b) If the assuming insurer is domiciled in a reciprocal jurisdiction as defined in subsection
14 (2)(b) of this section, a risk-based capital ratio of three hundred (300) percent of the authorized control
15 level, calculated in accordance with the formula developed by the NAIC; or

16 (c) If the assuming insurer is domiciled in a reciprocal jurisdiction set forth in subsection (2)(c)
17 of this section, after consultation with the reciprocal jurisdiction and considering any recommendations
18 published through the NAIC Committee Process, such solvency or capital ratio as the commissioner
19 determines to be an effective measure of solvency.

20 (5) The assuming insurer shall agree to and provide adequate assurance, in the form of a properly
21 executed Form RJ-1 of its agreement to the following:

22 (a) The assuming insurer shall agree to provide prompt written notice and explanation to the
23 commissioner if it falls below the minimum requirements set forth in subsection (3) or (4) of this section,

1 or if any regulatory action is taken against it for serious noncompliance with applicable law;

2 (b) The assuming insurer shall consent in writing to the jurisdiction of the court of this state
3 and to the appointment of the commissioner as agent for service of process:

4 1. The commissioner may also require that the consent be provided and included in each
5 reinsurance agreement under the jurisdiction of the commissioner; and

6 2. Nothing in this provision shall limit or in any way alter the capacity of parties to a
7 reinsurance agreement to agree to alternative dispute resolution mechanisms, except to the extent that such
8 agreements are unenforceable under applicable insolvency or delinquency laws.

9 (c) The assuming insurer shall consent in writing to pay all final judgments, wherever
10 enforcement is sought, obtained by a ceding insurer, that have been declared enforceable in the territory
11 where the judgment was obtained;

12 (d) Each reinsurance agreement shall include a provision requiring the assuming insurer to
13 provide security in an amount equal to one hundred (100) percent of the assuming insurer's liabilities
14 attributable to reinsurance ceded pursuant to that agreement if the assuming insurer resists enforcement of
15 a final judgment that is enforceable under the law of the jurisdiction in which it was obtained or a properly
16 enforceable arbitration award, whether obtained by the ceding insurer or by its legal successor on behalf
17 of its estate, if applicable;

18 (e) The assuming insurer shall confirm that it is not presently participating in any solvent
19 scheme of arrangement, which may involve a ceding insurer of this state, and shall agree to notify the
20 ceding insurer and the commissioner, and to provide one hundred (100) percent security to the ceding
21 insurer consistent with the terms of the scheme, should the assuming insurer enter into such a solvent
22 scheme or arrangement. Such security shall be in a form consistent with the provisions of KRS 304.5-
23 140(4) and sections 7, 8, 9, 10, 11, or 12 of this regulation; and

1 (f) The assuming insurer shall agree in writing to meet the applicable information filing
2 requirements as set forth in KRS 304.5-140(3)(f)4. and subsection (6) of this section.

3 (6) The assuming insurer or its legal successor shall provide, if requested by the
4 commissioner, on behalf of itself and any legal predecessors, the following documentation to the
5 commissioner:

6 (a) For the two years preceding entry into the reinsurance agreement and on an annual basis
7 thereafter, the assuming insurer's annual audited financial statements, in accordance with the applicable
8 law of the jurisdiction of its head office or domiciliary jurisdiction, as applicable, including the external
9 audit report;

10 (b) For the two years preceding entry into the reinsurance agreement, the solvency and
11 financial condition report or actuarial opinion, if filed with the assuming insurer's supervisor;

12 (c) Prior to entry into the reinsurance agreement and not more than semi-annually thereafter,
13 an updated list of all disputed and overdue reinsurance claims outstanding for ninety (90) days or more,
14 regarding reinsurance assumed from ceding insurers domiciled in the United States; and

15 (d) Prior to entry into the reinsurance agreement and not more than semi-annually thereafter,
16 information regarding the assuming insurer's assumed reinsurance by ceding insurer, ceded reinsurance
17 by the assuming insurer, and reinsurance recoverable on paid and unpaid losses by the assuming insurer
18 to allow for the evaluation of the criteria set forth in subsection (7) of this section.

19 (7) The assuming insurer shall maintain a practice of prompt payment of claims under reinsurance
20 agreements. The lack of prompt payment will be evidenced if any of the following criteria is met:

21 (a) More than fifteen (15) percent of the reinsurance recoverables from the assuming insurer
22 are overdue and in dispute as reported to the commissioner;

23 (b) More than fifteen (15) percent of the assuming insurer's ceding insurers or reinsurers have

1 overdue reinsurance recoverable on paid losses of ninety (90) days or more which are not in dispute and
2 which exceed for each ceding insurer \$100,000, or as otherwise specified in a covered agreement; or

3 (c) The aggregate amount of reinsurance recoverable on paid losses which are not in dispute,
4 but are overdue by ninety (90) days or more, exceeds \$50,000,000, or as otherwise specified in a covered
5 agreement.

6 (8) Pursuant to 304.5-140(3)(g), the commissioner shall publish a list of reciprocal jurisdictions:

7 (a) A list of reciprocal jurisdictions is published through the NAIC Committee Process. The list
8 created by the commissioner shall include any reciprocal jurisdiction as defined as described by Section
9 13(2) of this administrative regulation, and shall consider any other reciprocal jurisdiction included on the
10 NAIC list. The commissioner may approve a jurisdiction that does not appear on the NAIC list of
11 reciprocal jurisdictions as provided by applicable law, regulation, or in accordance with criteria published
12 through the NAIC Committee Process.

13 (b) The commissioner may remove a jurisdiction from the list of reciprocal jurisdictions upon
14 a determination that the jurisdiction no longer meets one or more of the requirements set forth in KRS
15 304.5-140, and Section 13(2) of this administrative regulation, or in accordance with a process published
16 through the NAIC Committee Process, except that the commissioner shall not remove from the list a
17 reciprocal jurisdiction as defined under subsection 2(a) and (b) of this section. Upon removal of a
18 reciprocal jurisdiction from this list, credit for reinsurance ceded to an assuming insurer domiciled in that
19 jurisdiction shall be allowed, if otherwise allowed pursuant to KRS 304.5-140 and this administrative
20 regulation.

21 (9) The commissioner shall timely create and publish a list of assuming insurers that have
22 satisfied the conditions set forth in this section and to which cessions shall be granted credit in accordance
23 with this section.

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(a) If an NAIC accredited jurisdiction has determined that the conditions set forth in subsection (3) and (4) of this section have been met, the commissioner has the discretion to defer to that jurisdiction's determination, and add such assuming insurer to the list of assuming insurers to which cessions shall be granted credit in accordance with this subsection. The commissioner may accept financial documentation filed with another NAIC accredited jurisdiction or with the NAIC in satisfaction of the requirements of subsection (3) of this section.

(b) When requesting that the commissioner defer to another NAIC accredited jurisdiction's determination, an assuming insurer must submit a properly executed Form RJ-1 and additional information as the commissioner may require. A state that has received a request will notify other states through the NAIC Committee Process and provide relevant information with respect to the determination of eligibility.

(10) If the commissioner determines that an assuming insurer no longer meets one or more of the requirements under this section, the commissioner may revoke or suspend the eligibility of the assuming insurer for recognition under this section. If the commissioner makes such a determination:

(a) While an assuming insurer's eligibility is suspended, no reinsurance agreement issued, amended or renewed after the effective date of the suspension shall qualify for credit except to the extent that the assuming insurer's obligations under the contract are secured in accordance with Section 7 of this administrative regulation; or

(b) If an assuming insurer's eligibility is revoked, credit for reinsurance shall not be granted after the effective date of the revocation with respect to any reinsurance agreements entered by the assuming insurer, including reinsurance agreements entered into prior to the date of revocation, except to the extent that the assuming insurer's obligations under the contract are secured in a form acceptable to the

1 commissioner and consistent with the provisions of Section 7 of this administrative regulation.

2 (11) Before denying statement credit or imposing a requirement to post security with respect to Section
3 7 of this administrative regulation or adopting any similar requirement that will have substantially the
4 same regulatory impact as security, the commissioner shall:

5 (a) Communicate with the ceding insurer, the assuming insurer, and the assuming insurer's
6 supervisory authority that the assuming insurer no longer satisfies one of the conditions listed in
7 subsections (3) and (4) of this section;

8 (b) Provide the assuming insurer with thirty (30) days from the initial communication to submit a plan
9 to remedy the defect, and ninety (90) days from the initial communication to remedy the defect, except
10 in exceptional circumstances in which a shorter period is necessary for policyholder and consumer
11 protection;

12 (c) After the expiration of ninety (90) days, or less, as set out in paragraph (b) of this subsection, if
13 the commissioner determines that no or insufficient action was taken by the assuming insurer, the
14 commissioner may impose any of the requirements as set out in this subsection; and

15 (d) Provide a written explanation to the assuming insurer of any of the requirements set out in this
16 subsection.

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

21 Section 14. [Section 13.] Reinsurance Contract. Upon the effective date of this administrative
22 regulation, credit shall not be granted to a ceding insurer for reinsurance effected with assuming insurers
23 meeting the requirements of KRS 304.5-140 unless the reinsurance agreement includes a:

1 (1) Proper insolvency clause pursuant to KRS 304.5-140(5) and 304.33-350 of the Insurance
2 Code; and

3 (2) Provision pursuant to KRS 304.5-140(2)(f), if the assuming insurer, is an unauthorized
4 assuming insurer, and has:

5 (a) Submitted to the jurisdiction of an alternative dispute resolution panel or court of competent
6 jurisdiction within the United States;

7 (b) Agreed to comply with all requirements necessary to give the court or panel jurisdiction;

8 (c) Designated an agent upon whom service of process may be effected; and

9 (d) Agreed to abide by the final decision of the court or panel.

10 Section 15. [~~Section 14.~~] Contracts Affected. All new and renewal reinsurance transactions entered
11 into after the effective date of this administrative regulation shall conform to the requirements of KRS
12 304.5-140 and this administrative regulation if credit is to be given to the ceding insurer for reinsurance.

13 Section 16. [~~Section 15.~~] Incorporation by Reference. (1) The following material is incorporated by
14 reference:

15 (a) "Certificate of Assuming Insurer," Form AR, 12/95 [~~1 December 95~~];

16 (b) "Certificate of Certified Reinsurer," Form CR-1, 9/19 [~~(09/19)~~];

17 (c) "Form CR-F" 9/19 [~~(09/19)~~]; and

18 (d) "Form CR-S", 9/19 [~~(09/19)~~];

19 (e) "Form RJ-1", 9/21.

20 (2) It may be inspected, copied, or obtained from the Department of Insurance, 500 Mero St.,
21 Frankfort, Kentucky 40602, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available
22 on the department's internet Web site at <https://insurance.ky.gov/ppc/CHAPTER.aspx>.

806 KAR 5:025
READ AND APPROVED:

Sharon P. Clark
Commissioner, Department of Insurance

Date

Ray A. Perry
Secretary, Public Protection Cabinet

Date

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held at 9:00 AM on November 22nd, 2021 at 500 Mero Street, Frankfort, KY 40602. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM on November 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

Contact Person: Abigail Gall
Title: Executive Administrative Secretary
Address: 500 Mero Street, Frankfort, KY 40601
Phone: +1 (502) 564-6026
Fax: +1 (502) 564-1453
Email: abigail.gall@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation: 806 KAR 5:025
Contact Person: Abigail Gall
Phone: +1 (502) 564-6026
Email: abigail.gall@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements for reinsurers to become accredited, certified, or use trust agreements in Kentucky. The administrative regulation ensures the ceding insurer may credit amounts reinsured to these assuming insurers on their financial statements. The administrative regulation also stipulates the process for becoming a qualified jurisdiction where a reinsurer may be domiciled and become certified. The qualified jurisdiction is critical as it means the country has passed a specific regulatory test to provide certainty that insurers within its jurisdiction adhere to similar and strict regulatory rules. The changes included within the administrative commence the process of conforming Kentucky law to the United States covered agreements with the European Union and United Kingdom regarding reinsurance collateral requirements. It moves away from recognizing only 100% collateral as the way to judge financial stability, and moves to a more rounded approach and review of both the company and regulatory jurisdiction where the company is domiciled.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to conform Kentucky law to the United States Covered Agreement with the European Union or else face federal preemption from the Federal Insurance Office (FIO). Historically, U.S. regulators did not impose direct control over non-U.S. reinsurers. Instead, they regulated non-U.S. reinsurance markets by only allowing a statutory credit on the ceding insurer's balance sheet when the non-U.S. reinsurer maintained 100% collateral for its reinsurance obligations. U.S. regulators then began requesting more information from non-U.S. based reinsurers to ensure they were compliant with the requirement and the statutory credit was permissible. This created a tightening of the market for reinsurance, restricted the free flow of capital, and reduced the potential investments an insurer and reinsurer could make. It also created a global fragmented regulatory system, especially within the United States, creating a barrier for many reinsurance companies to operate. The United States Department of Treasury and the European Union entered into intense negotiations to develop a regulatory framework reforming the collateral requirements for reinsurers in and outside the United States, and on September 22, 2017, the parties entered into a Covered Agreement. The agreement requires states to eliminate reinsurance collateral requirements within five (5) years, or risk preemption under the Covered Agreement.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation provides further clarity on the manner to become an accredited or certified reinsurer pursuant to KRS 304.5-140.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides specific details and a process for the commissioner to accredit or certify reinsurers, as well as, determine qualified jurisdictions.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment incorporates a process to determine the reciprocal and qualified jurisdiction list. These amendments derive from the June 2019 “red-lining” of the National Insurance Commissioner’s Model Law 786. The statute also requires the Commissioner to design a list of such jurisdictions within the regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to include a specific process for accreditation and certification of reinsurers following the 2018 statutory amendments to KRS 304.5-140, and the United States covered agreement with the European Union and United Kingdom. The Department has also been required by the NAIC to incorporate the June 2011 amendments in order to abide by their Financial Accreditation process, which ensures reciprocity and uniformity across states.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment uses the authority provided to the commissioner by KRS 304.5-140 to establish a list of reciprocal and qualified jurisdictions of reinsurers.

(d) How the amendment will assist in the effective administration of the statutes: This amendment is based on the most recent version of the NAIC's Model Regulation 786, and meets the requirements set forth in KRS 304.5-140 to establish a list of reciprocal and qualified jurisdictions of reinsurers. It is necessary to ensure reinsurers meet the new standards negotiated by the United States federal government and incorporated within KRS 304.5-140.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The administrative regulation will impact those domestic insurers that reinsure risks in the United States and through entities outside of the United States.

(4) Provide an analysis of how the entities identified in the previous question will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Reinsurers interested in taking advantage of the ceding process will need to comply with the new filing requirements in order to become an accredited or certified reinsurer.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: The requirements included within the administrative regulation are part of an NAIC Model Law and Regulation, and are required to be enacted in every jurisdiction across the United States. In the event states do not uniformly enact the changes, the Federal Insurance Office will assert federal preemption based on the covered agreement. Therefore, it will not cost regulated entities any amount to comply with these requirements as they have been enacted in other jurisdictions previously.

(c) As a result of compliance, what benefits will accrue to the entities: The requirements set forth in this administrative regulation will expand the pool of reinsurance available to insurers, and allow them to utilize capital in more productive manners other than unnecessarily holding it in reserve. Additionally, more reinsurers will qualify to allow ceding insurers to take advantage of the credit, so reinsurance will be more widely available and potentially cheaper. Reinsurers will also greatly benefit from the uniform standards making it easier, cheaper, and more efficient for them to do business in the United States.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: Implementation of this amendment is not anticipated to have an initial cost on the Department of Insurance.

(b) On a continuing basis: Implementation of this amendment is not anticipated to have an on-going cost on the Department of Insurance.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Department will use funds from its current operational budget to perform the tasks necessary.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase of fees will not be necessary because additional personnel is likely unnecessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees directly or indirectly.

(9) TIERING: Is tiering applied? Explain why or why not. No, tiering is not applied as it applies to all ceding and assuming insurers equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation: 806 KAR 5:025
Contact Person: Abigail Gall
Phone: +1 (502) 564-6026
Email: abigail.gall@ky.gov

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department as the implementer.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.5-140 and the September 22, 2017 United States Covered agreement with the European Union and the United Kingdom.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The administrative regulation will not generate any revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue is expected to be generated.

(c) How much will it cost to administer this program for the first year? No cost is expected, this will be handled on the Department's current operating budget.

(d) How much will it cost to administer this program for subsequent years? No cost is expected, this will be handled on the Department's current operating budget.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(4) Revenues (+/-): Neutral

(5) Expenditures (+/-): Neutral

(6) Other Explanation: The program including receipt and review of new filings will be handled by internal personnel. At this point, the Department anticipates all duties will be handled by current personnel due to the minimal nature of Kentucky specific filings. If filings exceed expectations additional staff may become necessary; however, the overseas reinsurance is not large for the small number of Kentucky domestic insurers. Thus, we anticipate a low volume of overall filings.

SUMMARY OF MATERIAL INCORPORATED BY REFERENCE

The documents incorporated reference include the necessary filings for reinsurers seeking to obtain and maintain their certification status. The AR-1, CR-F and CR-S allow the Department to review specific financial information to ensure compliance with the statutory and regulatory requirements. The CR-1 designates the Kentucky Insurance Commissioner, or otherwise applicable, as the designated representative for service of process and the reinsurer agrees to submit to the jurisdiction of Kentucky. The newly incorporated RJ-1 is a certificate of the reinsurer who is domiciled in a reciprocal jurisdiction as designated by the Commissioner.

