WEST VIRGINIA SECRETARY OF STATE

KRIS WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia Secretary Of State

NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

AGENCY: Insurance Commission

TITLE-SERIES: 114-102

RULE TYPE: Legislative

Amendment to Existing Rule: Yes

Repeal of existing rule: No

RULE NAME: 114-102 Term and Universal Life Insurance Reserve Financing

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: W. Va. Code §§33-2-10 and 33-4-15a(e)

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

W. Va. Code §33-4-15a(e) authorizes the Insurance Commissioner to propose rules regarding reinsurance arrangements. The rule provisions ensure that funds backing captive reinsurance transactions, which consist of primary security and other security, are held in the forms and amounts that are appropriate.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? Yes

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? Yes

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD:

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED:

COMMENTS RECEIVED:

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING:

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

The rule provisions ensure that funds backing captive reinsurance transactions, which consist of primary security and other security, are held in the forms and amounts that are appropriate. The rule also establishes uniform national standards governing reserve financing arrangements pertaining to term life and universal life insurance policies with secondary guarantees. The Insurance Commissioner seeks to amend this rule solely to extend the sunset date.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

The Insurance Commissioner seeks to amend this rule solely to extend the sunset date, which is currently August 1, 2027. The rule was first promulgated in 2022 after the Financial Regulation Standards and Accreditation (F) Committee of the National Association of Insurance Commissioners (NAIC) adopted the Term and Universal Life Insurance Reserve Financing Model Regulation (#787) as an accreditation standard effective January 1, 2023. The rule establishes uniform national standards governing reserve financing arrangements pertaining to term life and universal life insurance policies with secondary guarantees. The rule also includes provisions to ensure that funds backing captive reinsurance transactions, which consist of primary security and other security, are held in the forms and amounts that are appropriate. The rule is authorized under the existing statute on credit for reinsurance, W. Va. Code §33-4-15a, which was last updated during the 2020 Legislative Session. The sunset date of this rule requires extension for the Insurance Commissioners office to maintain its accreditation with the National Association of Insurance Commissioners.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

None

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

None

C. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

None

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2026 Increase/Decrease (use "-")	2027 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			
Personal Services			
Current Expenses			
Repairs and Alterations			
Assets			
Other			
2. Estimated Total Revenues			

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

N/A

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Anoop Bhasin -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 114
LEGISLATIVE RULE
INSURANCE COMMISSIONER

SERIES 102
TERM AND UNIVERSAL LIFE INSURANCE RESERVE FINANCING

Section

114-102-1. General.

114-102-2. Definitions.

114-102-3. Actuarial Method.

114-102-4. Requirements Applicable to Covered Policies to Obtain Credit for Reinsurance; Opportunity for Remediation.

114-102-5. Prohibition Against Avoidance.

114-102-6. Exemptions.

TITLE 114
LEGISLATIVE RULE
INSURANCE COMMISSIONER

SERIES 102
TERM AND UNIVERSAL LIFE INSURANCE RESERVE FINANCING

§114-102-1. General.

1.1. Scope. -- The purpose and intent of this rule is to establish uniform, national standards governing reserve financing arrangements pertaining to life insurance policies containing guaranteed nonlevel gross premiums, guaranteed nonlevel benefits and universal life insurance policies with secondary guarantees; and to ensure that, with respect to each such financing arrangement, funds consisting of primary security and other security are held by or on behalf of ceding insurers in the forms and amounts required herein. In general, reinsurance ceded for reserve financing purposes has one or more of the following characteristics: some or all of the assets used to secure the reinsurance treaty or to capitalize the reinsurer (1) are issued by the ceding insurer or its affiliates; (2) are not unconditionally available to satisfy the general account obligations of the ceding insurer; or (3) create a reimbursement, indemnification or other similar obligation on the part of the ceding insurer or any of its affiliates (other than a payment obligation under a derivative contract acquired in the normal course and used to support and hedge liabilities pertaining to the actual risks in the policies ceded pursuant to the reinsurance treaty). This rule shall apply to reinsurance treaties that cede liabilities pertaining to covered policies issued by any life insurance company domiciled in this state. This rule and 114CSR40 shall both apply to such reinsurance treaties. However, in the event of a direct conflict between the provisions of this rule and 114CSR40, the provisions of this rule shall apply, but only to the extent of the conflict. This rule is based upon the National Association of Insurance Commissioners' "Term and Universal Life Insurance Reserve Financing Model Regulation," Model 787, as amended in 2017.

1.2. Authority. -- W. Va. Code §§33-2-10 and 33-4-15a(e).

1.3. Filing Date. -- ~~June 6, 2022~~.

1.4. Effective Date. -- ~~July 1, 2022~~.

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect on August 1, ~~2027~~ 2032.

§114-102-2. Definitions.

2.1. "Actuarial method" means the methodology used to determine the required level of primary security, as described in section 3 of this rule.

2.2. "Commissioner" means the West Virginia Insurance Commissioner.

2.3. "Covered policies" means the following: Subject to the exemptions described in section 6 of this rule, covered policies are those policies, other than grandfathered policies, of the following policy types:

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

2.3.2. Flexible premium universal life insurance policies with provisions resulting in the ability of

a policyholder to keep a policy in force over a secondary guarantee period.

2.4. "Grandfathered policies" means policies of the types described in subdivisions 2.3.1 and 2.3.2 of this rule that were:

2.4.1. Issued prior to January 1, 2015; and

2.4.2. Ceded, as of December 31, 2014, as part of a reinsurance treaty that would not have met one of the exemptions set forth in section 6 of this rule had that section then been in effect.

2.5. "Non-covered policies" means any policy that does not meet the definition of covered policies, including grandfathered policies.

2.6. "Required level of primary security" means the dollar amount determined by applying the actuarial method to the risks ceded with respect to covered policies, but not more than the total reserve ceded.

2.7. "Primary security" means the following forms of security:

2.7.1. Cash meeting the requirements of W. Va. Code §33-4-15a(c)(2)(A);

2.7.2. Securities listed by the Securities Valuation Office meeting the requirements of W. Va. Code §33-4-15a(c)(2)(B), but excluding any synthetic letter of credit, contingent note, credit-linked note or other similar security that operates in a manner similar to a letter of credit, and excluding any securities issued by the ceding insurer or any of its affiliates; and

2.7.3. For security held in connection with funds-withheld and modified coinsurance reinsurance treaties:

2.7.3.a. Commercial loans in good standing of CM3 quality and higher;

2.7.3.b. Policy loans; and

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

2.8. "Other security" means any security acceptable to the commissioner other than security meeting the definition of primary security.

2.9. "Valuation manual" shall have the meaning ascribed in W. Va. Code §33-7-9(a)(11) and as adopted by 114CSR98. The "valuation manual" includes all amendments adopted by the National Association of Insurance Commissioners that are effective for the financial statement date on which credit for reinsurance is claimed.

2.10. "VM-20" means the requirements for principle-based reserves for life products, including all relevant definitions, from the valuation manual.

§114-102-3. Actuarial Method.

3.1. Actuarial Method.

3.1.1. The actuarial method to establish the required level of primary security for each reinsurance

treaty subject to this rule shall be VM-20, applied on a treaty-by-treaty basis, including all relevant definitions, from the valuation manual as then in effect, applied as follows:

3.1.1.a. For covered policies described in subdivision 2.3.1 of this rule, the actuarial method is the greater of the deterministic reserve or the net premium reserve (NPR) regardless of whether the criteria for exemption testing can be met. However, if the covered policies do not meet the requirements of the stochastic reserve exclusion test in the valuation manual, then the actuarial method is the greatest of the deterministic reserve, the stochastic reserve or the NPR. In addition, if such covered policies are reinsured in a reinsurance treaty that also contains covered policies described in subdivision 2.3.2 of this rule, the ceding insurer may elect to instead use paragraph 3.1.1.b of this rule as the actuarial method for the entire reinsurance agreement. Whether this paragraph or paragraph 3.1.1.b of this rule is used, the actuarial method must comply with any requirements or restrictions that the valuation manual imposes when aggregating these policy types for purposes of principle-based reserve calculations.

3.1.1.b. For covered policies described in subdivision 2.3.2 of this rule, the actuarial method is the greatest of the deterministic reserve, the stochastic reserve or the NPR regardless of whether the criteria for exemption testing can be met.

3.1.1.c. Except as provided in paragraph 3.1.1.d of this rule, the actuarial method is to be applied on a gross basis to all risks with respect to the covered policies as originally issued or assumed by the ceding insurer.

3.1.1.d. If the reinsurance treaty cedes less than one hundred percent (100%) of the risk with respect to the covered policies, then the required level of primary security may be reduced as follows:

3.1.1.d.1. If a reinsurance treaty cedes only a quota share of some or all of the risks pertaining to the covered policies, the required level of primary security, as well as any adjustment under subparagraph 3.1.1.d.3 of this rule, may be reduced to a pro rata portion in accordance with the percentage of the risk ceded;

3.1.1.d.2. If the reinsurance treaty in a non-exempt arrangement cedes only the risks pertaining to a secondary guarantee, the required level of primary security may be reduced by an amount determined by applying the actuarial method on a gross basis to all risks, other than risks related to the secondary guarantee, pertaining to the covered policies, except that for covered policies for which the ceding insurer did not elect to apply the provisions of VM-20 to establish statutory reserves, the required level of primary security may be reduced by the statutory reserve retained by the ceding insurer on those covered policies, where the retained reserve of those covered policies should be reflective of any reduction pursuant to the cession of mortality risk on a yearly renewable term basis in an exempt arrangement;

3.1.1.d.3. If a portion of the covered policy risk is ceded to another reinsurer on a yearly renewable term basis in an exempt arrangement, the required level of primary security may be reduced by the amount resulting by applying the actuarial method including the reinsurance section of VM-20 to the portion of the covered policy risks ceded in the exempt arrangement, except that for covered policies issued prior to January 1, 2017, this adjustment is not to exceed [cx/ (2 * number of reinsurance premiums per year)] where cx is calculated using the same mortality table used in calculating the NPR; and

3.1.1.d.4. For any other treaty ceding a portion of risk to a different reinsurer, including but not limited to stop loss, excess of loss and other non-proportional reinsurance treaties, there will be no reduction in the required level of primary security.

3.1.1.e. It is possible for any combination of subparagraphs 3.1.1.d.1, 3.1.1.d.2, 3.1.1.d.3 and

3.1.1.d.4 of this rule to apply. Such adjustments to the required level of primary security will be done in the sequence that accurately reflects the portion of the risk ceded via the treaty. The ceding insurer should document the rationale and steps taken to accomplish the adjustments to the required level of primary security due to the cession of less than one hundred percent (100%) of the risk. The adjustments for other reinsurance will be made only with respect to reinsurance treaties entered into directly by the ceding insurer. The ceding insurer will make no adjustment as a result of a retrocession treaty entered into by the assuming insurers.

3.1.1.f. In no event will the required level of primary security resulting from application of the actuarial method exceed the amount of statutory reserves ceded.

3.1.1.g. If the ceding insurer cedes risks with respect to covered policies, including any riders, in more than one reinsurance treaty subject to this rule, in no event will the aggregate required level of primary security for those reinsurance treaties be less than the required level of primary security calculated using the actuarial method as if all risks ceded in those treaties were ceded in a single treaty subject to this rule;

3.1.1.h. If a reinsurance treaty subject to this rule cedes risk on both covered and non-covered policies, credit for the ceded reserves shall be determined as follows:

3.1.1.h.1. The actuarial method shall be used to determine the required level of primary security for the covered policies, and section 4 of this rule shall be used to determine the reinsurance credit for the covered policy reserves; and

3.1.1.h.2. Credit for the non-covered policy reserves shall be granted only to the extent that security, in addition to the security held to satisfy the requirements of subparagraph 3.1.1.h.1 of this rule, is held by or on behalf of the ceding insurer in accordance with W. Va. Code §33-4-15a(b) and (c). Any primary security used to meet the requirements of this paragraph may not be used to satisfy the required level of primary security for the covered policies.

3.2. Valuation Used for Purposes of Calculations.

3.2.1. For the purposes of both calculating the required level of primary security pursuant to the actuarial method and determining the amount of primary security and other security, as applicable, held by or on behalf of the ceding insurer, the following shall apply:

3.2.1.a. For assets, including any such assets held in trust, that would be admitted under the National Association of Insurance Commissioners' Accounting Practices and Procedures Manual if they were held by the ceding insurer, the valuations are to be determined according to statutory accounting procedures as if such assets were held in the ceding insurer's general account and without taking into consideration the effect of any prescribed or permitted practices; and

3.2.1.b. For all other assets, the valuations are to be those that were assigned to the assets for the purpose of determining the amount of reserve credit taken. In addition, the asset spread tables and asset default cost tables required by VM-20 shall be included in the actuarial method if adopted by the National Association of Insurance Commissioners' Life Actuarial (A) Task Force no later than the December 31 on or immediately preceding the valuation date for which the required level of primary security is being calculated. The tables of asset spreads and asset default costs shall be incorporated into the actuarial method in the manner specified in VM-20.

§114-102-4. Requirements Applicable to Covered Policies to Obtain Credit for Reinsurance; Opportunity for Remediation.

4.1. Subject to the provisions of subsection 4.2 of this rule and the exemptions described in section 6 of this rule, credit for reinsurance shall be allowed with respect to ceded liabilities pertaining to covered policies pursuant to W. Va. Code §33-4-15a(b) and (c) if, and only if, in addition to all other requirements imposed by law or rule, the following requirements are met on a treaty-by-treaty basis:

4.1.1. The ceding insurer's statutory policy reserves with respect to the covered policies are established in full and in accordance with the applicable requirements of W. Va. Code §33-7-9 and related rules and actuarial guidelines, and credit claimed for any reinsurance treaty subject to this rule, does not exceed the proportionate share of those reserves ceded under the contract;

4.1.2. The ceding insurer determines the required level of primary security with respect to each reinsurance treaty subject to this rule and provides support for its calculation as determined to be acceptable to the commissioner;

4.1.3. Funds consisting of primary security, in an amount at least equal to the required level of primary security, are held by or on behalf of the ceding insurer, as security under the reinsurance treaty within the meaning of W. Va. Code §33-4-15a(c), on a funds withheld, trust, or modified coinsurance basis;

4.1.4. Funds consisting of other security, in an amount at least equal to any portion of the statutory reserves as to which primary security is not held pursuant to subdivision 4.1.3 of this rule, are held by or on behalf of the ceding insurer as security under the reinsurance treaty within the meaning of W. Va. Code §33-4-15a(c);

4.1.5. Any trust used to satisfy the requirements of this section shall comply with all of the conditions and qualifications of W. Va. Code St. R. §114-40-10, except that:

4.1.5.a. Funds consisting of primary security or other security held in trust, shall for the purposes identified in subsection 3.2 of this rule, be valued according to the valuation rules set forth in subsection 3.2 of this rule, as applicable;

4.1.5.b. There are no affiliate investment limitations with respect to any security held in such trust if such security is not needed to satisfy the requirements of subdivision 4.1.3 of this rule;

4.1.5.c. The reinsurance treaty must prohibit withdrawals or substitutions of trust assets that would leave the fair market value of the primary security within the trust (when aggregated with primary security outside the trust that is held by or on behalf of the ceding insurer in the manner required by subdivision 4.1.3 of this rule) below one hundred and two percent (102%) of the level required by subdivision 4.1.3 of this rule at the time of the withdrawal or substitution; and

4.1.5.d. The determination of reserve credit under W. Va. Code St. R. §114-40-10.4.c shall be determined according to the valuation rules set forth in subsection 3.2 of this rule, as applicable; and

4.1.6. The reinsurance treaty has been approved by the commissioner.

4.2. Requirements at Inception Date and on an On-going Basis; Remediation

4.2.1. The requirements of subsection 4.1 of this rule must be satisfied as of the date that risks

under covered policies are ceded, if such date is on or after the effective date of this rule, and on an ongoing basis thereafter. Under no circumstances shall a ceding insurer take or consent to any action or series of actions that would result in a deficiency under subdivision 4.1.3 or 4.1.4 of this rule with respect to any reinsurance treaty under which covered policies have been ceded, and in the event that a ceding insurer becomes aware at any time that such a deficiency exists, it shall use its best efforts to arrange for the deficiency to be eliminated as expeditiously as possible.

4.2.2. Prior to the due date of each quarterly or annual statement, each life insurance company that has ceded reinsurance within the scope of this rule, as set forth in subsection 1.1 of this rule, shall perform an analysis, on a treaty-by-treaty basis, to determine, as to each reinsurance treaty under which covered policies have been ceded, whether as of the end of the immediately preceding calendar quarter (the valuation date) the requirements of subdivisions 4.1.3 and 4.1.4 of this rule were satisfied. The ceding insurer shall establish a liability equal to the excess of the credit for reinsurance taken over the amount of primary security actually held pursuant to subdivision 4.1.3 of this rule, unless either:

4.2.2.a. The requirements of subdivisions 4.1.3 and 4.1.4 of this rule were fully satisfied as of the valuation date as to such reinsurance treaty; or

4.2.2.b. Any deficiency has been eliminated before the due date of the quarterly or annual statement to which the valuation date relates through the addition of primary security and/or other security, as the case may be, in such amount and in such form as would have caused the requirements of subdivisions 4.1.3 and 4.1.4 of this rule to be fully satisfied as of the valuation date.

4.2.3. Nothing in subdivision 4.2.2 of this rule shall be construed to allow a ceding company to maintain any deficiency under subdivision 4.1.3 or 4.1.4 of this rule for any period of time longer than is reasonably necessary to eliminate it.

§114-102-5. Prohibition Against Avoidance.

No insurer that has covered policies as to which this rule applies, as set forth in subsection 1.1 of this rule, shall take any action or series of actions, or enter into any transaction or arrangement or series of transactions or arrangements if the purpose of such action, transaction or arrangement or series thereof is to avoid the requirements of this rule, or to circumvent its purpose and intent, as set forth in subsection 1.1 of this rule.

§114-102-6. Exemptions.

6.1. This rule does not apply to the following situations:

6.1.1. Reinsurance of:

6.1.1.a. Policies that satisfy the criteria for exemption set forth in W. Va. Code St. R. §114-68-5.6 or W. Va. Code St. R. §114-68-5.7; and which are issued before the later of:

6.1.1.a.1. The effective date of this rule; and

6.1.1.a.2. The date on which the ceding insurer begins to apply the provisions of VM-20 to establish the ceded policies' statutory reserves, but in no event later than January 1, 2020;

6.1.1.b. Portions of policies that satisfy the criteria for exemption set forth in W. Va. Code St. R. §114-68-5.5 and which are issued before the later of:

6.1.1.b.1. The effective date of this rule, and

6.1.1.b.2. The date on which the ceding insurer begins to apply the provisions of VM-20 to establish the ceded policies' statutory reserves, but in no event later than January 1, 2020;

6.1.1.c. Any universal life policy that meets all of the following requirements:

6.1.1.c.1. Secondary guarantee period, if any, is five years or less;

6.1.1.c.2. Specified premium for the secondary guarantee period is not less than the net level reserve premium for the secondary guarantee period based on the Commissioners Standard Ordinary (CSO) valuation tables and valuation interest rate applicable to the issue year of the policy; and

6.1.1.c.3. The initial surrender charge is not less than one hundred percent (100%) of the first year annualized specified premium for the secondary guarantee period;

6.1.1.d. Credit life insurance;

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

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

6.1.2. Reinsurance ceded to an assuming insurer that meets the applicable requirements of W. Va. Code §33-4-15a(b)(2)(D); or

6.1.3. Reinsurance ceded to an assuming insurer that meets the applicable requirements of W. Va. Code §33-4-15a(b)(2)(A), (B) or (C), and that, in addition:

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

6.1.3.b. Is not in a company action level event, regulatory action level event, authorized control level event, or mandatory control level event as those terms are defined in W. Va. Code §33-40-1 *et seq*. when its risk-based capital is calculated in accordance with the life risk-based capital report including overview and instructions for companies, as the same may be amended by the National Association of Insurance Commissioners from time to time, without deviation; or

6.1.4. Reinsurance ceded to an assuming insurer that meets the applicable requirements of W. Va. Code §33-4-15a(b)(2)(A), (B) or (C), and that, in addition:

6.1.4.a. Is not an affiliate, as that term is defined in W. Va. Code §33-27-2(a), of:

6.1.4.a.1. The insurer ceding the business to the assuming insurer; or

6.1.4.a.2. Any insurer that directly or indirectly ceded the business to that ceding insurer;

6.1.4.b. Prepares statutory financial statements in compliance with the National Association of Insurance Commissioners' Accounting Practices and Procedures Manual;

6.1.4.c. Is both:

6.1.4.c.1. Licensed or accredited in at least ten states (including its state of domicile); and

6.1.4.c.2. Not licensed in any state as a captive, special purpose vehicle, special purpose financial captive, special purpose life reinsurance company, limited purpose subsidiary, or any other similar licensing regime; and

6.1.4.d. Is not, or would not be, below five hundred percent (500%) of the authorized control level risk-based capital, as that term is defined in W. Va. Code §33-40-1 *et seq*., when its risk-based capital is calculated in accordance with the life risk-based capital report including overview and instructions for companies, as the same may be amended by the National Association of Insurance Commissioners from time to time, without deviation, and without recognition of any departures from National Association of Insurance Commissioners' statutory accounting practices and procedures pertaining to the admission or valuation of assets or liabilities that increase the assuming insurer's reported surplus; or

6.1.5. Reinsurance ceded to an assuming insurer that meets the requirements of W. Va. Code §33-4-15a(e)(2)(D); or

6.1.6. Reinsurance not otherwise exempt under subdivisions 6.1.1, 6.1.2, 6.1.3, 6.1.4 and 6.1.5 of this rule if the commissioner, after consulting with the National Association of Insurance Commissioners' Financial Analysis Working Group (FAWG) or other group of regulators designated by the National Association of Insurance Commissioners, as applicable, determines under all the facts and circumstances that all of the following apply:

6.1.6.a. The risks are clearly outside of the intent and purpose of this rule, as described in subsection 1.1 of this rule;

6.1.6.b. The risks are included within the scope of this rule only as a technicality; and

6.1.6.c. The application of this rule to those risks is not necessary to provide appropriate protection to policyholders. The commissioner shall publicly disclose any decision made pursuant to this subdivision to exempt a reinsurance treaty from this rule, as well as the general basis therefor, including a summary description of the treaty.