TITLE 760 DEPARTMENT OF INSURANCE

Proposed Rule
LSA Document #22-245

DIGEST

Adds 760 IAC 1-82 to establish uniform 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 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. Effective 30 days after filing with the Publisher.

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

760 IAC 1-82

SECTION 1. 760 IAC 1-82 IS ADDED TO READ AS FOLLOWS:

Rule 82. Term and Universal Life Insurance Reserve Financing

760 IAC 1-82-1 Applicability of definitions

Authority: IC 27-6-10.1-5
Affected: IC 27-6-10.1

Sec. 1. The definitions in this rule apply throughout this rule.
(Department of Insurance; 760 IAC 1-82-1)

760 IAC 1-82-2 "Actuarial method" defined

Authority: IC 27-6-10.1-5
Affected: IC 27-6-10.1

Sec. 2. "Actuarial method" means the methodology used to determine the required level of primary security, as described in section 16 of this rule.
(Department of Insurance; 760 IAC 1-82-2)

760 IAC 1-82-3 "Commissioner" defined

Authority: IC 27-6-10.1-5
Affected: IC 27-6-10.1

Sec. 3. "Commissioner" means the commissioner of the department of insurance.
(Department of Insurance; 760 IAC 1-82-3)

760 IAC 1-82-4 "Covered policies" defined

Authority: IC 27-6-10.1-5
Affected: IC 27-6-10.1

Sec. 4. "Covered policies" means, subject to the exemptions described in section 15 of this rule, policies, other than grandfathered policies, of the following policy types:
(1) Life insurance policies with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits, or both, except for flexible premium universal life insurance policies.
(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.

(Department of Insurance; 760 IAC 1-82-4)

760 IAC 1-82-5 "Grandfathered policies" defined

Authority: IC 27-6-10.1-5
Affected: IC 27-6-10.1

Sec. 5. "Grandfathered policies" means policies of the types described in section 4 of this rule that were:
(1) issued prior to January 1, 2015; and
(2) ceded, as of December 31, 2014, as part of a reinsurance treaty that would not have met one (1) of the exemptions set forth in section 15 of this rule had that section then been in effect.

(Department of Insurance; 760 IAC 1-82-5)

760 IAC 1-82-6 "NAIC" defined

Authority: IC 27-6-10.1-5
Affected: IC 27-6-10.1

Sec. 6. "NAIC" means the National Association of Insurance Commissioners.

(Department of Insurance; 760 IAC 1-82-6)

760 IAC 1-82-7 "Noncovered policies" defined

Authority: IC 27-6-10.1-5
Affected: IC 27-6-10.1

Sec. 7. "Noncovered policies" means any policy that does not meet the definition of "covered policies", including grandfathered policies.

(Department of Insurance; 760 IAC 1-82-7)

760 IAC 1-82-8 "Other security" defined

Authority: IC 27-6-10.1-5
Affected: IC 27-6-10.1

Sec. 8. "Other security" means any security acceptable to the commissioner other than security meeting the definition of "primary security".

(Department of Insurance; 760 IAC 1-82-8)

760 IAC 1-82-9 "Primary security" defined

Authority: IC 27-6-10.1-5
Affected: IC 27-6-10.1-3

Sec. 9. "Primary security" means the following forms of security:
(1) Cash meeting the requirements of IC 27-6-10.1-3(A).
(2) Securities listed by the Securities Valuation Office meeting the requirements of IC 27-6-10.1-3(B), but excluding a synthetic letter of credit, a contingent note, a 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.
(3) For security held in connection with funds-withheld and modified coinsurance reinsurance treaties:
(A) commercial loans in good standing of CM3 quality and higher;
(B) policy loans; and
(C) derivatives acquired in the normal course and used to support and hedge liabilities pertaining to

the actual risks in the policies ceded under the reinsurance treaty.

(Department of Insurance; 760 IAC 1-82-9)

760 IAC 1-82-10 "Required level of primary security" defined

Authority: IC 27-6-10.1-5
Affected: IC 27-6-10.1

Sec. 10. "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.

(Department of Insurance; 760 IAC 1-82-10)

760 IAC 1-82-11 "Valuation Manual" defined

Authority: IC 27-6-10.1-5
Affected: IC 27-1-1.5-35; IC 27-1-12.8-34; IC 27-6-10.1

Sec. 11. "Valuation Manual" means the Valuation Manual described in IC 27-1-1.5-35 and adopted by the NAIC as described IC 27-1-12.8-34(b)(1), with all amendments adopted by the NAIC that are effective for the financial statement date on which credit for reinsurance is claimed.

(Department of Insurance; 760 IAC 1-82-11)

760 IAC 1-82-12 "VM-20" defined

Authority: IC 27-6-10.1-5
Affected: IC 27-6-10.1

Sec. 12. "VM-20" refers to "VM-20: Requirements for Principle-Based Reserves for Life Products", including all relevant definitions, from the Valuation Manual.

(Department of Insurance; 760 IAC 1-82-12)

760 IAC 1-82-13 Purpose

Authority: IC 27-6-10.1-5
Affected: IC 27-6-10.1-5

Sec. 13. The purpose of this rule is to:
(1) establish among NAIC members uniform standards governing reserve financing arrangements that pertain to:
(A) a life insurance policy containing guaranteed nonlevel gross premiums;
(B) a life insurance policy containing guaranteed nonlevel benefits; and
(C) a universal life insurance policy with secondary guarantees; and
(2) ensure that, with respect to each financing arrangement, funds consisting of primary security and other security, as defined in this rule, are held by or on behalf of each ceding insurer in the forms and amounts required in this rule.

(Department of Insurance; 760 IAC 1-82-13)

760 IAC 1-82-14 Applicability

Authority: IC 27-6-10.1-5
Affected: IC 27-6-10.1-5

Sec. 14. (a) This rule applies to reinsurance treaties that cede liabilities pertaining to covered policies issued by any life insurance company domiciled in this state.

(b) This rule and 760 IAC 1-56 both apply to the reinsurance treaties described in subsection (a). In the event of a direct conflict between the provisions of this rule and 760 IAC 1-56, the provisions of this rule apply, but only to the extent of the conflict.

(Department of Insurance; 760 IAC 1-82-14)

760 IAC 1-82-15 Exemptions

Authority: IC 27-6-10.1-5
Affected: IC 27-1-23-1; IC 27-1-36-4; IC 27-6-10.1-2; IC 27-6-10.1-5

Sec. 15. This rule does not apply to the following:
(1) Reinsurance of the following:
(A) Policies that satisfy the criteria for exemption set forth in 760 IAC 1-64-4(f) or 760 IAC 1-64-4(g) and which are issued before the later of:
(i) the effective date of this rule; and
(ii) the date on which the ceding insurer begins to apply the provisions of VM-20 to establish the ceded policies' statutory reserves, but not later than January 1, 2020.
(B) Portions of policies that satisfy the criteria for exemption set forth in 760 IAC 1-64-4(e) and which are issued before the later of:
(i) the effective date of this rule; and
(ii) the date on which the ceding insurer begins to apply the provisions of VM-20 to establish the ceded policies' statutory reserves, but not later than January 1, 2020.
(C) A universal life policy that meets all of the following requirements:
(i) Secondary guarantee period, if any, is five (5) years or less.
(ii) Specified premium for the secondary guarantee period is not less than the net level reserve premium for the secondary guarantee period based on the Commissioners Standard Ordinary (CSO) valuation tables and valuation interest rate applicable to the issue year of the policy.
(iii) The initial surrender charge is not less than one hundred percent (100%) of the first year annualized specified premium for the secondary guarantee period.
(D) Credit life insurance.
(E) A 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.
(F) A 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 (1) year.
(2) Reinsurance ceded to an assuming insurer that meets the applicable requirements of IC 27-6-10.1-2(D).
(3) Reinsurance ceded to an assuming insurer that meets the applicable requirements of IC 27-6-10.1-2(A), IC 27-6-10.1-2(B), or IC 27-6-10.1-2(C), and that, in addition:
(A) prepares statutory financial statements in compliance with the NAIC Accounting Practices and Procedures Manual, without any departures from NAIC 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 under the Statement of Statutory Accounting Principles No. 1; and
(B) is not in a company action level event, regulatory action level event, authorized control level event, or mandatory control level event, as those terms are defined in IC 27-1-36, 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 NAIC from time to time, without deviation.
(4) Reinsurance ceded to an assuming insurer that meets the applicable requirements of IC 27-6-10.1-2(A), IC 27-6-10.1-2(B), or IC 27-6-10.1-2(C), and that, in addition:
(A) is not an affiliate, as defined in IC 27-1-23-1(b), of:
(i) the insurer ceding the business to the assuming insurer; or
(ii) any insurer that directly or indirectly ceded the business to that ceding insurer;
(B) prepares statutory financial statements in compliance with the NAIC Accounting Practices and Procedures Manual;
(C) is both:

(i) licensed or accredited in at least ten (10) states, including its state of domicile; and
(ii) not licensed in any state as a captive, special purpose vehicle, special purpose financial captive, special purpose life reinsurance company, limited purpose subsidiary, or any other similar licensing regime; and
(D) is not, or would not be, below five hundred percent (500%) of the authorized control level risk-based capital, as defined in IC 27-1-36-4, 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 NAIC from time to time, without deviation, and without recognition of any departures from NAIC statutory accounting practices and procedures pertaining to the admission or valuation of assets or liabilities that increase the assuming insurer's reported surplus.
(5) Reinsurance ceded to an assuming insurer that meets the requirements of IC 27-6-10.1-5(B)(4).
(6) Reinsurance not otherwise exempt under subdivisions (1) through (5) if the commissioner, after consulting with the NAIC Financial Analysis Working Group (FAWG) or other group of regulators designated by the NAIC, as applicable, determines under all the facts and circumstances that all of the following apply:
(A) The risks are clearly outside the intent and purpose of this rule.
(B) The risks are included within the scope of this rule only as a technicality.
(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 under this subdivision to exempt a reinsurance treaty from this rule, as well as the general basis for it, including a summary description of the treaty.

(Department of Insurance; 760 IAC 1-82-15)

760 IAC 1-82-16 The actuarial method

Authority: IC 27-6-10.1-5
Affected: IC 27-6-10.1-2; IC 27-6-10.1-3; IC 27-6-10.1-5

Sec. 16. (a) 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:
(1) For covered policies, the actuarial method is the greater of the deterministic reserve or the net premium reserve regardless of whether the criteria for exemption testing can be met. 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 net premium reserve. In addition, if the covered policies are reinsured in a reinsurance treaty that also contains covered policies described in section 4(2) of this rule, the ceding insurer may elect to instead use subdivision (2) as the actuarial method for the entire reinsurance agreement. Whether this subdivision or subdivision (2) are used, the actuarial method must comply with requirements or restrictions that the Valuation Manual imposes when aggregating these policy types for purposes of principle-based reserve calculations.
(2) For covered policies described in section 4(2) of this rule, the actuarial method is the greatest of the deterministic reserve, the stochastic reserve, or the net premium reserve regardless of whether the criteria for exemption testing can be met.
(3) Except as provided in subdivision (4), 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.
(4) If the reinsurance treaty cedes less than one hundred percent (100%) of the risk with respect to the covered policies, the required level of primary security may be reduced as follows:
(A) 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 an adjustment under clause (C), may be reduced to a pro rata portion in accordance with the percentage of the risk ceded.
(B) If the reinsurance treaty in a nonexempt 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 under the cession of mortality risk on a yearly renewable term basis in an exempt arrangement.

(C) 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 [c_x / (2 * number of reinsurance premiums per year)], where c_x is calculated using the same mortality table used in calculating the net premium reserve.

(D) 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 nonproportional reinsurance treaties, there will be no reduction in the required level of primary security.

It is possible for any combination of clauses (A) through (D) to apply. 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.

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

(6) If the ceding insurer cedes risks with respect to covered policies, including riders, in more than one (1) 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.

(7) If a reinsurance treaty subject to this rule cedes risk on both covered and noncovered policies, credit for the ceded reserves shall be determined as follows:

(A) The actuarial method shall be used to determine the required level of primary security for the covered policies, and section 17 of this rule shall be used to determine the reinsurance credit for the covered policy reserves.

(B) Credit for the noncovered policy reserves shall be granted only to the extent that security, in addition to the security held to satisfy the requirements of clause (A), is held by or on behalf of the ceding insurer in accordance with IC 27-6-10.1-2 and IC 27-6-10.1-3. A primary security used to meet the requirements of this clause may not be used to satisfy the required level of primary security for the covered policies.

(b) For the purposes of both calculating the required level of primary security under the actuarial method and determining the amount of primary security and other security, as applicable, held by or on behalf of the ceding insurer, the following shall apply:

(1) For assets, including assets held in trust, that would be admitted under the NAIC 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 the assets were held in the ceding insurer's general account and without taking into consideration the effect of any prescribed or permitted practices.

(2) 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 NAIC's Life Actuarial (A) Task Force not later than 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.

(Department of Insurance; 760 IAC 1-82-16)

760 IAC 1-82-17 Requirements applicable to covered policies to obtain credit for reinsurance; opportunity for remediation

Authority: IC 27-6-10.1-5
Affected: IC 27-1-12.8; IC 27-6-10.1-2; IC 27-6-10.1-3; IC 27-6-10.1-5

Sec. 17. (a) Subject to the exemptions described in section 15 of this rule and the provisions of

subsection (b), credit for reinsurance shall be allowed with respect to ceded liabilities pertaining to covered policies under IC 27-6-10.1-2 and IC 27-1-10.1-3 if, in addition to all other requirements imposed by law or rule, the following requirements are met on a treaty-by-treaty basis:

(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 IC 27-1-12.8 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.

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

(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 IC 27-6-10.1-3, on a funds-withheld, trust, or modified coinsurance basis.

(4) Funds consisting of other security, in an amount at least equal to any portion of the statutory reserves to which primary security is not held under subdivision (3), are held by or on behalf of the ceding insurer as security under the reinsurance treaty within the meaning of IC 27-6-10.1-3.

(5) A trust used to satisfy the requirements of this section shall comply with all of the conditions and qualifications of 760 IAC 1-56-10, except that:

(A) funds consisting of primary security or other security held in trust, shall, for the purposes identified in section 16(b) of this rule, be valued according to the valuation rules set forth in section 16(b) of this rule, as applicable; and

(B) there are no affiliate investment limitations with respect to security held in the trust if the security is not needed to satisfy the requirements of subdivision (3);

(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 (3) below one hundred two percent (102%) of the level required by subdivision (3) at the time of the withdrawal or substitution); and

(D) the determination of reserve credit under 760 IAC 1-56-10(d)(3) shall be determined according to the valuation rules set forth in section 16(b) of this rule, as applicable.

(6) The reinsurance treaty has been approved by the commissioner.

(b) The following requirements are also applicable to covered policies:

(1) The requirements of subsection (a) must be satisfied as of the date that risks under covered policies are ceded, if the 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 an action or series of actions that would result in a deficiency under subsection (a)(3) or (a)(4) with respect to a 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.

(2) Prior to the due date of each quarterly or annual statement, each life insurance company that has ceded reinsurance within the scope of section 13 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 subsection (a)(3) and (a)(4) 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 under subsection (a)(3), unless either:

(A) the requirements of subsection (a)(3) and (a)(4) were fully satisfied as of the valuation date as to the reinsurance treaty; or

(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 or other security, or both, as the case may be, in the amount and in the form as would have caused the requirements of subsection (a)(3) and (a)(4) to be fully satisfied as of the valuation date.

Nothing in this subdivision shall be construed to allow a ceding company to maintain a deficiency under subsection (a)(3) and (a)(4) for any period of time longer than is reasonably necessary to eliminate it.

(Department of Insurance; 760 IAC 1-82-17)

760 IAC 1-82-18 Prohibition against avoidance

Authority: IC 27-6-10.1-5
Affected: IC 27-6-10.1-5

Sec. 18. No insurer that has covered policies to which this rule applies may take an action, or series of actions, or enter into a transaction or arrangement, or series of transactions or arrangements, if the purpose of the action, transaction, or arrangement, or series thereof, is to avoid the requirements or circumvent the purpose of this rule.

(Department of Insurance; 760 IAC 1-82-18)

760 IAC 1-82-19 Severability

Authority: IC 27-6-10.1-5
Affected: IC 27-6-10.1-5

Sec. 19. If any provision of this rule is held invalid, the remainder shall not be affected.

(Department of Insurance; 760 IAC 1-82-19)

Notice of Public Hearing

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