

## IDAPA 18 – IDAHO DEPARTMENT OF INSURANCE

### Company Activities

#### 18.07.06 – Rules Governing Life and Health Reinsurance Agreements

##### **Who does this rule apply to?**

*This rule applies to all domestic life, accident, health insurers, and all other life, accident, and health insurers not subject to similar rules in their domiciliary state. This rule also similarly applies to licensed property and casualty insurers with respect to their accident and health business.*

##### **What is the purpose of this rule?**

*The purpose of this rule sets standards for reinsurance agreements involving life insurance, annuities, or accident and sickness (disability) insurance in order that financial statements properly reflect business of the insurer.*

##### **What is the legal authority for the agency to promulgate this rule?**

*This rule implements the following statutes passed by the Idaho Legislature:*

Insurance -

The Department of Insurance:

- [Section 41-211, Idaho Code](#) – Rules

Authorization of Insurers and General Requirements:

- [Section 41-335, Idaho Code](#) – Annual Statement.

Kinds of Insurance — Limits of Risk — Reinsurance:

- [Section 41-510, Idaho Code](#) – Reinsurance Defined
- [Section 41-511, Idaho Code](#) – Authorized Reinsurance
- [Section 41-512, Idaho Code](#) – Reinsurance By Impaired Or Withdrawing Insurers – Penalty For Violation
- [Section 41-514, Idaho Code](#) – Purpose

##### **Who do I contact for more information on this rule?**

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## 18.07.06 – RULES GOVERNING LIFE AND HEALTH REINSURANCE AGREEMENTS

### 000. LEGAL AUTHORITY.

Title 41, Chapters 2, 3, and 5, Sections 41-211, 41-335, 41-510, 41-511, 41-512 and 41-514, Idaho Code. (3-31-22)

### 001. TITLE, PURPOSE AND SCOPE.

**01. Title.** IDAPA 18.07.06, “Rules Governing Life and Health Reinsurance Agreements.” (3-31-22)

**02. Purpose.** To set forth standards for Reinsurance Agreements involving life insurance, annuities, or accident and sickness insurance (disability) in order that the financial statements of the life and health and property and casualty insurers writing health business and utilizing such agreements properly reflect the financial condition of the ceding and assuming insurer. (3-31-22)

**a.** The Department recognizes that licensed insurers routinely enter into reinsurance agreements that yield legitimate relief to the ceding insurer from strain to surplus. (3-31-22)

**b.** However, it is improper for a licensed insurer, in the capacity of ceding insurer, to enter into reinsurance agreements for the principal purpose of producing significant surplus aid for the ceding insurer, typically on a temporary basis, while not transferring all of the significant risks inherent in the business being reinsured. In substance or effect, the expected potential liability to the ceding insurer remains basically unchanged by the reinsurance transaction, notwithstanding certain risk elements in the reinsurance agreement, such as catastrophic mortality or extraordinary survival. The terms of such agreements referred to herein and described in Section 011 violate Idaho Code Sections 41-1306, 41-515, 41-308(3), 41-327 and 41-3309: (3-31-22)

**03. Applicability.** This rule applies to all domestic life and accident and health insurers and to all other licensed life and accident and health insurers that are not subject to a substantially similar rule in their domiciliary state. This rule also similarly applies to licensed property and casualty insurers with respect to their accident and health business. This rule does not apply to assumption reinsurance or yearly renewable term reinsurance. (3-31-22)

### 002. -- 010. (RESERVED)

### 011. ACCOUNTING REQUIREMENTS.

**01. Standards for Credit on Financial Statement.** No insurer subject to this rule will, for reinsurance ceded, reduce any liability or establish any asset in any financial statement filed with the Department if, by the terms of the reinsurance agreement, in substance or effect, any of the following conditions exist: (3-31-22)

**a.** Renewal expense allowances provided or to be provided to the ceding insurer by the reinsurer in any accounting period, are not sufficient to cover anticipated allocable renewal expenses of the ceding insurer on the portion of the business reinsured, unless a liability is established for the present value of the shortfall (using assumptions equal to the applicable statutory reserve basis on the business reinsured). Those expenses include commissions, premium taxes and direct expenses including, but not limited to, billing, valuation, claims and maintenance expected by the company at the time the business is reinsured; (3-31-22)

**b.** The ceding insurer can be deprived of surplus or assets at the reinsurer’s option or automatically upon the occurrence of some event, such as the insolvency of the ceding insurer, except that termination of the reinsurance agreement by the reinsurer for nonpayment of reinsurance premiums or other amounts due, such as modified coinsurance reserve adjustments, interest and adjustments on funds withheld, and tax reimbursements, will not be considered to be such a deprivation of surplus or assets; (3-31-22)

**c.** The ceding insurer needs to reimburse the reinsurer for negative experience under the reinsurance agreement, except that neither offsetting experience refunds against current and prior years’ losses under the agreement nor payment by the ceding insurer of an amount equal to the current and prior years’ losses under the agreement upon voluntary termination of in force reinsurance by the ceding insurer will be considered such a reimbursement to the reinsurer for negative experience. Voluntary termination does not include situations where termination occurs because of unreasonable provisions which allow the reinsurer to reduce its risk under the agreement. An example of such a provision is the right of the reinsurer to increase reinsurance premiums or risk and expense charges to excessive levels forcing the ceding company to prematurely terminate the reinsurance treaty; (3-31-22)

**d.** The ceding insurer needs to, at specific points in time scheduled in the agreement, terminate or automatically recapture all or part of the reinsurance ceded; (3-31-22)

e. The reinsurance agreement involves the possible payment by the ceding insurer to the reinsurer of amounts other than from income realized from the insured policies. For example, it is improper for a ceding company to pay reinsurance premiums, or other fees or charges to a reinsurer which are greater than the direct premiums collected by the ceding company; (3-31-22)

f. The treaty does not transfer all of the significant risk inherent in the business being reinsured. The following table identified for a representative sampling of products or type of business, the risks which are considered to be significant. For products not specifically included, the risks determined to be significant will be consistent with this table. (3-31-22)

i. Risk categories: (3-31-22)

(1) Morbidity. (3-31-22)

(2) Mortality. (3-31-22)

ii. Lapse. This is the risk that a policy will voluntarily terminate prior to the recoupment of a statutory surplus strain experienced at issue of the policy. (3-31-22)

iii. Credit Quality (C1). This is the risk that invested assets supporting the reinsured business will decrease in value. The main hazards are that assets will default or that there will be a decrease in earning power. It excludes market value declines due to changes in interest rate. (3-31-22)

iv. Reinvestment (C3). This is the risk that interest rates will fall and funds reinvested (coupon payments or monies received upon asset maturity or call) will therefore earn less than expected. If asset durations are less than liability durations, the mismatch will increase. (3-31-22)

v. Disintermediation (C3). This is the risk that interest rates rise and policy loans and surrenders increase or maturing contracts do not renew at anticipated rates of renewal. If asset durations are greater than the liability durations, the mismatch will increase. Policyholders will move their funds into new products offering higher rates. The company may have to sell assets at a loss to provide for these withdrawals.

**Risk Category**

Key: + - Significant  
 0 - Insignificant

	<b>i.</b>	<b>ii.</b>	<b>iii.</b>	<b>iv.</b>	<b>v.</b>	<b>vi.</b>
Health Insurance - other than LTC/LTD*	+	0	+	0	0	0
Health Insurance - LTC/LTD*	+	0	+	+	+	0
Immediate Annuities	0	+	0	+	+	0
Single Premium Deferred Annuities	0	0	+	+	+	+
Flexible Premium Deferred Annuities	0	0	+	+	+	+
Guaranteed Interest Contracts	0	0	0	+	+	+
Other Annuity Deposit Business	0	0	+	+	+	+
Single Premium Whole Life	0	+	+	+	+	+
Traditional Non-Par Permanent	0	+	+	+	+	+
Traditional Non-Par Term	0	+	+	0	0	0
Traditional Par Permanent	0	+	+	+	+	+
Traditional Par Term	0	+	+	0	0	0

	<b>i.</b>	<b>ii.</b>	<b>iii.</b>	<b>iv.</b>	<b>v.</b>	<b>vi.</b>
Adjustable Premium Permanent	0	+	+	+	+	+
Indeterminate Premium Permanent	0	+	+	+	+	+
Universal Life Flexible Premium	0	+	+	+	+	+
Universal Life Fixed Premium	0	+	+	+	+	+
Universal Life Fixed Premium dump-in premiums allowed	0	+	+	+	+	+

\*LTC = Long Term Care Insurance

\*LTD = Long Term Disability Insurance

(3-31-22)

**g.** Significant Risk.

(3-31-22)

i. The credit quality, reinvestment, or disintermediation risk is significant for the business reinsured and the ceding company does not (other than for the classes of business excepted in IDAPA 18.07.06.011.01.g.ii.) either transfer the underlying assets to the reinsurer or legally segregate such assets in a trust or escrow account or otherwise establish a mechanism satisfactory to the Director which legally segregates, by contract or contract provision, the underlying assets. (3-31-22)

ii. Notwithstanding the requirements of IDAPA 18.07.06.011.01.g.i., the assets supporting the reserves for the following classes of business and any classes of business which do not have a significant credit quality, reinvestment or disintermediation risk may be held by the ceding company without segregation of such assets:

- Health Insurance - LTC/LTD
- Traditional Non-Par Permanent
- Traditional Par Permanent
- Adjustable Premium Permanent
- Indeterminate Premium Permanent
- Universal Life Fixed Premium (no dump-in premiums allowed)

The associated formula for determining the reserve interest rate adjustment needs to use a formula that reflects the ceding company's investment earnings and incorporates all realized and unrealized gains and losses reflected in the statutory statement. The following is an acceptable formula:

$$\text{Rate} = \frac{2(I + CG)}{X + Y - I - CG}$$

Where: "I" is the net investment income as reported in Annual Statement

"CG" is capital gains less capital losses as reported in Annual Statement

"X" is the current year cash and invested assets plus investment income due and accrued less borrowed money as reported in Annual Statement

"Y" is the same as X but for the prior year (3-31-22)

**h.** Settlements are made less frequently than quarterly or payments due from the reinsurer are not made in cash within ninety (90) days of the settlement date. (3-31-22)

**i.** The ceding insurer needs to make representations or warranties not reasonably related to the business being reinsured. (3-31-22)

**j.** The ceding insurer needs to make representations or warranties about future performance of the business being reinsured. (3-31-22)

**k.** The reinsurance agreement is entered into for the principal purpose of producing significant surplus aid for the ceding insurer, typically on a temporary basis, while not transferring all of the significant risks inherent in the business reinsured and, in substance or effect, the expected potential liability to the ceding insurer remains basically unchanged. (3-31-22)

**02. Director's Approval.** An insurer subject to this Rule may, with the prior approval of the Director, take such reserve credit or establish such asset as the Director may deem consistent with the Insurance Code and Rules, including actuarial interpretations or standards adopted by the Department. (3-31-22)

**03. Filing of Reinsurance Agreements.** (3-31-22)

**a.** Agreements entered into after the effective date of this Rule which involve the reinsurance of business issued prior to the effective date of the agreements, along with any subsequent amendments thereto, will be filed by the ceding company with the Director within thirty (30) days from its date of execution. Each filing will include data detailing the financial impact of the transaction. The ceding insurer's actuary who signs the financial statement actuarial opinion with respect to valuation of reserves will consider his Rule and any applicable actuarial standards of practice when determining the proper credit in financial statements filed with this Department. The actuary should maintain adequate documentation and be prepared upon request to describe the actuarial work performed for inclusion in the financial statements and to demonstrate that such work conforms to this Rule. (3-31-22)

**b.** Any increase in surplus net of federal income tax resulting from arrangements described in Subsection 011.03.a. will be identified separately on the insurer's statutory financial statement as a surplus item (aggregate write-ins for gains and losses in surplus in the Capital and Surplus Account line of the Annual Statement) and recognition of the surplus increase as income will be reflected on a net of tax basis in the "Reinsurance ceded" line of the annual statement as earnings emerge from the business reinsured. (3-31-22)

**i.** For example: On the last day of calendar year N, company XYZ pays a twenty (\$20) million initial commission and expense allowance to company ABC for reinsuring an existing block of business. Assuming a thirty-four percent (34%) tax rate, the net increase in surplus at inception is thirteen point two (\$13.2) million (twenty (\$20) million - six point eight (\$6.8) million) which is reported on the "Aggregate write-ins for gains and losses in surplus" line in the Capital and Surplus account. Six point eight (\$6.8) million (thirty-four (34%) of twenty (\$20) million) is reported as income on the "Commissions and expense allowances on reinsurance ceded" line of the Summary of Operations. (3-31-22)

**ii.** At the end of year N+1 the business has earned four (\$4) million. ABC has paid point five (\$.5) million in profit and risk charges in arrears for the year and has received a one million (\$1) million experience refund. Company ABC's annual statement would report one point six five (\$1.65) million (sixty-six percent (66%) of four (\$4) million - one (\$1) million - point five (\$.5) million) up to a maximum of thirteen point two (\$13.2) million) on the "Commissions and expense allowance on reinsurance ceded" line of the Summary of Operations, and -one point sixty five (\$1.65) million on the "Aggregate write-ins for gains and losses in surplus" line of the Capital and Surplus account. The experience refund would be reported separately as a miscellaneous income item in the Summary of Operations. (3-31-22)

**012. WRITTEN AGREEMENTS.**

**01. Execution Date.** No reinsurance agreement or amendment to any agreement may be used to reduce any liability or to establish any asset in any financial statement filed with the Department, unless the agreement, amendment or a binding letter of intent has been duly executed by both parties no later than the "as of date" of the financial statement. (3-31-22)

**02. Letter of Intent.** In the case of a letter of intent, a reinsurance agreement or an amendment to a reinsurance agreement needs to be executed within a reasonable period of time, not exceeding ninety (90) days from the execution date of the letter of intent, in order for credit to be granted for the reinsurance ceded. (3-31-22)

**03. Requisite Provisions.** The reinsurance agreement will contain provisions that provide that: (3-31-22)

**a.** The agreement will constitute the entire agreement between the parties with respect to the business being reinsured thereunder and that there are no understandings between the parties other than as expressed in the agreement; and (3-31-22)

**b.** Any change or modification to the agreement will be null and void unless made by amendment to the agreement and signed by both parties. (3-31-22)

**013. EXISTING AGREEMENTS.**

Insurers subject to this rule will not be allowed to recognize any reserve credits or assets established with respect to reinsurance agreements entered into prior to the effective date of this rule which, under the provisions of this rule would not be entitled to recognition of the reserve credits or assets; provided, however, that the reinsurance agreements will have been in compliance with laws or rules in existence immediately preceding the effective date of this rule. (3-31-22)

**014. -- 999. (RESERVED)**