IDAPA 18 – IDAHO DEPARTMENT OF INSURANCE

Company Activities

18.07.07 – Credit For Reinsurance Rules

Who does this rule apply to?
This rule applies to all insurers conducting business in the state of Idaho.

What is the purpose of this rule?
The purpose of this rule sets forth rules and procedural requirements the Director sees as necessary to carry out the "Credit For Reinsurance" provision in Section 41-515, Idaho Code.

What is the legal authority for the agency to promulgate this rule?
This rule implements the following statute passed by the Idaho Legislature:

Insurance -
The Department of Insurance:
- Section 41-211, Idaho Code – Rules

Who do I contact for more information on this rule?

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000. LEGAL AUTHORITY.
Title 41, Chapter 2, Section 41-211, Idaho Code. (3-20-20)

001. TITLE AND SCOPE.

01. Title. IDAPA 18.07.07, "Credit for Reinsurance Rules." (3-20-20)

02. Scope. The purpose of this rule is to set forth rules and procedural requirements necessary to carry out the Credit for Reinsurance provision, Section 41-515, Idaho Code. The actions and information are in the public interest and for the protection of the ceding insurers in this state. (3-20-20)

002. INCORPORATION BY REFERENCE.
Consistent with National Association of Insurance Commissioners (NAIC) model regulation 786, the following documents applicable to letters of credit as referenced in Subsections 061.02, 081.05 and 081.06 of this rule, are incorporated by reference. (3-28-18)

01. The Purposes and Procedures Manual of the NAIC Investment Analysis Office, NAIC Securities Valuation Office and NAIC Structured Securities Group, December 31, 2016, edition, as referenced in Subsection 061.02. (3-28-18)

02. The Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 600 (UCP 600), July 1, 2007, edition, as referenced in Subsection 081.05. (3-28-18)

03. The International Standby Practices of the International Chamber of Commerce Publication 590 (ISP98), 1998 edition, as referenced in Subsection 081.06. (3-28-18)

003. -- 009. (RESERVED)

010. DEFINITIONS.

01. Beneficiary. When used in trust agreements qualified under this rule, the entity for whose sole benefit the trust has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes, and is limited to, the court appointed domiciliary receiver (including conservator, rehabilitator or liquidator). (3-28-18)

02. Grantor. The entity that has established a trust for the sole benefit of the beneficiary. When established in conjunction with a reinsurance agreement, the grantor is the unlicensed, unaccredited assuming insurer. (3-28-18)

03. Mortgage-Related Security. Means an obligation that is rated AA or higher (or the equivalent) by a securities rating agency recognized by the securities valuation office of the NAIC and that either; (3-28-18)

a. Represents ownership of one (1) or more promissory notes or certificates of interest or participation in the notes (including any rights designed to assure servicing of, or the receipt or timeliness of receipt by the holders of the notes, certificates, or participation of amounts payable under, the notes, certificates or participation), that: (3-28-18)

i. Are directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, or on a residential manufactured home as defined in 42 U.S.C.A. Section 5402(6), whether the manufactured home is considered real or personal property under the laws of the state in which it is located; (3-28-18)

ii. Were originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution that is supervised and examined by a federal or state housing authority, or by a mortgagee approved by the Secretary of Housing and Urban Development pursuant to 12 U.S.C.A. Sections 1709 and 1715-b, or, where the notes involve a lien on the manufactured home, by an institution or by a financial institution approved for insurance by the Secretary of Housing and Urban Development pursuant to 12 U.S.C.A. Section 1703; or (3-28-18)

b. Is secured by one (1) or more promissory notes or certificates of deposit or participations in the

notes (with or without recourse to the insurer of the notes) and, by its terms, provides for payments of principal in relation to payments, or reasonable projections of payments, or notes meeting the requirements of Subparagraphs 010.03.a.i. and 010.03.a.ii. (3-28-18)

04. Obligation. (3-28-18)

a. Losses Paid But Not Recovered. Reinsured losses and allocated loss expenses paid by the ceding company, but not recovered from the assuming insurer; (3-28-18)

b. Reserves for Reinsured Losses Reported and Outstanding; (3-28-18)

c. Reserves for Reinsured Losses Incurred But Not Reported; and (3-28-18)

d. Reserves for Allocated Reinsured Loss Expenses and Unearned Premiums. (3-28-18)

05. Promissory Note. When used in connection with a manufactured home, will also include a loan, advance or credit sale as evidenced by a retail installment sales contract or other instrument. (3-28-18)

011. CREDIT FOR REINSURANCE – REINSURER LICENSED IN THIS STATE.
Pursuant to Section 41-515(2)(a), Idaho Code, the Director will allow credit for reinsurance ceded by a domestic insurer to assuming insurers which were licensed in this State as of statutory financial statement credit for reinsurance is claimed. (3-28-18)

012. -- 020. (RESERVED)

021. CREDIT FOR REINSURANCE -- ACCREDITED REINSURERS.

01. Accredited Reinsurers. Pursuant to Section 41-515(2)(b), Idaho Code, the Director will allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which is accredited as a reinsurer in this state as of the date on which statutory financial statement credit for reinsurance is claimed. An accredited reinsurer needs to: (3-28-18)

a. File with the Department a properly executed form AR-1 as evidence of its submission to this state's jurisdiction and to this state's authority to examine its books and records; (3-20-20)

b. File with the Director a certified copy of a certificate of authority or other acceptable evidence that it is licensed to transact insurance or reinsurance in at least one (1) state, or in the case of a U.S. branch of an alien assuming insurer is entered through and licensed to transact insurance or reinsurance in at least one (1) state. (3-28-18)

c. File annually with the director a copy of its annual statement filed with the department of its state of domicile or, in the case of an alien assuming insurer, with the state through which it is entered and in which it is licensed to transact insurance or reinsurance, and a copy of its most recent audited financial statement; and (3-28-18)

d. Maintain a surplus as regards policyholders in an amount not less than twenty million dollars ($20,000,000) or obtain the affirmative approval of the Director upon a finding that it has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers. (3-28-18)

02. Denial of Accreditation. If the Director determines that the assuming insurer has failed to meet or maintain any of these qualifications, he may upon written notice and hearing, suspend or revoke the accreditation. Credit will not be allowed a domestic ceding insurer under this section with respect to reinsurance ceded after 9/1/97 if the assuming insurer's accreditation has been denied or revoked by the Director, or if the reinsurance was ceded while the assuming insurer's accreditation was under suspension by the Director after notice and hearing. (3-28-18)

022. -- 030. (RESERVED)

031. CREDIT FOR REINSURANCE -- REINSURER DOMICILED AND LICENSED IN ANOTHER STATE.

Pursuant to Section 41-515(2)(c), Idaho Code, the Director will allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which any date on which statutory financial statement credit for reinsurance is claimed: (3-28-18)

01. Applicable Domicile and License. Is domiciled and licensed in (or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed in) a state which employs standards regarding credit for reinsurance substantially similar to those applicable under Section 41-515, Idaho Code, and this rule; (3-28-18)

02. Maintains Surplus. Maintains a surplus as regards policyholders in an amount not less than twenty million dollars ($20,000,000); and (7-1-96)

03. Proper AR-1 Form Filed. Files a properly executed Form AR-1 with the Director as evidence of its submission to this state's authority to examine its books and records. (7-1-96)

04. Provisions. The provisions of this section relating to surplus as regards policyholders will not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system. As used in this section, "substantially similar" standards means credit for reinsurance standards which the Director determines equal or exceed the standards of Section 41-515, Idaho Code, and this rule. (3-28-18)

032. -- 040. (RESERVED)

041. CREDIT FOR REINSURANCE -- REINSURERS MAINTAINING TRUST FUNDS.

01. Trust Fund. Pursuant to Section 41-515(2)(d), Idaho Code, the Director will allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that, as of any date on which statutory financial statement credit for reinsurance is claimed, and thereafter for so long as credit for reinsurance is claimed, maintains a trust fund in an amount prescribed below in a qualified United States financial institution as defined in Section 41-515(4), Idaho Code, for the payment of the valid claims of its United States domiciled ceding insurers, their assigns and successors in interest. The assuming insurer will report annually to the Director substantially the same information as that prescribed to be reported on the NAIC annual statement form by licensed insurers, to enable the Director to determine the sufficiency of the trust fund. (3-20-20)

02. Requirements. The following requirements apply to the following categories of assuming insurer: (7-1-96)

a. The trust fund for a single assuming insurer will consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by United States domiciled insurers, and in addition, the assuming insurer will maintain a trusteed surplus of not less than twenty million dollars ($20,000,000), except as provided for in Paragraph 041.02.b. of this section. (3-28-18)

b. At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three (3) full years, the Director or commissioner with principal regulatory oversight of the trust may authorize a reduction in the prescribed trusteed surplus, but only after a finding, based on an assessment of the risk, that the new prescribed surplus level is adequate for the protection of U.S. ceding insurers, policyholders and claimants in light of reasonably foreseeable adverse loss development. The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flow, and will consider all material risk factors, including when applicable the lines of business involved, the stability of the incurred loss estimates and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The minimum prescribed trusteed surplus cannot be reduced to an amount less than thirty percent (30%) of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers covered by the trust. (3-20-20)

c. The trust fund for a group including incorporated and individual unincorporated underwriters will consist of: (3-28-18)

i. For insurance ceded under reinsurance agreements with an inception, amendment or renewal date on or after January 1, 1993, funds in trust in an amount not less than the respective underwriters' several liabilities attributable to business ceded by U.S. domiciled ceding insurers to any underwriter of the group; (3-28-18)

ii. For reinsurance ceded under reinsurance agreements with an inception date on or before December 31, 1992, and not amended or renewed after that date, notwithstanding the other provisions of this rule, funds in trust in an amount not less than the respective underwriters' several insurance and reinsurance liabilities attributable to business written in the United States; and (3-28-18)

iii. In addition to these trusts, the group will maintain a trusteed surplus of which one hundred million dollars ($100,000,000) will be held jointly for the benefit of the U.S. domiciled ceding insurers of any member of the group for all the years of account. (3-28-18)

d. The incorporated members of the group within the scope of Paragraph 041.02.c. of this section will not be engaged in any business other than underwriting as a member of the group and will be subject to the same level of regulation and solvency control by the group's domiciliary regulator as are the unincorporated members. The group will, within ninety (90) days after its financial statements are due to be filed with the group's domiciliary regulator, provide to the Director: (3-28-18)

i. An annual certification by the group's domiciliary regulator of the solvency of each underwriter member of the group; or (3-28-18)

ii. If a certification is unavailable, a financial statement, prepared by independent public accountants, of each underwriter member of the group. (3-28-18)

e. The trust fund for a group of incorporated insurers under common administration, whose members possess aggregate policyholders surplus of ten billion dollars ($10,000,000,000) (calculated and reported in substantially the same manner as prescribed by the annual statement instructions and Accounting Practices and Procedures Manual of the NAIC) and that has continuously transacted an insurance business outside the United States for at least three (3) years immediately prior to making application for accreditation, will: (3-28-18)

i. Consist of funds in trust in an amount not less than the assuming insurers' several liabilities attributable to business ceded by U.S. domiciled ceding insurers to any members of the group pursuant to reinsurance contracts issued in the name of such group; (3-28-18)

ii. Maintain a joint trusteed surplus of which one hundred million dollars ($100,000,000) will be held jointly for the benefit of U.S. domiciled ceding insurers of any member of the group; and (3-28-18)

iii. File a properly executed form AR-1 as evidence of the submission to the Idaho Department of Insurance's authority to examine the books and records of any of its members and will certify that any member examined will bear the expense of any such examination. (3-28-18)

f. Within ninety (90) days after the statements are due to be filed with the group's domiciliary regulator, the group will file with the Director an annual certification of each underwriter member's solvency by the member's domiciliary regulators, and financial statements, prepared by independent public accountants, of each underwriter member of the group. (3-28-18)

03. Acceptable Form. (3-28-18)

a. Credit for reinsurance cannot be granted unless the form of the trust and any amendments to the trust have been approved by either the Director or commissioner of the state where the trust is domiciled or the Director or commissioner of another state who, pursuant to the terms of the trust instrument, has accepted responsibility for regulatory oversight of the trust. The form of the trust and any trust amendments also will be filed with the Director and commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument will provide that: (3-28-18)

i. Contested claims will be valid and enforceable out of funds in trust to the extent remaining

unsatisfied thirty (30) days after entry of the final order of any court of competent jurisdiction in the United States. (7-1-96)

ii. Legal title to the assets of the trust will be vested in the trustee for the benefit of the grantor's United States ceding insurers, their assigns and successors in interest. (3-28-18)

iii. The trust will be subject to examination as determined by the Director. (7-1-96)

iv. The trust will remain in effect for as long as the assuming insurer, or any member or former member of a group of insurers, will have outstanding obligations under reinsurance agreements subject to the trust; and (7-1-96)

v. No later than February 28 of each year the trustees of the trust will report to the Director in writing setting forth the balance in the trust and listing the trust's investments at the preceding year end, and will certify the date of termination of the trust, if so planned, or certify that the trust cannot expire prior to the next following December 31. (7-1-96)

b. Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount prescribed by this subsection or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation or similar proceedings under the laws of its state or country of domicile, the trustee will comply with an order of the Director or commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the Director or commissioner with regulatory oversight over the trust or other designated receiver all of the assets of the trust fund. (3-20-20)

c. The assets will be distributed by and claims will be filed with and valued by the Director or commissioner with regulatory oversight over the trust in accordance with the laws of the state in which the trust is domiciled applicable to the liquidation of domestic insurance companies. (3-28-18)

d. If the commissioner with regulatory oversight over the trust determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the U.S. beneficiaries of the trust, the Director or commissioner with regulatory oversight over the trust will return the assets, or any part thereof, to the trustee for distribution in accordance with the trust agreement. (3-28-18)

e. The grantor will waive any right otherwise available to it under U.S. law that is inconsistent with this provision. (3-28-18)

04. Liabilities. For purposes of this section, the term "liabilities" will mean the assuming insurer's gross liabilities attributable to reinsurance ceded by U.S. domiciled insurers excluding liabilities that are otherwise secured by acceptable means, and, will include: (3-28-18)

a. For business ceded by domestic insurers authorized to write accident and health, and property and casualty insurance: (3-28-18)

i. Losses and allocated loss expenses paid by the ceding insurer, recoverable from the assuming insurer; (3-28-18)

ii. Reserves for losses reported and outstanding; (3-28-18)

iii. Reserves for losses incurred but not reported; (3-28-18)

iv. Reserves for allocated loss expenses; and (3-28-18)

v. Unearned premiums. (3-28-18)

b. For business ceded by domestic insurers authorized to write life, health and annuity insurance: (3-28-18)

i. Aggregate reserves for life policies and contracts net of policy loans and net due and deferred premiums: (3-28-18)

ii. Aggregate reserves for accident and health policies; (3-28-18)

iii. Deposit funds and other liabilities without life or disability contingencies; and (3-28-18)

iv. Liabilities for policy and contract claims. (3-28-18)

05. **Assets**. Assets deposited in trusts established pursuant to Section 41-515(2), Idaho Code, and Section 041 of these rules will be valued according to their current fair market value and will consist only of cash in U.S. dollars, certificates of deposit issued by a U.S. financial institution as defined in Section 41-515(4)(a), Idaho Code, clean, irrevocable, unconditional and "evergreen" letters of credit issued or confirmed by a qualified U.S. financial institution, as defined in Section 41-515(4)(a), Idaho Code, and investments of the type specified in this subsection, but investments in or issued by an entity controlling, controlled by or under common control with either the grantor or beneficiary of the trust cannot exceed five percent (5%) of total investments. No more than twenty percent (20%) of the total of the investments in the trust may be foreign investments authorized under Paragraphs 041.05.a.v., 05.c., 05.e.ii. or 05.f. of this rule, and no more than ten percent (10%) of the total of the investments in the trust may be securities denominated in foreign currencies. For purposes of applying the preceding sentence, a depository receipt denominated in U.S. dollars and representing rights conferred by a foreign security will be classified as a foreign investment denominated in a foreign currency. The assets of a trust established to satisfy the requirements of Section 41-515(2), Idaho Code, will be invested only as follows: (3-28-18)

a. Government obligations that are not in default as to principal or interest, that are valid and legally authorized and that are issued, assumed or guaranteed by: (3-28-18)

i. The United States or by any agency or instrumentality of the United States; (3-28-18)

ii. A state of the United States; (3-28-18)

iii. A territory, possession or other governmental unit of the United States; (3-28-18)

iv. An agency or instrumentality of a governmental unit referred to in Subparagraphs 041.05.a.ii. and 041.05.a.iii. if the obligations will be by law (statutory or otherwise) payable, as to both principal and interest, from taxes levied or by law needed to be levied or from adequate special revenues pledged or otherwise appropriated or by law needed to be provided for making these payments, but cannot be obligations eligible for investment under this paragraph if payable solely out of special assessments on properties benefited by local improvements; or (3-20-20)

v. The government of any other country that is a member of the Organization for Economic Cooperation and Development and whose government obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC. (3-28-18)

b. Obligations that are issued in the United States, or that are dollar denominated and issued in a non-U.S. market, by a solvent U.S. institution (other than an insurance company) or that are assumed or guaranteed by a solvent U.S. institution (other than an insurance company) and that are not in default as to principal or interest if the obligations: (3-28-18)

i. Are rated A or higher (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC, or if not so rated, are similar in structure and other material respects to other obligations of the same institution that are so rated; (3-28-18)

ii. Are insured by at least one (1) authorized insurer (other than the investing insurer or a parent, subsidiary or affiliate of the investing insurer) licensed to insure obligations in this state and, after considering the insurance, are rated AAA (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC; or (3-28-18)

iii. Have been designated as Class One or Class Two by the Securities Valuation Office of the NAIC. (3-28-18)

c. Obligations issued, assumed or guaranteed by a solvent non-U.S. institution chartered in a country that is a member of the Organization for Economic Cooperation and Development or obligations of U.S. corporations issued in a non-U.S. currency, provided that in either case the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC. (3-28-18)

d. An investment made pursuant to the provisions of Paragraph 041.05.a., 041.05.b., or 041.05.c. of this subsection will be subject to the following additional limitations: (3-28-18)

i. An investment in or loan upon the obligations of an institution other than an institution that issues mortgage-related securities cannot exceed five percent (5%) of the assets of the trust; (3-28-18)

ii. An investment in any one mortgage-related security cannot exceed five percent (5%) of the assets of the trust; (3-28-18)

iii. The aggregate total investment in mortgage-related securities cannot exceed twenty-five percent (25%) of the assets of the trust; and (3-28-18)

iv. Preferred or guaranteed shares issued or guaranteed by a solvent U.S. institution are permissible investments if all of the institution's obligations are eligible as investments under Subparagraphs 041.05.b.i. and 05.b.iii. of this subsection, but cannot exceed two percent (2%) of the assets of the trust. (3-28-18)

e. Equity interests: (3-28-18)

i. Investments in common shares or partnership interests of a solvent U.S. institution are permissible if: (3-28-18)

(1) Its obligations and preferred shares, if any, are eligible as investments under Paragraph 041.05.e.; and (3-28-18)

(2) The equity interests of the institution (except an insurance company) are registered on a national securities exchange as provided in the Securities Exchange Act of 1934, 15 U.S.C. Sections 78a to 78kk or otherwise registered pursuant to that act, and if otherwise registered, price quotations for them are furnished through a nationwide automated quotations system approved by the Financial Industry Regulatory Authority, or successor organization. A trust cannot invest in equity interests under Paragraph 041.05.e. an amount exceeding one percent (1%) of the assets of the trust even though the equity interests are not so registered and are not issued by an insurance company; (3-28-18)

ii. Investments in common shares of a solvent institution organized under the laws of a country that is a member of the Organization for Economic Cooperation and Development, if: (3-28-18)

(1) All its obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC; and (3-28-18)

(2) The equity interests of the institution are registered on a securities exchange regulated by the government of a country that is a member of the Organization for Economic Cooperation and Development. (3-28-18)

iii. An investment in or loan upon any one institution's outstanding equity interests cannot exceed one percent (1%) of the assets of the trust. The cost of an investment in equity interests made pursuant to Paragraph 041.05.e., when added to the aggregate cost of other investments in equity interests then held pursuant to Paragraph 041.05.e., cannot exceed ten percent (10%) of the assets in the trust. (3-28-18)

f. Obligations issued, assumed or guaranteed by a multinational development bank, provided the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office

of the NAIC. (3-28-18)

g. Investment companies: (3-28-18)

i. Securities of an investment company registered pursuant to the Investment Company Act of 1940, 15 U.S.C. Section 80a, are permissible investments if the investment company: (3-28-18)

(1) Invests at least ninety percent (90%) of its assets in the types of securities that qualify as an investment under Paragraph 041.05.a., 041.05.b., or 041.05.c. of this subsection or invests in securities that are determined by the Director to be substantively similar to the types of securities set forth in Paragraph 041.05.a., 041.05.b., or 041.05.c. of this subsection; or (3-28-18)

(2) Invests at least ninety percent (90%) of its assets in the types of equity interests that qualify as an investment under Subparagraph 041.05.e.i. of this subsection; (3-28-18)

ii. Investments made by a trust in investment companies under Paragraph 041.05.e. cannot exceed the following limitations: (3-28-18)

(1) An investment in an investment company qualifying under Subparagraph 041.05.g.i.(1) of this subsection, cannot exceed ten percent (10%) of the assets in the trust and the aggregate amount of investment in qualifying investment companies cannot exceed twenty-five percent (25%) of the assets in the trust; and (3-28-18)

(2) Investments in an investment company qualifying under Subparagraph 041.05.g.i.(2) of this subsection, cannot exceed five percent (5%) of the assets in the trust and the aggregate amount of investment in qualifying investment companies will be included when calculating the permissible aggregate value of equity interests pursuant to Subparagraph 041.05.e.i. of this subsection. (3-28-18)

h. Letters of Credit: (3-28-18)

i. In order for a letter of credit to qualify as an asset of the trust, the trustee will have the right and the obligation pursuant to the deed of trust or some other binding agreement (as duly approved by the Director), to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced. (3-28-18)

ii. The trust agreement will provide that the trustee will be liable for its negligence, willful misconduct or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances where such draw would be necessary is considered negligence or willful misconduct, or both. (3-20-20)

06. Security by an Unauthorized Assuming Insurer. A specific security provided to a ceding insurer by an assuming insurer pursuant to Section 051 will be applied, until exhausted, to the payment of liabilities of the assuming insurer to the ceding insurer holding the specific security prior to, and as a condition precedent for, presentation of a claim by the ceding insurer for payment by a trustee of a trust established by the assuming insurer pursuant to this section. (3-28-18)

042. CREDIT FOR REINSURANCE – CERTIFIED REINSURERS.

01. Certification and Security. (3-20-20)

a. Pursuant to Section 41-515(2)(e), Idaho Code, the Director will allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that has been certified as a reinsurer in this state at all times for which statutory financial statement credit for reinsurance is claimed under Section 042 of this rule. The credit allowed will be based upon the security held by or on behalf of the ceding insurer in accordance with a rating assigned to the certified reinsurer by the Director. The security will be in a form consistent with the provisions of Section 41-515(2)(e) and (3), Idaho Code, and Sections 071, 081, or 091 of this rule the amount of security necessary in order for full credit to be allowed will correspond with the following requirements:

Rating	Security Requisite
Secure - 1	0%
Secure - 2	10%
Secure - 3	20%
Secure - 4	50%
Secure - 5	75%
Vulnerable - 6	100%

(3-20-20)

b. Affiliated reinsurance transactions will receive the same opportunity for reduced security requirements as all other reinsurance transactions. (3-28-18)

c. The Director will require the certified reinsurer to post one hundred percent (100%), for the benefit of the ceding insurer or its estate, security upon the entry of an order of rehabilitation, liquidation or conservation against the ceding insurer. (3-28-18)

d. In order to facilitate the prompt payment of claims, a certified reinsurer cannot be prescribed to post security for catastrophe recoverables for a period of one (1) year from the date of the first instance of a liability reserve entry by the ceding company as a result of a loss from a catastrophic occurrence as recognized by the Director. The one (1) year deferral period is contingent upon the certified reinsurer continuing to pay claims in a timely manner. Reinsurance recoverables for only the following lines of business as reported on the NAIC annual financial statement related specifically to the catastrophic occurrence will be included in the deferral: (3-20-20)

i. Line 1: Fire. (3-28-18)

ii. Line 2: Allied Lines. (3-28-18)

iii. Line 3: Farm owners multiple peril. (3-28-18)

iv. Line 4: Homeowners multiple peril. (3-28-18)

v. Line 5: Commercial multiple peril. (3-28-18)

vi. Line 9: Inland Marine. (3-28-18)

vii. Line 12: Earthquake. (3-28-18)

viii. Line 21: Auto physical damage. (3-28-18)

e. Credit for reinsurance under Section 042 will apply only to reinsurance contracts entered into or renewed on or after the effective date of the certification of the assuming insurer. Any reinsurance contract entered into prior to the effective date of the certification of the assuming insurer that is subsequently amended after the effective date of the certification of the assuming insurer, or a new reinsurance contract, covering any risk for which collateral was provided previously, will only be subject to Section 042 with respect to losses incurred and reserves reported from and after the effective date of the amendment or new contract. (3-28-18)

f. Nothing in this section will prohibit the parties to a reinsurance agreement from agreeing to provisions establishing security requirements that exceed the minimum security requirements established for certified reinsurers under Section 042. (3-28-18)

02. Certification procedure: (3-28-18)

a. The Director will post notice on the Department's website promptly upon receipt of any application for certification, including instructions on how members of the public may respond to the application. The Director cannot take final action on the application until at least thirty (30) days after posting the notice prescribed by Paragraph 042.02.a. (3-20-20)

b. The Director will issue written notice to an assuming insurer that has made application and been approved as a certified reinsurer. Included in such notice will be the rating assigned the certified reinsurer in accordance with Subsection 042.01. The Director will publish a list of all certified reinsurers and their ratings . (3-28-18)

c. In order to be eligible for certification, the assuming insurer will meet the following requirements: (3-28-18)

i. The assuming insurer needs to be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the Director pursuant to Subsection 042.03. (3-20-20)

ii. The assuming insurer needs to maintain capital and surplus, or its equivalent, of no less than two hundred fifty million dollars ($250,000,000) calculated in accordance with Subparagraph 042.02.d.viii. of this section. This requirement may also be satisfied by an association including incorporated and individual unincorporated underwriters having minimum capital and surplus equivalents (net of liabilities) of at least two hundred fifty million dollars ($250,000,000) and a central fund containing a balance of at least two hundred fifty million dollars ($250,000,000). (3-20-20)

iii. The assuming insurer needs to maintain financial strength ratings from two (2) or more rating agencies deemed acceptable by the Director. These ratings will be based on interactive communication between the rating agency and the assuming insurer and cannot be based solely on publicly available information. These financial strength ratings will be one (1) factor used by the Director in determining the rating that is assigned to the assuming insurer. Acceptable rating agencies include the following: (3-20-20)

(1) Standard & Poor's; (3-28-18)

(2) Moody's Investors Service; (3-28-18)

(3) Fitch Ratings; (3-28-18)

(4) A.M. Best Company; or (3-28-18)

(5) Any other nationally recognized statistical rating organization. (3-28-18)

iv. The certified reinsurer needs to comply with any other requirements reasonably imposed by the Director. (3-20-20)

d. Each certified reinsurer will be rated on a legal entity basis, with due consideration being given to the group rating where appropriate, except that an association including incorporated and individual unincorporated underwriters that has been approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating. Factors that may be considered as part of the evaluation process include, but are not limited to, the following: (3-28-18)

i. The certified reinsurer's financial strength rating from an acceptable rating agency. The maximum rating that a certified reinsurer may be assigned will correspond to its financial strength rating as outlined in the table below. The Director will use the lowest financial strength rating received from an approved rating agency in establishing the maximum rating of a certified reinsurer. A failure to obtain or maintain at least two (2) financial strength ratings from acceptable rating agencies will result in loss of eligibility for certification:

Rating	Best	S&P	Moody's	Fitch
Secure - 1	A++	AAA	Aaa	AAA
Secure - 2	A+	AA+, AA, AA-	Aa1, Aa2, Aa3	AA+, AA, AA-
Secure - 3	A	A+, A	A1, A2	A+, A
Secure - 4	A-	A-	A3	A-
Secure - 5	B++, B+	BBB+, BBB, BBB-	Baa1, Baa2, Baa3	BBB+, BBB, BBB-
Vulnerable - 6	B, B-, C++, C+, C, C-, D, E, F	BB+, BB, BB-, B+, B, B-, CCC, CC, C, D, R	Ba1, Ba2, Ba3, B1, B2, B3, Caa, Ca, C	BB+, BB, BB-, B+, B, B-, CCC+, CC, CCC-, DD

(3-28-18)

ii. The business practices of the certified reinsurer in dealing with its ceding insurers, including its record of compliance with reinsurance contractual terms and obligations; (3-28-18)

iii. For certified reinsurers domiciled in the U.S., a review of the most recent applicable NAIC Annual Statement Blank, either Schedule F (for property/casualty reinsurers) or Schedule S (for life and health reinsurers); (3-28-18)

iv. For certified reinsurers not domiciled in the U.S., a review annually of Form CR-F (for property/casualty reinsurers) or Form CR-S (for life and health reinsurers); (3-20-20)

v. The reputation of the certified reinsurer for prompt payment of claims under reinsurance agreements, based on an analysis of ceding insurers' Schedule F reporting of overdue reinsurance recoverables, including the proportion of obligations that are more than ninety (90) days past due or are in dispute, with specific attention given to obligations payable to companies that are in administrative supervision or receivership; (3-28-18)

vi. Regulatory actions against the certified reinsurer; (3-28-18)

vii. The report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in following Subparagraph 042.02.d.viii.; (3-28-18)

viii. For certified reinsurers not domiciled in the U.S., audited financial statements (audited U.S. GAAP basis if available, audited IFRS basis statements are allowed but needs to include an audited footnote reconciling equity and net income to a U.S. GAAP basis, or with the permission of the state insurance director, audited IFRS statements with reconciliation to U.S. GAAP certified by an officer of the company), regulatory filings, and actuarial opinion (as filed with the non-U.S. jurisdiction supervisor). Upon the initial application for certification, the Director will consider audited financial statements for the last three (3) years filed with its non U.S. jurisdiction supervisor; (3-20-20)

ix. The liquidation priority of obligations to a ceding insurer in the certified reinsurer's domiciliary jurisdiction in the context of an insolvency proceeding; (3-28-18)

x. A certified reinsurer's participation in any solvent scheme of arrangement, or similar procedure, which involves U.S. ceding insurers. The Director will receive prior notice from a certified reinsurer that proposes participation by the certified reinsurer in a solvent scheme of arrangement; and (3-28-18)

xi. Any other information deemed relevant by the Director. (3-28-18)

e. Based on the analysis conducted under Subparagraph 042.02.d.v. of a certified reinsurer's reputation for prompt payment of claims, the Director may make appropriate adjustments in the security the certified reinsurer is needed to post to protect its liabilities to U.S. ceding insurers, provided that the Director will, at a

minimum, increase the security the certified reinsurer is needed to post by one rating level under Subparagraph 042.02.d.i. if the Director finds that: (3-20-20)

i. More than fifteen percent (15%) of the certified reinsurer's ceding insurance clients have overdue reinsurance recoverables on paid losses of ninety (90) days or more that are not in dispute and that exceed one hundred thousand dollars ($100,000) for each cedent; or (3-28-18)

ii. The aggregate amount of reinsurance recoverables on paid losses that are not in dispute that are overdue by ninety (90) days or more exceeds fifty million dollars ($50,000,000). (3-28-18)

f. The assuming insurer needs to submit a properly executed form CR-1 as evidence of its submission to the jurisdiction of this state, appointment of the Director as an agent for service of process in this state, and agreement to provide security for one hundred percent (100%) of the assuming insurer's liabilities attributable to reinsurance ceded by U.S. ceding insurers if it resists enforcement of a final U.S. judgment. The Director will not certify any assuming insurer that is domiciled in a jurisdiction that the Director has determined does not adequately and promptly enforce final U.S. judgments or arbitration awards. (3-20-20)

g. The certified reinsurer needs to agree to meet applicable information filing requirements as determined by the Director, both with respect to an initial application for certification and on an ongoing basis. All information submitted by certified reinsurers that is not otherwise public information subject to disclosure will be exempted from disclosure under Title 74, Chapter 1, Idaho Code, and will be withheld from public disclosure. The applicable information filing requirements are, as follows: (3-20-20)

i. Notification within ten (10) days of any regulatory actions taken against the certified reinsurer, any change in the provisions of its domiciliary license or any change in rating by an approved rating agency, including a statement describing such changes and the reasons therefor; (3-28-18)

ii. Annually, Form CR-F or CR-S, as applicable per instructions adopted by the Department. (3-28-18)

iii. Annually, the report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in following Subparagraph 042.02.g.iv.; (3-28-18)

iv. Annually, audited financial statements (audited U.S. GAAP basis if available, audited IFRS basis statements are allowed but needs to include an audited footnote reconciling equity and net income to a U.S. GAAP basis, or, with the permission of the Director, audited IFRS statements with reconciliation to U.S. GAAP certified by an officer of the company), regulatory filings, and actuarial opinion (as filed with the certified reinsurer's supervisor). Upon the initial certification, audited financial statements for the last three (3) years filed with the certified reinsurer's supervisor; (3-20-20)

v. At least annually, an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from U.S. domestic ceding insurers; (3-28-18)

vi. A certification from the certified reinsurer's domestic regulator that the certified reinsurer is in good standing and maintains capital in excess of the jurisdiction's highest regulatory action level; and (3-28-18)

vii. Any other information that the Director may reasonably require. (3-28-18)

h. Change in Rating or Revocation of Certification. (3-28-18)

i. In the case of a downgrade by a rating agency or other disqualifying circumstance, the Director will upon written notice assign a new rating to the certified reinsurer in accordance with the requirements of Subparagraph 042.02.d.i. (3-28-18)

ii. The Director will have the authority to suspend, revoke, or otherwise modify a certified reinsurer's certification at any time if the certified reinsurer fails to meet its obligations or security requirements under this section, or if other financial or operating results of the certified reinsurer, or documented significant delays in

payment by the certified reinsurer, lead the Director to reconsider the certified reinsurer's ability or willingness to meet its contractual obligations. (3-28-18)

iii. If the rating of a certified reinsurer is upgraded by the Director, the certified reinsurer may meet the security requirements applicable to its new rating on a prospective basis, but the Director will require the certified reinsurer to post security under the previously applicable security requirements as to all contracts in force on or before the effective date of the upgraded rating. If the rating of a certified reinsurer is downgraded by the Director, the Director will require the certified reinsurer to meet the security requirements applicable to its new rating for all business it has assumed as a certified reinsurer. (3-28-18)

iv. Upon revocation of the certification of a certified reinsurer by the Director, the assuming insurer will be needed to post security in accordance with Section 061 of this rule in order for the ceding insurer to continue to take credit for reinsurance ceded to the assuming insurer. If funds continue to be held in trust in accordance with Section 041 of this rule, the Director may allow additional credit equal to the ceding insurer's pro rata share of such funds, discounted to reflect the risk of uncollectibility and anticipated expenses of trust administration. Notwithstanding the change of a certified reinsurer's rating or revocation of its certification, a domestic insurer that has ceded reinsurance to that certified reinsurer cannot be denied credit for reinsurance for a period of three (3) months for all reinsurance ceded to that certified reinsurer, unless the reinsurance is found by the Director to be at high risk of uncollectibility. (3-20-20)

03. Qualified Jurisdictions. (3-28-18)

a. If, upon conducting an evaluation under Section 042 of this rule with respect to the reinsurance supervisory system of any non-U.S. assuming insurer, the Director determines that the jurisdiction qualifies to be recognized as a qualified jurisdiction, the Director will publish notice and evidence of such recognition in an appropriate manner. The Director may establish a procedure to withdraw recognition of those jurisdictions that are no longer qualified. (3-28-18)

b. In order to determine whether the domiciliary jurisdiction of a non-U.S. assuming insurer is eligible to be recognized as a qualified jurisdiction, the Director will evaluate the reinsurance supervisory system of the non-U.S. jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits and the extent of reciprocal recognition afforded by the non-U.S. jurisdiction to reinsurers licensed and domiciled in the U.S. The Director will determine the appropriate approach for evaluating the qualifications of such jurisdictions, and create and publish a list of jurisdictions whose reinsurers may be approved by the Director as eligible for certification. A qualified jurisdiction needs to agree to share information and cooperate with the Director with respect to all certified reinsurers domiciled within that jurisdiction. Additional factors to be considered in determining whether to recognize a qualified jurisdiction, in the discretion of the Director, include, but are not limited to, the following: (3-20-20)

i. The framework under which the assuming insurer is regulated. (3-28-18)

ii. The structure and authority of the domiciliary regulator with regard to solvency regulation requirements and financial surveillance. (3-28-18)

iii. The substance of financial and operating standards for assuming insurers in the domiciliary jurisdiction. (3-28-18)

iv. The form and substance of financial reports needed to be filed or made publicly available by reinsurers in the domiciliary jurisdiction and the accounting principles used. (3-20-20)

v. The domiciliary regulator's willingness to cooperate with U.S. regulators in general and the Director in particular. (3-28-18)

vi. The history of performance by assuming insurers in the domiciliary jurisdiction. (3-28-18)

vii. Any documented evidence of substantial problems with the enforcement of final U.S. judgments in the domiciliary jurisdiction. A jurisdiction will not be considered to be a qualified jurisdiction if the Director has determined that it does not adequately and promptly enforce final U.S. judgments or arbitration awards. (3-28-18)

viii. Any relevant international standards or guidance with respect to mutual recognition of reinsurance supervision adopted by the International Association of Insurance Supervisors or successor organization. (3-28-18)

ix. Any other matters deemed relevant by the Director. (3-28-18)

c. A list of qualified jurisdictions will be published through the NAIC committee process. The Director will consider this list in determining qualified jurisdictions. If the Director approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the Director will provide thoroughly documented justification with respect to the criteria provided under Subparagraphs 042.03.b.i. through 042.03.b.ix. of this subsection. (3-28-18)

d. U.S. jurisdictions that meet the requirements for accreditation under the NAIC financial standards and accreditation program will be recognized as qualified jurisdictions. (3-28-18)

04. Recognition of Certification Issued by an NAIC Accredited Jurisdiction. (3-28-18)

a. If an applicant for certification has been certified as a reinsurer in an NAIC accredited jurisdiction, the Director has the discretion to defer to that jurisdiction's certification, and to defer to the rating assigned by that jurisdiction, if the assuming insurer submits a properly executed Form CR-1 and such additional information as the Director requires. The assuming insurer will be considered to be a certified reinsurer in this State. (3-28-18)

b. Any change in the certified reinsurer's status or rating in the other jurisdiction will apply automatically in this State as of the date it takes effect in the other jurisdiction. The certified reinsurer will notify the Director of any change in its status or rating within ten (10) days after receiving notice of the change. (3-28-18)

c. The Director may withdraw recognition of the other jurisdiction's rating at any time and assign a new rating in accordance with Paragraph 042.02.h. of this subsection. (3-28-18)

d. The Director may withdraw recognition of the other jurisdiction's certification at any time, with written notice to the certified reinsurer. Unless the Director suspends or revokes the certified reinsurer's certification in accordance with Paragraph 042.02.h., the certified reinsurer's certification will remain in good standing in this State for a period of three (3) months, which will be extended if additional time is necessary to consider the assuming insurer's application for certification in this State. (3-28-18)

05. Mandatory Funding Clause. In addition to the clauses prescribed under Section 101 of this rule, reinsurance contracts entered into or renewed under this section will include a proper funding clause, which requires the certified reinsurer to provide and maintain security in an amount sufficient to avoid the imposition of any financial statement penalty on the ceding insurer under this section for reinsurance ceded to the certified reinsurer. (3-20-20)

06. Notification Requirements.The Director will comply with all reporting and notification requirements that may be established by the NAIC with respect to certified reinsurers and qualified jurisdictions. (3-28-18)

043. -- 050. (RESERVED)

051. CREDIT FOR REINSURANCE REQUISITE BY LAW.
Pursuant to Section 41-515(2)(f), Idaho Code, the Director will allow credit for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of Section 41-515(2)(a), (b), (c), (d), or (e), Idaho Code, but only with respect to the insurance of risks located in jurisdictions where such reinsurance is prescribed by the applicable law or regulation of that jurisdiction. As used in this section, "jurisdiction" means any state, district or territory of the United States and any lawful national government. (3-20-20)

052. -- 060. (RESERVED)

061. ASSET OR REDUCTION FROM LIABILITY FOR REINSURANCE CEDED TO AN UNAUTHORIZED ASSUMING INSURER NOT MEETING THE REQUIREMENT OF SECTIONS 011, 021, 031, 041, 042, AND 051.
Pursuant to Section 41-515(3), Idaho Code, the Director will allow a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of Section 41-515(2), Idaho Code, in an amount not exceeding the liabilities carried by the ceding insurer. The reduction will be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the exclusive benefit of the ceding insurer, under a reinsurance contract with such assuming insurer as security for the payment of obligations under the reinsurance contract. The security will be held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer or, in the case of a trust, held in a qualified United States financial institution as defined in Section 41-515(4)(b), Idaho Code. This security may be in the form of any of the following: (3-28-18)

01. Cash. (7-1-96)

02. Securities. Securities listed by the Securities Valuation Office of the NAIC, including those deemed exempt from filing as defined by the Purposes and Procedures Manual of the NAIC Investment Analysis Office NAIC Securities Valuation Office and NAIC Structured Securities Group, and qualifying as admitted assets; (3-28-18)

03. Letters of Credit. Clean, irrevocable, unconditional and "evergreen" letters of credit issued or confirmed by a qualified United States institution, as defined in Section 41-515(4)(a), Idaho Code, effective no later than December 31 of the year for which filing is being made, and in the possession of, or in trust for, the ceding insurer on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance (or confirmation) will, notwithstanding the issuing (or confirming) institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification or amendment, whichever first occurs; or (3-28-18)

04. Other. Any Other Form of Security Acceptable to the Director. (3-28-18)

05. Other Provisions Applicable. An admitted asset or a reduction from liability for reinsurance ceded to an unauthorized assuming insurer pursuant to Section 061 will be allowed only when the requirements of Section 101 and the applicable portions of Sections 074, 075, 076, 081, and 091 of this rule are met. (3-28-18)

062. -- 070. (RESERVED)

071. TRUST AGREEMENTS QUALIFIED UNDER IDAPA 18.07.08.061.
Sections 074, 075, and 076 apply to trust agreements qualified under Section 061. (3-28-18)

072. -- 073. (RESERVED)

074. REQUISITE CONDITIONS.

01. Who Will Enter the Agreement. The trust agreement will be entered into between the beneficiary, the grantor and a trustee which will be a qualified United States financial institution as defined in Section 41-515(4)(b), Idaho Code. (3-28-18)

02. Trust Account. The trust agreement will create a trust account into which assets will be deposited. (7-1-99)

03. Who Will Hold Assets in Trust Account. All assets in the trust account will be held by the trustee at the trustee's office in the United States. (3-28-18)

04. Provisions of Trust Agreement. The Trust Agreement will provide that: (7-1-99)

a. The beneficiary will have the right to withdraw assets from the trust account at any time, without notice to the grantor, subject only to written notice from the beneficiary to the trustee; (7-1-96)

b. No other statement or document is prescribed to be presented to withdraw assets, except that the beneficiary may be prescribed to acknowledge receipt of withdrawn assets; (3-20-20)

c. It is not subject to any conditions or qualifications outside of the trust agreement; and (7-1-96)

d. It cannot contain references to any other agreements or documents except as provided for under Subsections 074.11 and 074.12. (3-28-18)

05. Sole Benefit of Beneficiary. The Trust Agreement will be established for the sole benefit of the beneficiary. (7-1-99)

06. Requisites of Trustee. The Trust Agreement will require the trustee to: (7-1-99)

a. Receive assets and hold all assets in a safe place; (7-1-96)

b. Determine that all assets are in such form that the beneficiary, or the trustee upon direction by the beneficiary, may whenever necessary negotiate any such assets, without consent or signature from the grantor or any other person or entity; (7-1-96)

c. Furnish to the grantor and the beneficiary a statement of all assets in the trust account upon its inception and at intervals no less frequent than the end of each calendar quarter; (7-1-96)

d. Notify the grantor and the beneficiary within ten (10) days, of any deposits to or withdrawals from the trust account; (7-1-96)

e. Upon written demand of the beneficiary, immediately take any and all steps necessary to transfer absolutely and unequivocally all right, title and interest in the assets held in the trust account to the beneficiary and deliver physical custody of the assets to the beneficiary; and (7-1-96)

f. Allow no substitutions or withdrawals of assets from the trust account, except on written instructions from the beneficiary, except that the trustee may, without the consent of but with notice to the beneficiary, upon call or maturity of any trust asset, withdraw such asset upon condition that the proceeds are paid into the trust account. (7-1-96)

07. Written Notification of Termination. The trust agreement will provide that at least thirty (30) days, but not more than forty-five (45) days, prior to termination of the trust account, written notification of termination will be delivered by the trustee to the beneficiary. (7-1-99)

08. Subject to Laws of State in Which Trust is Established. The trust agreement will be made subject to and governed by the laws of the state in which the trust is domiciled. (3-28-18)

09. Prohibit Invasion of Trust Corpus. The trust agreement will prohibit invasion of the trust corpus for the purpose of paying compensation to, or reimbursing the expenses of, the trustee. In order for a letter of credit to qualify as an asset of the trust, the trustee will have the right and the obligation pursuant to the deed of trust or some other binding agreement (as duly approved by the Director), to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced. (3-28-18)

10. Trustee Will Be Liable. The trust agreement will provide that the trustee will be liable for its own negligence, willful misconduct or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances where such draw would be necessary to be deemed to be considered negligence or willful misconduct, or both. (3-20-20)

11. Purposes for Applying Amounts Drawn Upon Trust Account. When a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities and accident and health, where it is customary practice to provide a trust agreement for a specific purpose, the trust agreement may, provide that the ceding insurer will undertake to use and apply amounts drawn upon the trust account, without

diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes: (3-20-20)

a. To pay or reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement regarding any losses and allocated loss expenses paid by the ceding insurer, but not recovered from the assuming insurer, or for unearned premiums due to the ceding insurer if not otherwise paid by the assuming insurer; (7-1-96)

b. To make payment to the assuming insurer of any amounts held in the trust account that exceed one hundred two percent (102%) of the actual amount needed to fund the assuming insurer's obligations under the specific reinsurance agreement; or (3-20-20)

c. Where the ceding insurer has received notification of termination of the trust account and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten (10) days prior to the termination date, to withdraw amounts equal to the obligations and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution as defined in Section 41-515(4)(b), Idaho Code, apart from its general assets, in trust for such uses and purposes specified in Subsections 074.11.a. and 074.11.b. as may remain executory after such withdrawal and for any period after the termination date. (3-28-18)

12. Reinsurance Agreement Provisions. When a trust agreement is established to meet the requirements of Section 061 in conjunction with a reinsurance agreement covering life, annuities or accident and health risks, where it is customary to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer will undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes; (3-20-20)

a. To pay or reimburse the ceding insurer for: (3-28-18)

i. The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of the policies; and (3-28-18)

ii. The assuming insurer's share under the specific reinsurance agreement of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurer, under the terms and provisions of the policies reinsured under the reinsurance agreement; (3-28-18)

b. To pay to the assuming insurer amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer; or (3-28-18)

c. Where the ceding insurer has received notification of termination of the trust and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten (10) days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer, and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified U.S. financial institution apart from its general assets, in trust for the uses and purposes specified in Paragraphs 074.12.a. and 074.12.b. of this Subsection as may remain executory after withdrawal and for any period after the termination date. (3-28-18)

13. Trust Account Assets. Either the reinsurance agreement or the trust agreement needs to stipulate that assets deposited in the trust account will be valued according to their current fair market value and will consist only of cash in United States dollars, certificates of deposit issued by a United States bank and payable in United States dollars, and investments permitted by the Insurance Code or any combination of the above, provided investments in or issued by an entity controlling, controlled by or under common control with either the grantor or the beneficiary of the trust cannot exceed five percent (5%) of total investments. The agreement may further specify the types of investments to be deposited. If the reinsurance agreement covers life, annuities or accident and health risks, then the provisions prescribed by this paragraph needs to be included in the reinsurance agreement. (3-20-20)

075. PERMITTED CONDITIONS.

01. Resignation of Trustee. The trust agreement may provide that the trustee may resign upon delivery of a written notice of resignation, effective not less than ninety (90) days after receipt by the beneficiary and grantor of the notice and that the trustee may be removed by the grantor by delivery to the trustee and the beneficiary of a written notice of removal, effective not less than ninety (90) days after receipt by the trustee and the beneficiary of the notice, provided that no such resignation or removal will be effective until a successor trustee has been duly appointed and approved by the beneficiary and the grantor and all assets in the trust have been duly transferred to the new trustee. (7-1-99)

02. Grantor's Rights. The grantor may have the full and unqualified right to vote any shares of stock in the trust account and to receive from time to time payments of any dividends or interest upon any shares of stock or obligations included in the trust account. Any such interest or dividends will be either forwarded promptly upon receipt to the grantor or deposited in a separate account established in the grantor's name. (7-1-99)

03. Trustee's Authority to Invest. The trustee may be given authority to invest, and accept substitutions of, any funds in the account, provided that no investment or substitution will be made without prior approval of the beneficiary, unless the trust agreement specifies categories of investments acceptable to the beneficiary and authorizes the trustee to invest funds and to accept substitutions which the trustee determines are at least equal in current fair market value to the assets withdrawn and that are consistent with the restrictions in Paragraph 076.01.b. (3-28-18)

04. Transfer of Assets. The trust agreement may provide that the beneficiary may at any time designate a party to which all or part of the trust assets are to be transferred. Such transfer may be conditioned upon the trustee receiving, prior to or simultaneously, other specified assets. (7-1-99)

05. Termination of Trust Account. The trust agreement may provide that, upon termination of the trust account, all assets not previously withdrawn by the beneficiary will, with written approval by the beneficiary, be delivered over to the grantor. (7-1-99)

076. ADDITIONAL CONDITIONS APPLICABLE TO REINSURANCE AGREEMENTS.

01. Reinsurance Agreement. A reinsurance agreement may contain provisions that: (3-28-18)

a. Require the assuming insurer to enter into a trust agreement and to establish a trust account for the benefit of the ceding insurer, and specifying what the agreement is to cover; (7-1-96)

b. Require the assuming insurer, prior to depositing assets with the trustee, to execute assignments or endorsements in blank, or to transfer legal title to the trustee of all shares, obligations or any other assets requiring assignments, in order that the ceding insurer, or the trustee upon the direction of the ceding insurer, may whenever necessary negotiate these assets without consent or signature from the assuming insurer or any other entity; (7-1-96)

c. Require that all settlements of account between the ceding insurer and the assuming insurer be made in cash or its equivalent; and (7-1-96)

d. Stipulate that the assuming insurer and the ceding insurer agree that the assets in the trust account, established pursuant to the provisions of the reinsurance agreement, may be withdrawn by the ceding insurer at any time, notwithstanding any other provisions in the reinsurance agreement, and will be utilized and applied by the ceding insurer or its successors in interest by operation of law, including without limitation any liquidator, rehabilitator, receiver or conservator of such company, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for the following purposes: (7-1-96)

i. To pay or reimburse the ceding insurer for: (3-28-18)

(1) The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement because of cancellations of such policies; (3-28-18)

(2) The assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer pursuant to the provisions of the policies reinsured under the reinsurance agreement; and (3-28-18)

(3) Any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer; (3-28-18)

ii. To make payment to the assuming insurer of amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer. (3-28-18)

02. Other Provisions of Reinsurance Agreement. The Reinsurance Agreement may also contain provisions that: (7-1-99)

a. Give the assuming insurer the right to seek approval from the ceding insurer, which cannot be unreasonably or arbitrarily withheld, to withdraw from the trust account all or any part of the trust assets and transfer those assets to the assuming insurer, provided: (3-28-18)

i. The assuming insurer will, at the time of withdrawal, replace the withdrawn assets with other qualified assets having a current fair market value equal to the current fair market value of the assets withdrawn so as to maintain at all times the deposit in the prescribed amount, or (3-20-20)

ii. After withdrawal and transfer, the current fair market value of the trust account is no less than one hundred and two percent (102%) of the prescribed amount. (3-20-20)

b. Provide for the return of any amount withdrawn in excess of the actual amounts prescribed for Paragraph 076.01.d. and for interest payments, at a rate not in excess of the prime rate of interest on such amounts. (3-20-20)

c. Permit the award by any arbitration panel or court of competent jurisdiction of: (7-1-96)

i. Interest at a rate different from that provided in Paragraph 076.02.b.; (7-1-99)

ii. Court of arbitration costs; (7-1-96)

iii. Attorney's fees, and (7-1-96)

iv. Any other reasonable expenses. (7-1-96)

03. Financial Reporting. A trust agreement may be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements needed to be filed with this department in compliance with the provisions of this regulation when established on or before the date of filing of the financial statement of the ceding insurer. Further, the reduction for the existence of an acceptable trust account may be up to the current fair market value of acceptable assets available to be withdrawn from the trust account at that time, but such reduction will be no greater than the specific obligations under the reinsurance agreement that the trust account was established to secure. (3-20-20)

04. Existing Agreements. Notwithstanding the effective date of this rule, any trust agreement or underlying reinsurance agreement in existence prior to July 1, 1996 will continue to be acceptable until 7/1/96, at which time the agreements will have to be in full compliance with this rule for the trust agreement to be acceptable. (7-1-96)

05. Failure to Identify Beneficiary. The failure of any trust agreement to specifically identify the beneficiary as defined in Section 010 will not be construed to affect any actions or rights which the Director may take or possess pursuant to the provisions of the laws of this state. (3-28-18)

077. -- 080. (RESERVED)

081. LETTERS OF CREDIT QUALIFIED UNDER SECTION 061.

01. Letters of Credit Under Section 061. The letter of credit needs to be clean, irrevocable and unconditional and issued or confirmed by a qualified United States financial institution as defined in Section 41-515(4)(a), Idaho Code. The letter of credit will contain an issue date and date of expiration and will stipulate that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds and that no other document need be presented. The letter of credit will also indicate that it is not subject to any condition or qualifications outside of the letter of credit. In addition, the letter of credit itself cannot contain reference to any other agreements, documents or entities, except as provided in Subparagraph 081.08.a.i. As used in this section, "beneficiary" means the domestic insurer for whose benefit the letter of credit has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court appointed domiciliary receiver (including conservator, rehabilitator or liquidator). (3-20-20)

02. Heading of Letter. The heading of the letter of credit may include a boxed section which contains the name of the applicant and other appropriate notations to provide a reference for the letter of credit. The boxed section will be clearly marked to indicate that such information is for internal identification purposes only. (7-1-96)

03. Statement. The letter of credit will contain a statement to the effect that the obligation of the qualified United States financial institution under the letter of credit is in no way contingent upon reimbursement with respect thereto. (7-1-96)

04. Term of Letter. The term of the letter of credit will be for at least one (1) year and will contain an "evergreen clause" which prevents the expiration of the letter of credit without due notice from the issuer. The "evergreen clause" will provide for a period of no less than thirty (30) days' notice prior to the expiration date or nonrenewal. (7-1-96)

05. Disclosure Statement. The letter of credit will state whether it is subject to and governed by the laws of this state or the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce Publication 600 (UCP 600) or International Standby Practices of the International Chamber of Commerce Publication 590 (ISP98), and all drafts drawn thereunder will be presentable at an office in the United States of a qualified United States financial institution. (3-28-18)

06. Letter Subject to Uniform Customs and Practice. If the letter of credit is made subject to the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce Publication 600 (UCP 600) or International Standby Practices of the International Chamber of Commerce Publication 590 (ISP98), then the letter of credit will specifically address and provide for an extension of time to draw against the letter of credit in the event that one or more of the occurrences specified in Article 36 of Publication 600 occur. (3-28-18)

07. Exception. If the letter of credit is issued by a United States financial institution authorized to issue letters of credit, other than a qualified United States financial institution as described in Subsection 081.01, then the following additional requirements will be met: (3-28-18)

a. The issuing financial institution will formally designate the confirming qualified United States financial institution as its agent for the receipt and payment of the drafts, and (3-28-18)

b. The "evergreen clause" will provide for thirty (30) days' notice prior to the expiration date for nonrenewal. (7-1-96)

c. The reinsurance agreement in conjunction with which the letter of credit is obtained may contain provisions that: (3-28-18)

i. Require the assuming insurer to provide letters of credit to the ceding insurer and specify what they are to cover. (7-1-96)

ii. Stipulate that the assuming insurer and ceding insurer agree that the letter of credit provided by the

assuming insurer pursuant to the provisions of the reinsurance agreement may be drawn upon at any time, notwithstanding any other provisions in the agreement, and will be utilized by the ceding insurer or its successors in interest only for one or more of the following reasons: (7-1-96)

(1) To pay or reimburse the ceding insurer for: (3-28-18)

(a) The assuming insurer's share under the specific reinsurance agreement of premiums returned but not yet recovered from the assuming insurers, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of such policies; (3-28-18)

(b) The assuming insurer's share, under the specific reinsurance agreement, of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurers, under the terms and provisions of the policies reinsured under the reinsurance agreement; and (3-28-18)

(c) Any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer; (3-28-18)

(2) Where the letter of credit will expire without renewal or be reduced or replaced by a letter of credit for a reduced amount, and where the assuming insurer's entire obligations under the reinsurance agreement remain unliquidated and undischarged ten (10) days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of the liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer and exceed the amount of any reduced or replacement letter of credit, and deposit those amounts in a separate account in the name of the ceding insurer in a qualified U.S. financial institution apart from its general assets, in trust for such uses and purposes specified in Subparagraph 081.08.a.ii. as may remain after withdrawal and for any period after the termination date. (3-28-18)

iii. All of the foregoing provisions of Paragraph 081.08.a. should be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer. (3-28-18)

d. Nothing contained in Paragraph 081.08.a. will preclude the ceding insurer and assuming insurer from providing for: (3-28-18)

i. An interest payment, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to Paragraph 081.08.a.ii; or (3-28-18)

ii. The return of any amounts drawn down on the letters of credit in excess of the actual amounts needed for the above or any amounts that are subsequently determined not to be due. (3-20-20)

082. -- 090. (RESERVED)

091. OTHER SECURITY.
A ceding insurer may take credit for unencumbered funds withheld by the ceding insurer in the United States subject to withdrawal solely by the ceding insurer and under its exclusive control. (7-1-96)

092. -- 100. (RESERVED)

101. REINSURANCE CONTRACT.
Credit will not be granted, nor an asset or reduction from liability allowed, to a ceding insurer for reinsurance effected with assuming insurers meeting the requirements of Sections 011, 021, 031, 041, 042, or 061 or otherwise in compliance with Section 41-515(2), Idaho Code, after the adoption of this rule unless the reinsurance agreement: (3-28-18)

01. Insolvency Clause. Includes a proper insolvency clause that stipulates, that reinsurance is payable directly to the liquidator or successor without diminution regardless of the status of the ceding company, pursuant to Chapter 33, Title 41, Idaho Code; (3-28-18)

02. Jurisdiction. Includes a provision pursuant to Section 41-515(2), Idaho Code, whereby the

assuming insurer, if an unauthorized assuming insurer, has submitted to the jurisdiction of an alternative dispute resolution panel or court of competent jurisdiction within the United States, has agreed to comply with all requirements necessary to court or panel jurisdiction, agent upon whom service of process may be effected, and has agreed to abide by the final decision of such court or panel; and (3-28-18)

03. Reinsurance Intermediary Clause. Includes a proper reinsurance intermediary clause, if applicable, that stipulates that the credit risk for the intermediary is carried by the assuming insurer. (3-28-18)

102. -- 150. (RESERVED)

151. MANDATORY FORMS.
Consistent with NAIC model regulation 786, various forms have been adopted and need to be received by the Department to be compliant with this rule including forms AR-1, CR-1, CR-F, and CR-S. These forms can be obtained from the Department's website. (3-20-20)

152. -- 999. (RESERVED)

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