

**REVISED PROPOSED REGULATION OF THE
COMMISSIONER OF INSURANCE**

LCB File No. R188-18

April 30, 2020

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§1-23, NRS 679B.130, 681A.130 and 681A.145.

A REGULATION relating to insurance; establishing uniform standards governing reserve financing arrangements pertaining to certain life insurance policies; requiring certain ceding insurers to hold certain levels of primary security and other security in reserve financing arrangements; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law authorizes the Commissioner of Insurance to adopt regulations to carry out the provisions of existing law relating to reinsurance. (NRS 681A.130) Existing law also authorizes the Commissioner to adopt regulations applicable to arrangements for reinsurance relating to certain types of life insurance policies and the financing arrangements that govern such policies. (NRS 681A.145) **Section 17** of this regulation sets forth that the purposes of this regulation are to: (1) establish uniform standards governing reserve financing arrangements for certain types of life insurance policies; and (2) ensure each financing arrangement governed by the provisions of this regulation consists of required amounts of primary security or other security. **Section 18** of this regulation establishes the types of reinsurance to which the provisions of this regulation apply.

Section 19 of this regulation establishes the actuarial method required to be used for various types of covered policies and reinsurance treaties. **Section 8** of this regulation defines “covered policy” as: (1) certain life insurance policies with guaranteed non-level gross premiums or guaranteed non-level benefits; or (2) flexible premium universal life insurance policies with provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period. **Section 3** of this regulation defines “actuarial method” as the methodology used to determine the required level of primary security for a given reinsurance treaty as set forth in the *Valuation Manual* adopted by the National Association of Insurance Commissioners. **Section 20** of this regulation authorizes the use of credit for reinsurance for ceded liabilities relating to covered policies under certain circumstances.

Section 21 of this regulation prohibits an insurer that holds a covered policy subject to the provisions of this regulation from taking any action or entering into an arrangement for the purposes of avoiding the requirements established by this regulation. **Section 22** of this regulation provides for the severability of any provision of this regulation held invalid from other

valid portions of this regulation. **Section 23** of this regulation sets the effective date of this regulation as January 1, 2021, or upon filing with the Secretary of State, whichever is later.

Section 1. Chapter 681A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 22, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 22, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 16, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Actuarial method” means the methodology used to determine the required level of primary security set forth in section 19 of this regulation pursuant to the “Requirements for Principle-Based Reserves for Life Products” in the Valuation Manual.*

Sec. 4. *“Affiliate” has the meaning ascribed to it in NRS 692C.030.*

Sec. 5. *“Attained-age-based yearly renewable term life insurance policy” means a yearly renewable term life insurance policy in which the premium rates on both the initial current premium scale and the guaranteed maximum premium scale are:*

- 1. Based upon the attained age of the insured such that the rates for any given policy at a given attained age of the insured is independent of the year the policy was issued; and*
- 2. The same as the premium rates for policies covering all insured of the same sex, risk class, plan of insurance and attained age.*

Sec. 6. *“Authorized control level” has the meaning ascribed to it in NAC 681B.405.*

Sec. 7. *“Company action level” has the meaning ascribed to it in NAC 681B.410.*

Sec. 8. *“Covered policy” means:*

- 1. A life insurance policy with guaranteed non-level gross premiums or guaranteed non-level benefits other than a flexible premium universal life insurance policy; or*

2. A flexible premium universal life insurance policy with provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period.

Sec. 9. *“CSO” has the meaning ascribed to it in NAC 688A.375.*

Sec. 10. *“Mandatory control level” has the meaning ascribed to it in NAC 681B.445.*

Sec. 11. *“Other security” means a security, other than a primary security, which has been approved by the Commissioner.*

Sec. 12. 1. *“Primary security” means:*

(a) Cash;

(b) Except as otherwise provided in subsection 2, securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners; and

(c) For security held in connection with funds withheld and modified coinsurance reinsurance treaties:

(1) Commercial loans in good standing of commercial mortgage category CM3 quality or higher;

(2) Policy loans; and

(3) Derivatives acquired in the normal course of business and used to support and hedge liabilities pertaining to the actual risks in the policies ceded pursuant to the reinsurance treaty.

2. “Primary security” does not include synthetic letters of credit, contingent notes, credit-linked notes or other similar security that operates in a manner similar to a letter of credit and any securities issued by the ceding insurer or any of its affiliates.

Sec. 13. *“Regulatory action level” has the meaning ascribed to it in NAC 681B.460.*

Sec. 14. *“Secondary guarantee period” means the period for which a policy is guaranteed to remain in force subject only to a secondary guarantee.*

Sec. 15. *“Ultimate 1980 CSO Mortality Table” has the meaning ascribed to it in NAC 688A.385.*

Sec. 16. *“Valuation Manual” has the meaning ascribed to it in NRS 681B.0071.*

Sec. 17. *The purposes of sections 2 to 22, inclusive, of this regulation are to:*

1. Establish uniform standards governing reserve financing arrangements pertaining to life insurance policies that contain guaranteed non-level gross premiums or guaranteed non-level benefits and universal life insurance policies with secondary guarantees; and

2. Ensure that, with respect to each financing arrangement, funds consisting of primary security and other security are held by or on behalf of ceding insurers in the form and amount required pursuant to sections 2 to 22, inclusive, of this regulation.

Sec. 18. *1. The provisions of sections 2 to 22, inclusive, of this regulation apply to all reinsurance treaties that cede liabilities pertaining to a covered policy issued by a life insurance company domiciled in this State.*

2. The provisions of sections 2 to 22, inclusive, of this regulation do not apply to reinsurance:

(a) Of the following types of policies that are issued before the effective date of this regulation or the date on which the ceding insurer begins to apply the provisions of the Valuation Manual to establish the statutory reserves of the ceded policies, whichever occurs later, but not later than January 1, 2022:

(1) An attained-age-based yearly renewable term life insurance policy.

(2) A policy that becomes an attained-age-based yearly renewable term life insurance policy after an initial period of coverage if one of the following conditions are met:

(I) The initial period of coverage is constant for all insureds of the same sex, risk class and plan of insurance; or

(II) The initial period of coverage runs to a common attained age for all insureds of the same sex, risk class and plan of insurance and, after the initial period of coverage, the policy meets the conditions of an attained-age-based yearly renewable term life insurance policy.

(3) A renewable term life insurance policy if:

(I) The policy consists of a series of renewal periods that are identical in length, except for the final renewal period, which may be truncated or extended to reach the expiry age, provided that the final renewal period is less than 10 years and less than twice the size of any other renewal period under the policy, and for each period the premium rates on both the initial current premium scale and the guaranteed maximum premium scale are level;

(II) The guaranteed gross premium in all renewal periods are not less than the corresponding net premiums based upon the Ultimate 1980 CSO Mortality Table, with or without the Ten-Year Select Mortality Factors; and

(III) There are no cash surrender values in any policy year.

(b) Of a portion of a yearly renewable term reinsurance policy in which the mortality risk is reinsured and issued not later than:

(1) The effective date of this regulation; or

(2) The date on which the ceding insurer begins to apply the provisions of the Valuation Manual to establish the statutory reserves of the ceded policies,

↳ whichever occurs later, but not later than January 1, 2022.

(c) *Of a universal life policy that has:*

(1) *A secondary guarantee period, if any, of not more than 5 years;*

(2) *A specified premium for the secondary guarantee period of not less than the net level reserve premium for the secondary guarantee period, based on the CSO valuation tables and valuation interest rate applicable to the issue year of the policy; and*

(3) *An initial surrender charge that is not less than 100 percent of the first year annualized specified premium for the secondary guarantee period.*

(d) *Of credit life insurance.*

(e) *Of a variable life insurance policy that provides for life insurance in which the amount or duration of the policy varies according to the investment experience of a separate account.*

(f) *Of a group life insurance certificate unless the certificate provides for a stated or implied schedule of maximum gross premiums required in order to continue coverage in force for a period of more than 1 year.*

(g) *That is ceded to an assuming insurer that meets the applicable requirements of NRS 681A.180 and 681A.190.*

(h) *That is ceded to an assuming insurer that:*

(1) *Meets the applicable requirements of NRS 681A.155, 681A.160 and 681A.170;*

(2) *Prepares statutory financial statements in compliance with the Accounting Practices and Procedures Manual of the National Association of Insurance Commissioners, adopted by reference in NAC 679B.033, without any departures relating to the admissibility or valuation of assets or liabilities that increase the assuming insurer's reported surplus and reach a level of materiality that require disclosure in the financial statements pursuant to the Statement of*

Statutory Accounting Principles No. 1 of the National Association of Insurance

Commissioners; and

(3) Has not triggered a company action level event, regulatory action level event, authorized control level event or a mandatory control level event when its risk-based capital is calculated in accordance with the life risk-based capital report, including, without limitation, overview and instructions for companies, as amended by the National Association of Insurance Commissioners.

(i) That is ceded to an assuming insurer that:

(1) Meets the applicable requirements of NRS 681A.155, 681A.160 and 681A.170;

(2) Is not an affiliate of:

(I) The insurer ceding the business to the assuming insurer; or

(II) An insurer that directly or indirectly ceded the business to the current ceding insurer;

(3) Prepares statutory financial statements in compliance with the Accounting Practices and Procedures Manual of the National Association of Insurance Commissioners, adopted by reference in NAC 679B.033;

(4) Is licensed or accredited in not less than 10 states, including its state of domicile;

(5) Is not licensed in any state as a captive, special purpose vehicle, special purpose financial captive, special purpose life reinsurance company, limited purpose subsidiary or any other similarly situated licensing regime; and

(6) Is not below 500 percent of the authorized control level when its risk-based capital is calculated in accordance with the life risk-based capital report, including, without limitation, overview and instructions for companies, as amended by the National Association of

Insurance Commissioners, and without recognition of any departures relating to the admissibility or valuation of assets or liabilities that increase the reported surplus of the assuming insurer.

(j) That is ceded to an assuming insurer that meets the requirements of subsection 3 of NRS 681A.145.

(k) That is not otherwise exempt from the provisions of sections 2 to 22, inclusive, of this regulation pursuant to this subsection if the Commissioner, in consultation with the Financial Analysis Working Group of the National Association of Insurance Commissioners or another group of regulators approved by the National Association of Insurance Commissioners, determines that the application of the provisions of sections 2 to 22, inclusive, of this regulation to the risks associated with such form of reinsurance is not necessary to provide adequate protection to policyholders. If the Commissioner exempts a reinsurance treaty pursuant to this paragraph, he or she will, in a manner the Commissioner deems sufficient, publicly disclose the exemption, the basis for the determination and a summary description of the treaty.

Sec. 19. 1. Except as otherwise provided in this subsection, for a covered policy described in subsection 1 of section 8 of this regulation, the actuarial method is the greater of the deterministic reserve or the net premium reserve as set forth in the Valuation Manual, regardless of whether the criteria for exemption testing can be met. If the covered policy does not meet the requirements of the stochastic reserve exclusion test as set forth in the Valuation Manual, the actuarial method is the greatest of the deterministic reserve, the stochastic reserve or the net premium reserve, as set forth in the Valuation Manual. If a covered policy described in this subsection is reinsured in a reinsurance treaty that also contains a covered policy

described in subsection 2 of section 8 of this regulation, the ceding insurer may elect to use the actuarial method described in subsection 2 for the entire reinsurance agreement. Any actuarial method used pursuant to this subsection must comply with the requirements and restrictions that the Valuation Manual imposes on the aggregation of different types of covered policies for purposes of principle-based reserve calculations.

2. For a covered policy described in subsection 2 of section 8 of this regulation, the actuarial method is the greatest of the deterministic reserve, the stochastic reserve or the net premium reserve as set forth in the Valuation Manual, regardless of whether the criteria for exemption testing can be met.

3. Except as otherwise provided in subsection 4, the actuarial method must be applied on a gross basis to all risks with respect to a covered policy as originally issued or assumed by the ceding insurer.

4. Except as otherwise provided in subsection 5, if a reinsurance treaty cedes less than 100 percent of the risk pertaining to its covered policies, the required level of primary security may be reduced as follows:

(a) If a reinsurance treaty cedes only a quota share of some or all of the risks pertaining to its covered policies, the required level of primary security, as well as any applicable adjustment made pursuant to paragraph (c), may be reduced to a pro rata portion in accordance with the percentage of the risk ceded.

(b) If a reinsurance treaty in a nonexempt arrangement cedes only the risks pertaining to a secondary guarantee, the required level of primary security may be reduced by an amount determined by applying the actuarial method on a gross basis to all risks, except for risks related to the secondary guarantee, pertaining to its covered policies, except that for covered

policies for which the ceding insurer did not elect to apply the provisions of the Valuation Manual to establish statutory reserves, the required level of primary security may be reduced by the statutory reserve retained by the ceding insurer on such covered policies, where the retained reserve of the covered policies is reflective of any reduction pursuant to the cession of mortality risk on a yearly renewable term basis in an exempt arrangement.

*(c) If a portion of the risk associated with the covered policies in a reinsurance treaty is ceded to another reinsurer on a yearly renewable term basis in an exempt arrangement, the required level of primary security may be reduced by the amount determined by applying the actuarial method, including, without limitation, the reinsurance section of the Valuation Manual, to the portion of the risks associated with the covered policies ceded in the exempt arrangement, except for the covered policies issued before January 1, 2017, for which the adjustment is not to exceed $[c_x / (2 * \text{number of reinsurance premiums per year})]$, where c_x is calculated using the same mortality table used in calculating the net premium reserve.*

5. If a reinsurance treaty cedes a portion of risk to a different reinsurer, including, without limitation, stop loss, excess of loss or any other nonproportional reinsurance treaty, the required level of primary security may not be reduced.

6. If more than one of the scenarios described in paragraph (a), (b) or (c) of subsection 4 or in subsection 5 applies to a reinsurance treaty, any adjustment to the required level of primary security must be done in the order that accurately reflects the portion of the risk ceded via the treaty. The ceding insurer shall document the rationale and steps taken to accomplish the adjustments to the required level of primary security due to the cession of less than 100 percent of the risk. The adjustments for other reinsurance will be made only with respect to

reinsurance treaties entered into directly by the ceding insurer. The ceding insurer may not make an adjustment as a result of a retrocession treaty entered into by the assuming insurers.

7. Regardless of the actuarial method applied pursuant to this section, the required level of primary security may never exceed the amount of statutory reserves ceded.

8. If the ceding insurer cedes risks pertaining to covered policies in more than one reinsurance treaty, including, without limitation, any riders, the aggregate required level of primary security for such reinsurance treaties may not be less than the required level of primary security calculated using the actuarial method if all risks ceded in those treaties were ceded in a single reinsurance treaty.

9. If a reinsurance treaty cedes risk on both covered policies and noncovered policies, credit for the ceded reserves must be determined as follows:

(a) The actuarial method must be used to determine the required level of primary security for the covered policies and the amount of reinsurance credit for the covered policy reserves must be determined pursuant to section 20 of this regulation.

(b) Credit for the noncovered policy reserves must be granted only to the extent that security, in addition to security held to satisfy the requirements of paragraph (a), is held by or on behalf of the ceding insurer in accordance with NRS 681A.140 to 681A.240, inclusive, and NAC 681A.400 to 681A.520, inclusive. Any primary security used to meet the requirements of this paragraph may not be used to satisfy the required level of primary security for covered policies.

10. For the purposes of calculating the required level of primary security pursuant to this section and determining the amount of primary security and other security, as applicable, held by or on behalf of the ceding insurer, the following conditions and limitations shall apply:

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

(b) For all other assets not described in paragraph (a), the valuations are those that were assigned to the assets for the purpose of determining the amount of reserve credit taken. Additionally, the asset spread tables and asset default costs tables required by the Valuation Manual must be included in the actuarial method if such tables are adopted by the Life Actuarial (A) Task Force of the National Association of Insurance Commissioners not later than December 31 of any given year on or immediately preceding the valuation date for which the required level of primary security is being calculated. The asset spread tables and asset default cost tables must be incorporated into the actuarial method in the manner specified in the Valuation Manual.

Sec. 20. 1. Except as otherwise provided in subsection 3 or in subsection 2 of section 18 of this regulation, credit for reinsurance is authorized for ceded liabilities pertaining to covered policies in a reinsurance treaty pursuant to NRS 681A.140 to 681A.240, inclusive, and NAC 681A.400 to NAC 681A.520, inclusive, if:

(a) The ceding insurer's statutory policy reserves pertaining to covered policies are established in full and in accordance with the applicable requirements of this chapter and chapter 681A of NRS and credit claimed for any reinsurance treaty does not exceed the proportionate share of such reserves ceded under the contract;

(b) The ceding insurer determines the required level of primary security with respect to each reinsurance treaty and provides support for its calculation as determined to be acceptable to the Commissioner;

(c) Funds consisting of primary security, in an amount at least equal to the required level of primary security, are held by or on behalf of the ceding insurer as security as described in NRS 681A.240 under the reinsurance treaty on a funds withheld, trust or modified coinsurance basis;

(d) Funds consisting of other security, in an amount at least equal to any portion of the statutory reserves as to which primary security is not held pursuant to paragraph (c), are held by or on behalf of the ceding insurer as security as described in NRS 681A.240 under the reinsurance treaty; and

(e) The reinsurance treaty is approved by the Commissioner.

2. A trust used to satisfy the requirements of subsection 1 must comply with all of the requirements of NAC 681A.250 to 681A.380, inclusive, except:

(a) For the purposes identified in subsection 10 of section 19 of this regulation, funds consisting of primary security or other security held in trust must be valued according to the valuation rules set forth in subsection 10 of section 19 of this regulation, as applicable;

(b) There are no affiliate investment limitations with respect to any security held in such trust if such security is not needed to satisfy the requirements of paragraph (c) of subsection 1;

(c) The reinsurance treaty must prohibit withdrawals or substitutions of trust assets that would leave the fair market value of the primary security within the trust below 102 percent of the level required by paragraph (c) of subsection 1 at the time of the withdrawal or

substitution when aggregated with primary security outside of the trust that is held by or on behalf of the ceding insurer in the manner required by paragraph (c) of subsection 1; and

(d) The determination of reserve credit pursuant to NAC 681A.330 must be determined according to the valuation rules set forth in subsection 10 of section 19 of this regulation.

3. The requirements of subsection 1 must be satisfied on or before the date that risks under the covered policies are ceded and on an ongoing basis thereafter. A ceding insurer may not take or consent to any action or series of actions that would result in a deficiency under paragraph (c) or (d) of subsection 1 with respect to any reinsurance treaty under which covered policies have been ceded. If a ceding insurer becomes aware that such a deficiency exists, the ceding insurer shall use its best efforts to arrange for the elimination of the deficiency as expeditiously as possible.

4. Before the due date of each quarterly or annual statement, a life insurance company that has ceded reinsurance shall perform an analysis on each reinsurance treaty under which covered policies have been ceded to determine whether, as of the valuation date, the requirements of paragraphs (c) and (d) of subsection 1 have been satisfied.

5. The ceding insurer shall establish a liability equal to the excess of the credit for reinsurance taken over the amount of primary security actually held pursuant to paragraph (c) of subsection 1, unless:

(a) The requirements of paragraphs (c) and (d) of subsection 1 were fully satisfied as of the valuation date of the reinsurance treaty, as determined pursuant to subsection 4; or

(b) Any deficiency has been eliminated before the valuation date through the addition of primary security or other security in such an amount and in such form that would have satisfied the requirements of paragraphs (c) and (d) of subsection 1 as of the valuation date.

6. Nothing in subsection 4 or 5 shall be construed to allow a ceding company to maintain any deficiency under paragraph (c) or (d) of subsection 1 for longer than is reasonably necessary to eliminate the deficiency.

Sec. 21. An insurer that holds a covered policy subject to the provisions of sections 2 to 22, inclusive, of this regulation may not take any action or series of actions or enter into any transaction or arrangement or series of transactions or arrangements if the purpose of such action, transaction or arrangement or series thereof is to avoid the requirements of sections 2 to 22, inclusive, of this regulation or to avoid the purposes of the provisions of sections 2 to 22, inclusive, of this regulation, as set forth in section 17 of this regulation.

Sec. 22. If any of the provisions of sections 2 to 22, inclusive, of this regulation, or any application thereof to any person, thing or circumstance, is held invalid, it is intended that the invalidity not affect the remaining provisions or their application that can be given effect without the invalid provision or application.

Sec. 23. This regulation becomes effective on January 1, 2021, or upon filing with the Secretary of State, whichever is later.