

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 80

BY BUSINESS COMMITTEE

AN ACT

1 RELATING TO INSURANCE; AMENDING SECTION 41-515, IDAHO CODE, TO ESTABLISH
2 PROVISIONS REGARDING RECIPROCAL JURISDICTIONS; AND AMENDING CHAPTER
3 5, TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 41-515A, IDAHO
4 CODE, TO ESTABLISH PROVISIONS REGARDING CREDIT FOR REINSURANCE PROCE-
5 DURES.
6

7 Be It Enacted by the Legislature of the State of Idaho:

8 SECTION 1. That Section 41-515, Idaho Code, be, and the same is hereby
9 amended to read as follows:

10 41-515. CREDIT FOR REINSURANCE. (1) Credit for reinsurance shall be
11 allowed a domestic ceding insurer as either an asset or a reduction from lia-
12 bility on account of reinsurance ceded only when the reinsurer meets the re-
13 quirements of paragraph (a), (b), (c), (d), (e), ~~or (f)~~, or (g) of subsec-
14 tion (2) of this section and the requirements of section 41-515A, Idaho Code;
15 provided further, that the director may adopt by rule pursuant to subsection
16 (5) (a) of this section specific additional requirements relating to or set-
17 ting forth:

18 (a) The valuation of assets or reserve credits;

19 (b) The amount and forms of security supporting reinsurance arrange-
20 ments described in subsection (5) (a) of this section; and

21 (c) The circumstances pursuant to which credit will be reduced or elim-
22 inated.

23 (2) Credit shall be allowed under paragraph (a), (b), or (c) of this
24 subsection only, as respects cessions of those kinds or classes of business
25 which the assuming insurer is licensed or otherwise permitted to write or as-
26 sume in its state of domicile or, in the case of a United States branch of an
27 alien assuming insurer, in the state through which it is entered and licensed
28 to transact insurance or reinsurance. Credit shall be allowed under para-
29 graph (c) or (d) of this subsection only if the applicable requirements of
30 paragraph ~~(g)~~ of this subsection have been satisfied.

31 (a) Credit shall be allowed when the reinsurance is ceded to an assuming
32 insurer that is licensed to transact insurance or reinsurance in this
33 state.

34 (b) Credit shall be allowed when the reinsurance is ceded to an assuming
35 insurer that is accredited by the director as a reinsurer in this state.
36 In order to be eligible for accreditation, a reinsurer must:

37 (i) File with the director evidence of its submission to this
38 state's jurisdiction;

39 (ii) Submit to this state's authority to examine its books and
40 records;

41 (iii) Be licensed to transact insurance or reinsurance in at least
42 one (1) state or, in the case of a United States branch of an alien

1 assuming insurer, be entered through and licensed to transact in-
2 surance or reinsurance in at least one (1) state;

3 (iv) File annually with the director a copy of its annual state-
4 ment filed with the insurance department of its state of domicile
5 and a copy of its most recent audited financial statement; and

6 (v) Demonstrate to the satisfaction of the director that it has
7 adequate financial capacity to meet its reinsurance obligations
8 and is otherwise qualified to assume reinsurance from domestic in-
9 surers. An assuming insurer is deemed to meet this requirement as
10 of the time of its application if it maintains a surplus as regards
11 policyholders in an amount not less than twenty million dollars
12 (\$20,000,000) and its accreditation has not been denied by the di-
13 rector within ninety (90) days after submission of its applica-
14 tion.

15 (c) Credit shall be allowed when the reinsurance is ceded to an assuming
16 insurer that is domiciled in, or in the case of a United States branch of
17 an alien assuming insurer is entered through, a state that employs stan-
18 dards regarding credit for reinsurance substantially similar to those
19 applicable under this statute and the assuming insurer or United States
20 branch of an alien assuming insurer:

21 (i) Maintains a surplus as regards policyholders in an amount not
22 less than twenty million dollars (\$20,000,000); and

23 (ii) Submits to the authority of this state to examine its books
24 and records.

25 The requirement of subparagraph (i) of this paragraph does not apply to
26 reinsurance ceded and assumed pursuant to pooling arrangements among
27 insurers in the same holding company system.

28 (d) (i) Credit shall be allowed when the reinsurance is ceded to an
29 assuming insurer that maintains a trust fund in a qualified United
30 States financial institution, as defined in subsection (4)(b)
31 of this section for the payment of the valid claims of its United
32 States policyholders and ceding insurers, their assigns and suc-
33 cessors in interest. The assuming insurer shall report annually
34 to the director information substantially the same as that re-
35 quired to be reported on the national association of insurance
36 commissioners (NAIC) annual statement form by licensed insurers
37 to enable the director to determine the sufficiency of the trust
38 fund. The assuming insurer shall submit to examination of its
39 books and records by the director and bear the expense of examina-
40 tion.

41 (ii) Credit for reinsurance shall not be granted under this para-
42 graph, unless the form of the trust and any amendments to the trust
43 have been approved by:

- 44 1. The director of the state where the trust is domiciled; or
- 45 2. The director of another state who, pursuant to the terms
46 of the trust instrument, has accepted principal regulatory
47 oversight of the trust.

48 The form of the trust and any trust amendments also shall be filed
49 with the director of every state in which the ceding insurer bene-
50 ficiaries of the trust are domiciled. The trust instrument shall

1 provide that contested claims shall be valid and enforceable upon
2 the final order of any court of competent jurisdiction in the
3 United States. The trust shall vest legal title to its assets
4 in its trustees for the benefit of the assuming insurer's United
5 States ceding insurers, their assigns and successors in interest.
6 The trust and the assuming insurer shall be subject to examination
7 as determined by the director. The trust shall remain in effect
8 for as long as the assuming insurer has outstanding obligations
9 due under the reinsurance agreements subject to the trust. No
10 later than February 28 of each year, the trustees of the trust
11 shall report to the director in writing the balance of the trust
12 and listing the trust's investments at the preceding year-end and
13 shall certify the date of termination of the trust, if so planned,
14 or certify that the trust shall not expire prior to the next fol-
15 lowing December 31.

16 (iii) The following requirements apply to the following cate-
17 gories of assuming insurer:

18 1. The trust fund for a single assuming insurer shall con-
19 sist of funds in trust in an amount not less than the assuming
20 insurer's liabilities attributable to reinsurance ceded by
21 United States ceding insurers and, in addition, the assuming
22 insurer shall maintain a trusteeed surplus of not less than
23 twenty million dollars (\$20,000,000), except as provided in
24 subparagraph (iii)2. of this paragraph.

25 2. At any time after the assuming insurer has permanently
26 discontinued underwriting new business secured by the trust
27 for at least three (3) full years, the director with prin-
28 cipal regulatory oversight of the trust may authorize a
29 reduction in the required trusteeed surplus, but only after
30 a finding, based on an assessment of the risk, that the new
31 required surplus level is adequate for the protection of
32 United States ceding insurers, policyholders and claimants
33 in light of reasonably foreseeable adverse loss develop-
34 ment. The risk assessment may involve an actuarial review,
35 including an independent analysis of reserves and cash
36 flows, and shall consider all material risk factors includ-
37 ing, when applicable, the lines of business involved, the
38 stability of the incurred loss estimates and the effect of
39 the surplus requirements on the assuming insurer's liquid-
40 ity or solvency. The minimum required trusteeed surplus may
41 not be reduced to an amount less than thirty percent (30%) of
42 the assuming insurer's liabilities attributable to reinsur-
43 ance ceded by United States ceding insurers covered by the
44 trust.

45 3. In the case of a group that includes incorporated and in-
46 dividual unincorporated underwriters:

47 (A) For reinsurance ceded under reinsurance agree-
48 ments with an inception, amendment or renewal date on
49 or after January 1, 1993, the trust shall consist of a
50 trusteeed account in an amount not less than the respec-

1 tive underwriters' several liabilities attributable
2 to business ceded by United States domiciled ceding in-
3 surers to any underwriter of the group;

4 (B) For reinsurance ceded under reinsurance agree-
5 ments with an inception date on or before December 31,
6 1992, and not amended or renewed after that date, the
7 trust shall consist of a trustee account in an amount
8 not less than the respective underwriters' several in-
9 surance and reinsurance liabilities attributable to
10 business written in the United States; and

11 (C) In addition to these trusts, the group shall main-
12 tain in trust a trustee surplus of which one hundred
13 million dollars (\$100,000,000) shall be held jointly
14 for the benefit of United States ceding insurers of any
15 member of the group for all years of the account.

16 The incorporated members of the group shall not be engaged in
17 any business other than underwriting as a member of the group
18 and shall be subject to the same level of solvency regula-
19 tion and control by the group's domiciliary regulator as are
20 the unincorporated members. Within ninety (90) days after
21 its financial statements are due to be filed with the group's
22 domiciliary regulator, the group shall provide to the direc-
23 tor an annual certification by the group's domiciliary regu-
24 lator of the solvency of each underwriter member; or if cer-
25 tification is unavailable, financial statements prepared by
26 independent public accountants of each underwriter member
27 of the group.

28 (iv) In the case of a group of incorporated underwriters under
29 common administration, the group shall:

30 1. Have continuously transacted an insurance business out-
31 side the United States for at least three (3) years immedi-
32 ately prior to making application for accreditation;

33 2. Maintain aggregate policyholders' surplus of ten billion
34 dollars (\$10,000,000,000);

35 3. Maintain a trust fund in an amount not less than the
36 group's several liabilities attributable to business ceded
37 by United States domiciled ceding insurers to any member of
38 the group pursuant to reinsurance contracts issued in the
39 name of the group;

40 4. Maintain a joint trustee surplus of which one hundred
41 million dollars (\$100,000,000) shall be held jointly for the
42 benefit of United States domiciled ceding insurers of any
43 member of the group as additional security for these liabil-
44 ities; and

45 5. Within ninety (90) days after its financial statements
46 are due to be filed with the group's domiciliary regulator,
47 make available to the director an annual certification of
48 each underwriter member's solvency by the member's domicil-
49 iary regulator and financial statements of each underwriter

1 member of the group prepared by its independent public ac-
2 countant.

3 (e) Credit shall be allowed when the reinsurance is ceded to an assuming
4 insurer that has been certified by the director as a reinsurer in this
5 state and has secured its obligations in accordance with the following
6 requirements:

7 (i) In order to be eligible for certification, the assuming in-
8 surer must:

9 1. Be domiciled and licensed to transact insurance or rein-
10 surance in a qualified jurisdiction, as determined by the
11 director pursuant to subparagraph (iii) of this paragraph;

12 2. Maintain minimum capital and surplus, or the equivalent,
13 in an amount to be determined by the director ~~pursuant to~~ in
14 accordance with section 41-515A, Idaho Code, or applicable
15 rule;

16 3. Maintain financial strength ratings from two (2) or more
17 rating agencies deemed acceptable by the director ~~pursuant~~
18 ~~to~~ in accordance with section 41-515A, Idaho Code, or appli-
19 cable rule;

20 4. Agree to submit to the jurisdiction of this state, ap-
21 point the director as its agent for service of process in
22 this state and agree to provide security for one hundred per-
23 cent (100%) of the assuming insurer's liabilities attribut-
24 able to reinsurance ceded by United States ceding insurers
25 if it resists enforcement of a final United States judgment;

26 5. Agree to meet applicable information filing requirements
27 as determined by the director, both with respect to an ini-
28 tial application for certification and on an ongoing basis;
29 and

30 6. Satisfy any other requirements for certification deemed
31 relevant by the director.

32 (ii) An association including incorporated and individual unin-
33 corporated underwriters may be a certified reinsurer. In order to
34 be eligible for certification, in addition to satisfying the re-
35 quirements of subparagraph (i) of this paragraph:

36 1. The association shall satisfy its minimum capital and
37 surplus requirements through the capital and surplus equiv-
38 alents (net of liabilities) of the association and its mem-
39 bers, which shall include a joint central fund that may be
40 applied to any unsatisfied obligation of the association or
41 any of its members, in an amount determined by the director
42 to provide adequate protection;

43 2. The incorporated members of the association shall not be
44 engaged in any business other than underwriting as a member
45 of the association and shall be subject to the same level of
46 regulation and solvency control by the association's domi-
47 ciliary regulator as are the unincorporated members; and

48 3. Within ninety (90) days after its financial statements
49 are due to be filed with the association's domiciliary regu-
50 lator, the association shall provide to the director an an-

1 nual certification by the association's domiciliary regula-
2 tor of the solvency of each underwriter member; or if a cer-
3 tification is unavailable, financial statements, prepared
4 by independent public accountants, of each underwriter mem-
5 ber of the association.

6 (iii) The director shall create and publish a list of qualified
7 jurisdictions under which an assuming insurer licensed and domi-
8 ciled in such jurisdiction is eligible to be considered for certi-
9 fication by the director as a certified reinsurer.

10 1. In order to determine whether the domiciliary jurisdic-
11 tion of a non-United States assuming insurer is eligible
12 to be recognized as a qualified jurisdiction, the direc-
13 tor shall evaluate the appropriateness and effectiveness
14 of the reinsurance supervisory system of the jurisdiction,
15 both initially and on an ongoing basis, and consider the
16 rights, benefits and the extent of reciprocal recognition
17 afforded by the non-United States jurisdiction to reinsur-
18 ers licensed and domiciled in the United States. A qualified
19 jurisdiction must agree to share information and cooperate
20 with the director with respect to all certified reinsurers
21 domiciled within that jurisdiction. A jurisdiction may not
22 be recognized as a qualified jurisdiction if the director
23 has determined that the jurisdiction does not adequately and
24 promptly enforce final United States judgments and arbitra-
25 tion awards. Additional factors may be considered in the
26 discretion of the director.

27 2. A list of qualified jurisdictions shall be published
28 through the NAIC committee process. The director shall con-
29 sider this list in determining qualified jurisdictions. If
30 the director approves a jurisdiction as qualified that does
31 not appear on the list of qualified jurisdictions, the di-
32 rector shall provide thoroughly documented justification in
33 accordance with criteria to be developed ~~under rulemaking in~~
34 section 41-515A, Idaho Code, or applicable rule.

35 3. United States jurisdictions that meet the requirement
36 for accreditation under the NAIC financial standards and
37 accreditation program shall be recognized as qualified ju-
38 risdictions.

39 4. If a certified reinsurer's domiciliary jurisdiction
40 ceases to be a qualified jurisdiction, the director has the
41 discretion to suspend the reinsurer's certification indefi-
42 nitely, in lieu of revocation.

43 (iv) The director shall assign a rating to each certified rein-
44 surer, giving due consideration to the financial strength ratings
45 that have been assigned by rating agencies deemed acceptable to
46 the director ~~pursuant to rulemaking in accordance with section~~
47 41-515A, Idaho Code, or applicable rule. The director shall pub-
48 lish a list of all certified reinsurers and their ratings.

49 (v) A certified reinsurer shall secure obligations assumed from
50 United States ceding insurers under this subsection at a level

1 consistent with its rating, as specified in ~~rulemaking~~ under sec-
2 tion 41-515A, Idaho Code, or rule as promulgated by the director.

3 1. In order for a domestic ceding insurer to qualify for full
4 financial statement credit for reinsurance ceded to a certi-
5 fied reinsurer, the certified reinsurer shall maintain se-
6 curity in a form acceptable to the director and consistent
7 with the provisions of subsection (3) of this section, or in
8 a multibeneficiary trust in accordance with paragraph (d) of
9 this subsection, except as otherwise provided in this para-
10 graph.

11 2. If a certified reinsurer maintains a trust to fully
12 secure its obligations subject to paragraph (d) of this
13 subsection and chooses to secure its obligations incurred
14 as a certified reinsurer in the form of a multibeneficiary
15 trust, the certified reinsurer shall maintain separate
16 trust accounts for its obligations incurred under reinsur-
17 ance agreements issued or renewed as a certified reinsurer
18 with reduced security as permitted by this paragraph or com-
19 parable laws of other United States jurisdictions and for
20 its obligations subject to paragraph (d) of this subsection.
21 It shall be a condition to the grant of certification under
22 this paragraph that the certified reinsurer shall have bound
23 itself by the language of the trust and agreement with the
24 director with principal regulatory oversight of each such
25 trust account to fund, upon termination of any such trust
26 account, out of the remaining surplus of such trust, any de-
27 ficiency of any other such trust account.

28 3. The minimum trustee surplus requirements provided in
29 paragraph (d) of this subsection are not applicable with
30 respect to a multibeneficiary trust maintained by a cer-
31 tified reinsurer for the purpose of securing obligations
32 incurred under this paragraph, except that such trust shall
33 maintain a minimum trustee surplus of ten million dollars
34 (\$10,000,000).

35 4. With respect to obligations incurred by a certified
36 reinsurer under this subparagraph, if the security is in-
37 sufficient, the director shall reduce the allowable credit
38 by an amount proportionate to the deficiency and has the
39 discretion to impose further reductions in allowable credit
40 upon finding that there is a material risk that the certified
41 reinsurer's obligations will not be paid in full when due.

42 5. For purposes of this subparagraph, a certified reinsurer
43 whose certification has been terminated for any reason shall
44 be treated as a certified reinsurer required to secure one
45 hundred percent (100%) of its obligations. As used here,
46 the term "terminated" refers to revocation, suspension,
47 voluntary surrender and inactive status. If the director
48 continues to assign a higher rating as permitted by other
49 provisions of this section, this requirement does not apply

1 to a certified reinsurer in inactive status or to a reinsurer
2 whose certification has been suspended.

3 (vi) If an applicant for certification has been certified as a
4 reinsurer in an NAIC-accredited jurisdiction, the director has
5 the discretion to defer to that jurisdiction's certification and
6 has the discretion to defer to the rating assigned by that juris-
7 diction, and such assuming insurer shall be considered to be a
8 certified reinsurer in this state.

9 (vii) A certified reinsurer that ceases to assume new business in
10 this state may request to maintain its certification in inactive
11 status in order to continue to qualify for a reduction in security
12 for its in-force business. An inactive certified reinsurer shall
13 continue to comply with all applicable requirements of subpara-
14 graph (v) of this paragraph, and the director shall assign a rat-
15 ing that takes into account, if relevant, the reasons why the rein-
16 surer is not assuming new business.

17 (f) (i) Credit shall be allowed when the reinsurance is ceded to an
18 assuming insurer meeting each of the conditions set forth in this
19 paragraph.

20 1. The assuming insurer must have its head office or be domi-
21 ciled in, as applicable, and be licensed in a reciprocal ju-
22 risdiction. "Reciprocal jurisdiction" means a jurisdiction
23 that meets one (1) of the following:

24 (A) A non-United States jurisdiction that is sub-
25 ject to an in-force covered agreement with the United
26 States, each within its legal authority, or, in the
27 case of a covered agreement between the United States
28 and the European Union, is a member state of the Eu-
29 ropean Union. For purposes of this subsection, a
30 "covered agreement" means an agreement entered into
31 pursuant to the Dodd-Frank Wall Street reform and con-
32 sumer protection act, 31 U.S.C. 313 and 314, that is
33 currently in effect or in a period of provisional ap-
34 plication and addresses the elimination, under speci-
35 fied conditions, of collateral minimums as a condition
36 for entering into any reinsurance agreement with a ced-
37 ing insurer domiciled in this state or for allowing the
38 ceding insurer to recognize credit for reinsurance;

39 (B) A United States jurisdiction that meets accredita-
40 tion under the NAIC financial standards and accredita-
41 tion program; or

42 (C) A qualified jurisdiction, as determined by the di-
43 rector pursuant to paragraph (e) (iii) of this subsec-
44 tion, that is not otherwise described in 1.(A) or 1.(B)
45 of this subparagraph and that meets certain additional
46 requirements, consistent with the terms and conditions
47 of in-force covered agreements, as specified in sec-
48 tion 41-515A, Idaho Code, or rule as promulgated by the
49 director.

1 2. The assuming insurer must have and maintain, on an ongoing
2 basis, minimum capital and surplus, or its equivalent,
3 calculated according to the methodology of its domiciliary
4 jurisdiction, in an amount to be set forth in accordance with
5 section 41-515A, Idaho Code, or applicable rule. If the as-
6 suming insurer is an association, including incorporated
7 and individual unincorporated underwriters, it must have
8 and maintain, on an ongoing basis, minimum capital and sur-
9 plus equivalents (net of liabilities), calculated according
10 to the methodology applicable in its domiciliary jurisdic-
11 tion, and a central fund containing a balance in amounts to
12 be set forth in accordance with section 41-515A, Idaho Code,
13 or applicable rule.

14 3. The assuming insurer must have and maintain, on an on-
15 going basis, a minimum solvency or capital ratio, as appli-
16 cable, which will be set forth in accordance with section
17 41-515A, Idaho Code, or applicable rule. If the assum-
18 ing insurer is an association, including incorporated and
19 individual unincorporated underwriters, it must have and
20 maintain, on an ongoing basis, a minimum solvency or capital
21 ratio in the reciprocal jurisdiction where the assuming in-
22 surer has its head office or is domiciled, as applicable, and
23 is also licensed.

24 4. The assuming insurer must agree and provide adequate as-
25 urance to the director, in a form specified by the director
26 pursuant to section 41-515A, Idaho Code, or applicable rule,
27 as follows:

28 (A) The assuming insurer must provide prompt written
29 notice and explanation to the director if it falls be-
30 low the minimum requirements set forth in paragraph
31 (f) (i)2. or 3. of this subsection or if any regulatory
32 action is taken against it for serious noncompliance
33 with applicable law;

34 (B) The assuming insurer must consent in writing to
35 the jurisdiction of the courts of this state and to
36 the appointment of the director as agent for service
37 of process. The director may require that consent for
38 service of process be provided to the director and in-
39 cluded in each reinsurance agreement. Nothing in this
40 provision shall limit, or in any way alter, the capac-
41 ity of parties to a reinsurance agreement to agree to
42 alternative dispute resolution mechanisms, except to
43 the extent such agreements are unenforceable under ap-
44 licable insolvency or delinquency laws;

45 (C) The assuming insurer must consent in writing to pay
46 all final judgments, wherever enforcement is sought,
47 obtained by a ceding insurer or its legal successor,
48 that have been declared enforceable in the jurisdic-
49 tion where the judgment was obtained;

1 (D) Each reinsurance agreement must include a provi-
2 sion requiring the assuming insurer to provide secu-
3 rity in an amount equal to one hundred percent (100%)
4 of the assuming insurer's liabilities attributable to
5 reinsurance ceded pursuant to that agreement if the as-
6 suming insurer resists enforcement of a final judgment
7 that is enforceable under the law of the jurisdiction
8 in which it was obtained or a properly enforceable
9 arbitration award, whether obtained by the ceding
10 insurer or by its legal successor on behalf of its reso-
11 lution estate; and

12 (E) The assuming insurer must confirm that it is not
13 presently participating in any solvent scheme of ar-
14 rangement that involves this state's ceding insurers,
15 and agree to notify the ceding insurer and the direc-
16 tor and to provide security in an amount equal to one
17 hundred percent (100%) of the assuming insurer's lia-
18 bilities to the ceding insurer, should the assuming in-
19 surer enter into such a solvent scheme of arrangement.
20 Such security shall be in a form consistent with the
21 provisions of subsection (2) (e) and subsection (3) of
22 this section and as specified in section 41-515A, Idaho
23 Code, or by the director in rule.

24 5. The assuming insurer or its legal successor must provide,
25 if requested by the director, on behalf of itself and any le-
26 gal predecessors, certain documentation to the director, as
27 specified in section 41-515A, Idaho Code, or by the director
28 in rule.

29 6. The assuming insurer must maintain a practice of prompt
30 payment of claims under reinsurance agreements pursuant to
31 criteria set forth in section 41-515A, Idaho Code, or by the
32 director in rule.

33 7. The assuming insurer's supervisory authority must con-
34 firm to the director on an annual basis, as of the preceding
35 December 31 or at the annual date otherwise statutorily re-
36 ported to the reciprocal jurisdiction, that the assuming in-
37 surer complies with the requirements set forth in paragraph
38 (f) (i) 2. and 3. of this subsection.

39 8. Nothing in this provision precludes an assuming insurer
40 from providing the director with information on a voluntary
41 basis.

42 (ii) The director shall timely create and publish a list of recip-
43 rocal jurisdictions.

44 1. A list of reciprocal jurisdictions is published through
45 the NAIC committee process. The director's list shall in-
46 clude any reciprocal jurisdiction as defined under subpara-
47 graph (i) 1.(A) or (B) of this paragraph and shall consider
48 any other reciprocal jurisdiction included on the NAIC list.
49 The director may approve a jurisdiction that does not appear
50 on the NAIC list of reciprocal jurisdictions in accordance

1 with criteria to be developed under section 41-515A, Idaho
2 Code, or rules issued by the director.

3 2. The director may remove a jurisdiction from the list
4 of reciprocal jurisdictions upon a determination that the
5 jurisdiction no longer meets the requirements of a recipro-
6 cal jurisdiction in accordance with section 41-515A, Idaho
7 Code, or rules issued by the director, except that the direc-
8 tor shall not remove from the list a reciprocal jurisdiction
9 as defined under subparagraph (i)1.(A) or (B) of this para-
10 graph. Upon removal of a reciprocal jurisdiction from this
11 list, credit for reinsurance ceded to an assuming insurer
12 that has its home office or is domiciled in that jurisdiction
13 shall be allowed, if otherwise allowed pursuant to this sec-
14 tion.

15 (iii) The director shall timely create and publish a list of as-
16 suming insurers that have satisfied the conditions set forth in
17 this subsection and to which cessions shall be granted credit in
18 accordance with this subsection. The director may add an assum-
19 ing insurer to such list if an NAIC-accredited jurisdiction has
20 added such assuming insurer to a list of such assuming insurers
21 or if, upon initial eligibility, the assuming insurer submits the
22 information to the director as required under subparagraph (i)4.
23 of this paragraph and complies with any additional requirements
24 as provided by law or that the director may impose by rule, except
25 to the extent that they conflict with an applicable covered agree-
26 ment.

27 (iv) If the director determines that an assuming insurer no longer
28 meets one (1) or more of the requirements under this subsection,
29 the director may revoke or suspend the eligibility of the assuming
30 insurer for recognition under this subsection in accordance with
31 procedures as provided by law or set forth in rule.

32 1. While an assuming insurer's eligibility is suspended, no
33 reinsurance agreement issued, amended, or renewed after the
34 effective date of the suspension qualifies for credit except
35 to the extent that the assuming insurer's obligations under
36 the contract are secured in accordance with subsection (3)
37 of this section.

38 2. If an assuming insurer's eligibility is revoked, no
39 credit for reinsurance may be granted after the effective
40 date of the revocation with respect to any reinsurance
41 agreements entered into by the assuming insurer, including
42 reinsurance agreements entered into prior to the date of re-
43 vocation, except to the extent that the assuming insurer's
44 obligations under the contract are secured in a form accept-
45 able to the director and consistent with the provisions of
46 subsection (3) of this section.

47 (v) If subject to a legal process of rehabilitation, liquidation,
48 or conservation, as applicable, the ceding insurer or its repre-
49 sentative may seek and, if determined appropriate by the court in
50 which the proceedings are pending, may obtain an order that the as-

1 suming insurer post security for all outstanding ceded liabilities.
 2

3 (vi) Nothing in this subsection shall limit or in any way alter
 4 the capacity of parties to a reinsurance agreement to agree on re-
 5 quirements for security or other terms in that reinsurance agree-
 6 ment, except as expressly prohibited by this section or other ap-
 7 licable law or rule.

8 (vii) Credit may be taken under this subsection only for reinsur-
 9 ance agreements entered into, amended, or renewed on or after July
 10 1, 2021, and only with respect to losses incurred and reserves re-
 11 ported on or after the later of: the date on which the assuming
 12 insurer has met all eligibility requirements pursuant to subpara-
 13 graph (i) of this paragraph and the effective date of the new rein-
 14 surance agreement, amendment, or renewal.

15 1. This paragraph does not alter or impair a ceding in-
 16 surer's right to take credit for reinsurance, to the extent
 17 that credit is not available under this subsection, as long
 18 as the reinsurance qualifies for credit under any other ap-
 19 licable provision of this section.

20 2. Nothing in this subsection shall authorize an assuming
 21 insurer to withdraw or reduce the security provided under
 22 any reinsurance agreement except as permitted by the terms
 23 of the agreement.

24 3. Nothing in this subsection shall limit, or in any way al-
 25 ter, the capacity of parties to any reinsurance agreement to
 26 renegotiate the agreement.

27 (g) Credit shall be allowed when the reinsurance is ceded to an assuming
 28 insurer not meeting the requirements of paragraph (a), (b), (c), (d), ~~or~~
 29 (e), or (f) of this subsection, but only with respect to the insurance
 30 of risks located in jurisdictions where such reinsurance is required by
 31 applicable law or regulation of that jurisdiction.

32 (~~h~~) If the assuming insurer is not licensed, accredited or certified
 33 to transact insurance or reinsurance in this state, the credit permit-
 34 ted in paragraphs (c) and (d) of this subsection shall not be allowed un-
 35 less the assuming insurer agrees in the reinsurance agreements:

36 (i) That in the event of the failure of the assuming insurer to
 37 perform its obligations under the terms of the reinsurance agree-
 38 ment, the assuming insurer, at the request of the ceding insurer,
 39 shall submit to the jurisdiction of any court of competent juris-
 40 isdiction in any state of the United States, will comply with all
 41 requirements necessary to give such court jurisdiction, and will
 42 abide by the final decision of such court or of any appellate court
 43 in the event of an appeal; and

44 (ii) To designate the director or a designated attorney as its
 45 true and lawful attorney upon whom may be served any lawful process
 46 in any action, suit or proceeding instituted by or on behalf of the
 47 ceding company.

48 This provision is not intended to conflict with or override the obliga-
 49 tion of the parties to a reinsurance agreement to arbitrate their dis-
 50 putes, if such an obligation is created in the agreement.

1 (~~h~~i) If the assuming insurer does not meet the requirements of para-
2 graph (a), (b), (c), or (~~e~~f) of this subsection, the credit permitted by
3 paragraph (d) or (e) of this subsection shall not be allowed unless the
4 assuming insurer agrees in the trust agreements to the following condi-
5 tions:

6 (i) If the trust fund is inadequate because it contains an amount
7 less than the amount required by paragraph (d) (iii) of this sub-
8 section, or if the grantor of the trust has been declared insolvent
9 or placed into receivership, rehabilitation, liquidation or simi-
10 lar proceedings under the laws of its state or country of domicile,
11 the trustee shall comply with an order of the director with regula-
12 tory oversight over the trust or with an order of a court of compe-
13 tent jurisdiction directing the trustee to transfer to the direc-
14 tor with regulatory oversight all of the assets of the trust fund.

15 (ii) The assets shall be distributed by, and claims shall be filed
16 with and valued by, the director with regulatory oversight in ac-
17 cordance with the laws of the state in which the trust is domiciled
18 that are applicable to the liquidation of domestic insurance com-
19 panies.

20 (iii) If the director with regulatory oversight determines that
21 the assets of the trust fund or any part thereof are not necessary
22 to satisfy the claims of the United States ceding insurers of the
23 grantor of the trust, the assets or part thereof shall be returned
24 by the director with regulatory oversight to the trustee for dis-
25 tribution in accordance with the trust agreement.

26 (iv) The grantor shall waive any right otherwise available to it
27 under United States law that is inconsistent with this provision.

28 (~~±~~j) If an accredited or certified reinsurer ceases to meet the re-
29 quirements for accreditation or certification, the director may sus-
30 pend or revoke the reinsurer's accreditation or certification.

31 (i) The director must give the reinsurer notice and opportunity
32 for hearing. The suspension or revocation may not take effect un-
33 til after the director's order on hearing, unless:

34 1. The reinsurer waives its right to hearing;

35 2. The director's order is based on regulatory action by
36 the reinsurer's domiciliary jurisdiction or the voluntary
37 surrender or termination of the reinsurer's eligibility to
38 transact insurance or reinsurance business in its domicil-
39 iary jurisdiction or in the primary certifying state of the
40 reinsurer under paragraph (e) (vi) of this subsection; or

41 3. The director finds that an emergency requires immediate
42 action and a court of competent jurisdiction has not stayed
43 the director's order.

44 (ii) While a reinsurer's accreditation or certification is
45 suspended, no reinsurance contract issued or renewed after the
46 effective date of the suspension qualifies for credit, except to
47 the extent that the reinsurer's obligations under the contract are
48 secured in accordance with subsection (3) of this section. If a
49 reinsurer's accreditation or certification is revoked, no credit
50 for reinsurance may be granted after the effective date of the

1 revocation, except to the extent that the reinsurer's obligations
2 under the contract are secured in accordance with paragraph (e) (v)
3 of this subsection or with subsection (3) of this section.

4 (j)k) The following provisions apply regarding the concentration of
5 risk:

6 (i) A ceding insurer shall take steps to manage its reinsurance
7 recoverables proportionate to its own book of business. A domes-
8 tic ceding insurer shall notify the director within thirty (30)
9 days after reinsurance recoverables from any single assuming in-
10 surer, or group of affiliated assuming insurers, exceeds fifty
11 percent (50%) of the domestic ceding insurer's last reported sur-
12 plus to policyholders, or after it is determined that reinsurance
13 recoverables from any single assuming insurer, or group of af-
14 filiated assuming insurers, is likely to exceed this limit. The
15 notification shall demonstrate that the exposure is safely man-
16 aged by the domestic ceding insurer.

17 (ii) A ceding insurer shall take steps to diversify its reinsur-
18 ance program. A domestic ceding insurer shall notify the direc-
19 tor within thirty (30) days after ceding to any single assuming in-
20 surer, or group of affiliated assuming insurers, more than twenty
21 percent (20%) of the ceding insurer's gross written premium in the
22 prior calendar year, or after it has determined that the reinsur-
23 ance ceded to any single assuming insurer, or group of affiliated
24 assuming insurers, is likely to exceed this limit. The notifica-
25 tion shall demonstrate that the exposure is safely managed by the
26 domestic ceding insurer.

27 (3) An asset or a reduction from liability for the reinsurance ceded
28 by a domestic insurer to an assuming insurer not meeting the requirements in
29 subsection (2) of this section shall be allowed in an amount not exceeding
30 the liabilities carried by the ceding insurer; provided further, that the
31 director may adopt by rule pursuant to subsection (5) (a) of this section spe-
32 cific additional requirements relating to or setting forth the valuation of
33 assets or reserve credits, the amount and forms of security supporting rein-
34 surance arrangements described in subsection (5) (a) of this section, and the
35 circumstances pursuant to which credit will be reduced or eliminated. The
36 reduction shall be in the amount of funds held by or on behalf of the ced-
37 ing insurer, including funds held in trust for the ceding insurer, under a
38 reinsurance contract with the assuming insurer as security for the payment
39 of obligations thereunder, if the security is held in the United States sub-
40 ject to withdrawal solely by, and under the exclusive control of, the ceding
41 insurer; or, in the case of a trust, held in a qualified United States finan-
42 cial institution as defined in subsection (4) (b) of this section. This secu-
43 rity may be in the form of:

44 (a) Cash;

45 (b) Securities listed by the securities valuation office of the NAIC,
46 including those deemed exempt from filing as defined by the purposes and
47 procedures manual of the securities valuation office, and qualifying as
48 admitted assets;

49 (c) Clean, irrevocable, unconditional letters of credit, issued or
50 confirmed by a qualified United States financial institution as defined

1 in subsection (4) (a) of this section no later than December 31 of the
2 year for which the filing is being made, and in the possession of, or in
3 trust for, the ceding company on or before the filing date of its annual
4 statement. Letters of credit meeting applicable standards of issuer
5 acceptability as of the dates of their issuance (or confirmation)
6 shall, notwithstanding the issuing (or confirming) institution's sub-
7 sequent failure to meet applicable standards of issuer acceptability,
8 continue to be acceptable as security until their expiration, exten-
9 sion, renewal, modification or amendment, whichever first occurs; or

10 (d) Any other form of security acceptable to the director.

11 (4) (a) For purposes of subsection (3) (c) of this section a "qualified
12 United States financial institution" means an institution that:

13 (i) Is organized or (in the case of a United States office of
14 a foreign banking organization) licensed, under the laws of the
15 United States or any state thereof;

16 (ii) Is regulated, supervised and examined by United States fed-
17 eral or state authorities having regulatory authority over banks
18 and trust companies; and

19 (iii) Has been determined by either the director or the securities
20 valuation office of the NAIC, to meet such standards of financial
21 condition and standing as are considered necessary and appropri-
22 ate to regulate the quality of financial institutions whose let-
23 ters of credit will be acceptable to the director.

24 (b) A "qualified United States financial institution" means, for pur-
25 poses of the provisions of this statute specifying those institutions
26 that are eligible to act as a fiduciary of a trust, an institution that:

27 (i) Is an organization, or (in the case of a United States branch
28 or agency office of a foreign banking organization) licensed, un-
29 der the laws of the United States or any state thereof and has been
30 granted authority to operate with fiduciary powers; and

31 (ii) Is regulated, supervised and examined by federal or state au-
32 thorities having regulatory authority over banks and trust compa-
33 nies.

34 (5) The director may adopt rules implementing the provisions of this
35 chapter.

36 (a) The director is further authorized to adopt rules applicable to
37 reinsurance arrangements described in subparagraph (i) of this para-
38 graph.

39 (i) A rule adopted pursuant to this subparagraph may apply only
40 to reinsurance relating to: life insurance policies with guar-
41 anteed nonlevel gross premiums or guaranteed nonlevel benefits;
42 universal life insurance policies with provisions resulting in
43 the ability of a policyholder to keep a policy in force over a
44 secondary guarantee period; variable annuities with guaranteed
45 death or living benefits; long-term care insurance policies; or
46 such other life and health insurance and annuity products as to
47 which the NAIC adopts model regulatory requirements with respect
48 to credit for reinsurance.

49 (ii) A rule adopted pursuant to subparagraph (i) of this paragraph
50 concerning life insurance policies with guaranteed nonlevel gross

1 premiums or guaranteed nonlevel benefits or universal life insur-
 2 ance policies with provisions resulting in the ability of a poli-
 3 cyholder to keep a policy in force over a secondary guarantee pe-
 4 riod may apply to any treaty containing policies issued on or after
 5 January 1, 2015, and policies issued prior to January 1, 2015, if
 6 risk pertaining to such pre-2015 policies is ceded in connection
 7 with the treaty, in whole or in part, on or after January 1, 2015.

8 (iii) A rule adopted pursuant to this paragraph may require the
 9 ceding insurer, in calculating the amounts or forms of security
 10 required to be held under rules promulgated under this authority,
 11 to use the valuation manual referenced in section 41-612, Idaho
 12 Code.

13 (iv) A rule adopted pursuant to this paragraph shall not apply to
 14 cessions to an assuming insurer that:

15 1. Meets the conditions set forth in subsection (2) (f) of
 16 this section in this state or, if this state has not adopted
 17 provisions substantially equivalent to subsection (2) (f) of
 18 this section, the assuming insurer is operating in accor-
 19 dance with provisions substantially equivalent to subsec-
 20 tion (2) (f) of this section in a minimum of five (5) other
 21 states;

22 2. Is certified in this state or, if this state has not
 23 adopted provisions substantially equivalent to subsection
 24 (2) (e) of this section, certified in a minimum of five (5)
 25 other states; or

26 23. Maintains at least two hundred fifty million dollars
 27 (\$250,000,000) in capital and surplus when determined in ac-
 28 cordance with the NAIC accounting practices and procedures
 29 manual, referenced in section 41-335, Idaho Code, and is:

30 (A) Licensed in at least twenty-six (26) states; or

31 (B) Licensed in at least ten (10) states, and licensed
 32 or accredited in a total of at least thirty-five (35)
 33 states.

34 (b) The authority to adopt rules pursuant to paragraph (a) of this sub-
 35 section does not limit the director's general authority to adopt rules
 36 pursuant to this subsection.

37 (6) The provisions of this section shall apply to all cessions after the
 38 effective date of this act under reinsurance agreements that have had an in-
 39 ception, anniversary, or renewal date not less than six (6) months after the
 40 effective date of this act.

41 SECTION 2. That Chapter 5, Title 41, Idaho Code, be, and the same is
 42 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
 43 ignated as Section 41-515A, Idaho Code, and to read as follows:

44 41-515A. CREDIT FOR REINSURANCE PROCEDURES. (1) The purpose of this
 45 section is to set forth procedural requirements that the director deems nec-
 46 essary to carry out section 41-515, Idaho Code. The actions and information
 47 required under this section are declared to be in the public interest and for
 48 the protection of the ceding insurers in this state.

1 (2) Reinsurer licensed in this state. Pursuant to section
2 41-515(2) (a), Idaho Code, the director shall allow credit for reinsurance
3 ceded by a domestic insurer to assuming insurers that were licensed in this
4 state as of any date on which statutory financial statement credit for
5 reinsurance is claimed.

6 (3) Accredited reinsurers.

7 (a) Pursuant to section 41-515(2) (b), Idaho Code, the director shall
8 allow credit for reinsurance ceded by a domestic insurer to an assuming
9 insurer that is accredited as a reinsurer in this state as of the date on
10 which statutory financial statement credit for reinsurance is claimed.
11 An accredited reinsurer must:

12 (i) File a properly executed form AR-1 as evidence of its submis-
13 sion to this state's jurisdiction and to this state's authority to
14 examine its books and records;

15 (ii) File with the director a certified copy of a certificate
16 of authority or other acceptable evidence that it is licensed to
17 transact insurance or reinsurance in at least one (1) state or, in
18 the case of a United States branch of an alien assuming insurer, is
19 entered through and licensed to transact insurance or reinsurance
20 in at least one (1) state;

21 (iii) File annually with the director a copy of its annual state-
22 ment filed with the department of its state of domicile or, in the
23 case of an alien assuming insurer, with the state through which
24 it is entered and in which it is licensed to transact insurance
25 or reinsurance, and a copy of its most recent audited financial
26 statement; and

27 (iv) Maintain a surplus as regards policyholders in an amount not
28 less than twenty million dollars (\$20,000,000), or obtain the af-
29 firmative approval of the director upon a finding that it has ad-
30 equate financial capacity to meet its reinsurance obligations and
31 is otherwise qualified to assume reinsurance from domestic insur-
32 ers.

33 (b) If the director determines that the assuming insurer has failed
34 to meet or maintain any of these qualifications, the director may upon
35 written notice and opportunity for hearing suspend or revoke the ac-
36 creditation. Credit shall not be allowed a domestic ceding insurer
37 under this section if the assuming insurer's accreditation has been de-
38 nied or revoked by the director or if the reinsurance was ceded while the
39 assuming insurer's accreditation was under suspension by the director
40 after notice and hearing.

41 (4) Reinsurer domiciled in another state.

42 (a) Pursuant to section 41-515(2) (c), Idaho Code, the director shall
43 allow credit for reinsurance ceded by a domestic insurer to an assum-
44 ing insurer, that as of any date on which statutory financial statement
45 credit for reinsurance is claimed:

46 (i) Is domiciled and licensed in or, in the case of a United States
47 branch of an alien assuming insurer, is entered through a state
48 that employs standards regarding credit for reinsurance substan-
49 tially similar to those applicable under section 41-515, Idaho
50 Code, and this section;

1 (ii) Maintains a surplus as regards policyholders in an amount not
2 less than twenty million dollars (\$20,000,000); and

3 (iii) Files a properly executed form AR-1 with the director as ev-
4 idence of its submission to this state's authority to examine its
5 books and records.

6 (b) The provisions of this section relating to surplus as regards pol-
7 icyholders shall not apply to reinsurance ceded and assumed pursuant to
8 pooling arrangements among insurers in the same holding company system.
9 As used in this section, "substantially similar" standards means credit
10 for reinsurance standards that the director determines equal or exceed
11 the standards of section 41-515, Idaho Code, and this section.

12 (5) Reinsurers maintaining trust funds.

13 (a) Pursuant to section 41-515(2)(d), Idaho Code, the director shall
14 allow credit for reinsurance ceded by a domestic insurer to an assuming
15 insurer that, as of any date on which statutory financial statement
16 credit for reinsurance is claimed, and thereafter for as long as credit
17 for reinsurance is claimed, maintains a trust fund in an amount pre-
18 scribed in this subsection in a qualified United States financial
19 institution as defined in section 41-515(4)(b), Idaho Code, for the
20 payment of the valid claims of its United States-domiciled ceding in-
21 surers, their assigns and successors in interest. The assuming insurer
22 shall report annually to the director substantially the same infor-
23 mation as required to be reported on the NAIC annual statement form by
24 licensed insurers, to enable the director to determine the sufficiency
25 of the trust fund.

26 (b) The following requirements apply to the following categories of as-
27 suming insurer:

28 (i) The trust fund for a single assuming insurer shall consist
29 of funds in trust in an amount not less than the assuming in-
30 surer's liabilities attributable to reinsurance ceded by United
31 States-domiciled insurers, and, in addition, the assuming insurer
32 shall maintain a trustee surplus of not less than twenty million
33 dollars (\$20,000,000), except as provided in subparagraph (ii) of
34 this paragraph.

35 (ii) At any time after the assuming insurer has permanently dis-
36 continued underwriting new business secured by the trust for at
37 least three (3) full years, the director or commissioner with
38 principal regulatory oversight of the trust may authorize a reduc-
39 tion in the required trustee surplus, but only after a finding,
40 based on an assessment of the risk, that the new required sur-
41 plus level is adequate for the protection of United States ceding
42 insurers, policyholders, and claimants in light of reasonably
43 foreseeable adverse loss development. The risk assessment may
44 involve an actuarial review, including an independent analysis of
45 reserves and cash flows, and shall consider all material risk fac-
46 tors, including when applicable the lines of business involved,
47 the stability of the incurred loss estimates, and the effect of the
48 surplus requirements on the assuming insurer's liquidity or sol-
49 vency. The minimum required trustee surplus may not be reduced to
50 an amount less than thirty percent (30%) of the assuming insurer's

1 liabilities attributable to reinsurance ceded by United States
2 ceding insurers covered by the trust.

3 (iii) The trust fund for a group including incorporated and indi-
4 vidual unincorporated underwriters shall consist of:

5 1. For reinsurance ceded under reinsurance agreements with
6 an inception, amendment, or renewal date on or after January
7 1, 1993, funds in trust in an amount not less than the re-
8 spective underwriters' several liabilities attributable to
9 business ceded by United States-domiciled ceding insurers
10 to any underwriter of the group;

11 2. For reinsurance ceded under reinsurance agreements with
12 an inception date on or before December 31, 1992, and not
13 amended or renewed after that date, notwithstanding the
14 other provisions of this section, funds in trust in an amount
15 not less than the respective underwriters' several insur-
16 ance and reinsurance liabilities attributable to business
17 written in the United States; and

18 3. In addition to these trusts, the group shall maintain
19 a trustee surplus of which one hundred million dollars
20 (\$100,000,000) shall be held jointly for the benefit of the
21 United States-domiciled ceding insurers of any member of the
22 group for all the years of account.

23 (iv) The incorporated members of the group within the scope of
24 subparagraph (iii) of this paragraph shall not be engaged in any
25 business other than underwriting as a member of the group and shall
26 be subject to the same level of regulation and solvency control by
27 the group's domiciliary regulator as are the unincorporated mem-
28 bers. The group shall, within ninety (90) days after its financial
29 statements are due to be filed with the group's domiciliary regu-
30 lator, provide to the director:

31 1. An annual certification by the group's domiciliary regu-
32 lator of the solvency of each underwriter member of the
33 group; or

34 2. If a certification is unavailable, a financial state-
35 ment, prepared by independent public accountants, of each
36 underwriter member of the group.

37 (v) The trust fund for a group of incorporated insurers under com-
38 mon administration, whose members possess aggregate policyhold-
39 ers surplus of ten billion dollars (\$10,000,000,000), calculated
40 and reported in substantially the same manner as prescribed by the
41 annual statement instructions and accounting practices and pro-
42 cedures manual of the NAIC, and which has continuously transacted
43 an insurance business outside the United States for at least three
44 (3) years immediately prior to making application for accredita-
45 tion, shall:

46 1. Consist of funds in trust in an amount not less than
47 the assuming insurers' several liabilities attributable to
48 business ceded by United States-domiciled ceding insurers
49 to any members of the group pursuant to reinsurance con-
50 tracts issued in the name of such group;

1 2. Maintain a joint trusteesd surplus of which one hundred
2 million dollars (\$100,000,000) shall be held jointly for the
3 benefit of United States-domiciled ceding insurers of any
4 member of the group; and

5 3. File a properly executed form AR-1 as evidence of the sub-
6 mission to the department's authority to examine the books
7 and records of any of its members and shall certify that any
8 member examined will bear the expense of any such examina-
9 tion.

10 (vi) Within ninety (90) days after the statements are due to be
11 filed with the group's domiciliary regulator, the group shall
12 file with the director an annual certification of each underwriter
13 member's solvency by the member's domiciliary regulators and fi-
14 nancial statements prepared by independent public accountants of
15 each underwriter member of the group.

16 (c) (i) Credit for reinsurance shall not be granted unless the form
17 of the trust and any amendments to the trust have been approved by
18 either the director or commissioner of the state where the trust
19 is domiciled or the director or commissioner of another state who,
20 pursuant to the terms of the trust instrument, has accepted re-
21 sponsibility for regulatory oversight of the trust. The form of
22 the trust and any trust amendments also shall be filed with the di-
23 rector and commissioner of every state in which the ceding insurer
24 beneficiaries of the trust are domiciled. The trust instrument
25 shall provide that:

26 1. Contested claims shall be valid and enforceable out of
27 funds in trust to the extent remaining unsatisfied thirty
28 (30) days after entry of the final order of any court of com-
29 petent jurisdiction in the United States;

30 2. Legal title to the assets of the trust shall be vested in
31 the trustee for the benefit of the grantor's United States
32 ceding insurers, their assigns and successors in interest;

33 3. The trust shall be subject to examination as determined
34 by the director;

35 4. The trust shall remain in effect for as long as the as-
36 suming insurer, or any member or former member of a group of
37 insurers, shall have outstanding obligations under reinsur-
38 ance agreements subject to the trust; and

39 5. No later than February 28 of each year, the trustee of the
40 trust shall report to the director in writing setting forth
41 the balance in the trust and listing the trust's investments
42 at the preceding year-end and shall certify the date of ter-
43 mination of the trust, if so planned, or certify that the
44 trust shall not expire prior to the following December 31.

45 (ii) Notwithstanding any other provisions in the trust instru-
46 ment, if the trust fund is inadequate because it contains an amount
47 less than the amount required by this paragraph or if the grantor
48 of the trust has been declared insolvent or placed into receiver-
49 ship, rehabilitation, liquidation, or similar proceedings under
50 the laws of its state or country of domicile, the trustee shall

1 comply with an order of the director or commissioner with regula-
2 tory oversight over the trust, or with an order of a court of com-
3 petent jurisdiction directing the trustee, to transfer to the di-
4 rector or commissioner with regulatory oversight over the trust or
5 other designated receiver all of the assets of the trust fund.

6 (iii) The assets shall be distributed by and claims shall be filed
7 with and valued by the director or commissioner with regulatory
8 oversight over the trust in accordance with the laws of the state
9 in which the trust is domiciled applicable to the liquidation of
10 domestic insurance companies.

11 (iv) If the director or commissioner with regulatory oversight
12 over the trust determines that the assets of the trust fund or any
13 part thereof are not necessary to satisfy the claims of the United
14 States beneficiaries of the trust, the director or commissioner
15 with regulatory oversight over the trust shall return the assets,
16 or any part thereof, to the trustee for distribution in accordance
17 with the trust agreement.

18 (v) The grantor shall waive any right otherwise available to it
19 under United States law that is inconsistent with this provision.

20 (d) For purposes of this subsection, "liabilities" means the assum-
21 ing insurer's gross liabilities attributable to reinsurance ceded by
22 United States-domiciled insurers, excluding liabilities that are oth-
23 erwise secured by acceptable means, and shall include:

24 (i) For business ceded by domestic insurers authorized to write
25 accident and health insurance and property and casualty insur-
26 ance:

- 27 1. Losses and allocated loss expenses paid by the ceding in-
28 surer, recoverable from the assuming insurer;
- 29 2. Reserves for losses reported and outstanding;
- 30 3. Reserves for losses incurred but not reported;
- 31 4. Reserves for allocated loss expenses; and
- 32 5. Unearned premiums.

33 (ii) For business ceded by domestic insurers authorized to write
34 life, health, and annuity insurance:

- 35 1. Aggregate reserves for life policies and contracts net of
36 policy loans and net due and deferred premiums;
- 37 2. Aggregate reserves for accident and health policies;
- 38 3. Deposit funds and other liabilities without life or dis-
39 ability contingencies; and
- 40 4. Liabilities for policy and contract claims.

41 (e) Assets deposited in trusts established pursuant to section
42 41-515(2), Idaho Code, and this subsection shall be valued according to
43 their current fair market value and shall consist only of cash in United
44 States dollars, certificates of deposit issued by a United States fi-
45 nancial institution as defined in section 41-515(4) (a), Idaho Code,
46 clean, irrevocable, unconditional, and evergreen letters of credit
47 issued or confirmed by a qualified United States financial institu-
48 tion as defined in section 41-515(4) (a), Idaho Code, and investments
49 of the type specified in this paragraph, but investments in or issued
50 by an entity controlling, controlled by, or under common control with

1 either the grantor or beneficiary of the trust shall not exceed five
2 percent (5%) of total investments. No more than twenty percent (20%)
3 of the total of the investments in the trust may be foreign investments
4 authorized under subparagraph (i)5., (iii), (v)2., or (vi) of this
5 paragraph, and no more than ten percent (10%) of the total of the invest-
6 ments in the trust may be securities denominated in foreign currencies.
7 For purposes of applying the preceding sentence, a depository receipt
8 denominated in United States dollars and representing rights conferred
9 by a foreign security shall be classified as a foreign investment de-
10 nominated in a foreign currency. The assets of a trust established to
11 satisfy the requirements of section 41-515(2), Idaho Code, shall be
12 invested only as follows:

13 (i) Government obligations that are not in default as to princi-
14 pal or interest, that are valid and legally authorized, and that
15 are issued, assumed, or guaranteed by:

16 1. The United States or by any agency or instrumentality of
17 the United States;

18 2. A state of the United States;

19 3. A territory, possession, or other governmental unit of
20 the United States;

21 4. An agency or instrumentality of a governmental unit
22 referred to in 2. and 3. of this subparagraph if the obli-
23 gations shall be by law, statutory or otherwise, payable,
24 as to both principal and interest, from taxes levied or by
25 law required to be levied or from adequate special revenues
26 pledged or otherwise appropriated or by law required to be
27 provided for making these payments, but shall not be obli-
28 gations eligible for investment under this paragraph if
29 payable solely out of special assessments on properties ben-
30 efitited by local improvements; or

31 5. The government of any other country that is a member of
32 the organization for economic cooperation and development
33 and whose government obligations are rated A or higher, or
34 the equivalent, by a rating agency recognized by the securi-
35 ties valuation office of the NAIC.

36 (ii) Obligations that are issued in the United States or that are
37 dollar-denominated and issued in a non-United States market by a
38 solvent United States institution, other than an insurance com-
39 pany, or that are assumed or guaranteed by a solvent United States
40 institution, other than an insurance company, and that are not in
41 default as to principal or interest if the obligations:

42 1. Are rated A or higher, or the equivalent, by a securities
43 rating agency recognized by the securities valuation office
44 of the NAIC or, if not so rated, are similar in structure and
45 other material respects to other obligations of the same in-
46 stitution that are so rated;

47 2. Are insured by at least one (1) authorized insurer,
48 other than the investing insurer or a parent, subsidiary, or
49 affiliate of the investing insurer, licensed to insure obli-
50 gations in this state and, after considering the insurance,

1 are rated AAA, or the equivalent, by a securities rating
2 agency recognized by the securities valuation office of the
3 NAIC; or

4 3. Have been designated as class 1 or class 2 by the securi-
5 ties valuation office of the NAIC.

6 (iii) Obligations issued, assumed, or guaranteed by a solvent non-
7 United States institution chartered in a country that is a member
8 of the organization for economic cooperation and development or
9 obligations of United States corporations issued in a non-United
10 States currency, provided that in either case the obligations are
11 rated A or higher, or the equivalent, by a rating agency recognized
12 by the securities valuation office of the NAIC.

13 (iv) An investment made pursuant to the provisions of subpara-
14 graph (i), (ii), or (iii) of this paragraph shall be subject to the
15 following additional limitations:

16 1. An investment in or loan upon the obligations of an insti-
17 tution other than an institution that issues mortgage-re-
18 lated securities shall not exceed five percent (5%) of the
19 assets of the trust;

20 2. An investment in any one (1) mortgage-related security
21 shall not exceed five percent (5%) of the assets of the
22 trust;

23 3. The aggregate total investment in mortgage-related secu-
24 rities shall not exceed twenty-five percent (25%) of the as-
25 sets of the trust; and

26 4. Preferred or guaranteed shares issued or guaranteed by a
27 solvent United States institution are permissible invest-
28 ments if all of the institution's obligations are eligible
29 as investments under subparagraph (ii)1. and 3. of this
30 paragraph, but shall not exceed two percent (2%) of the as-
31 sets of the trust.

32 (v) As used in this section:

33 1. "Mortgage-related security" means an obligation that is
34 rated AA or higher, or the equivalent, by a securities rating
35 agency recognized by the securities valuation office of the
36 NAIC and that either:

37 (A) Represents ownership of one (1) or more promissory
38 notes or certificates of interest or participation
39 in the notes, including any rights designed to assure
40 servicing of, or the receipt or timeliness of receipt
41 by the holders of the notes, certificates, or partic-
42 ipation of amounts payable under, the notes, certifi-
43 cates, or participation, that:

44 a. Are directly secured by a first lien on a single
45 parcel of real estate, including stock allo-
46 cated to a dwelling unit in a residential coop-
47 erative housing corporation, upon which is lo-
48 cated a dwelling or mixed residential and commer-
49 cial structure, or on a residential manufactured
50 home as defined in 42 U.S.C. 5402(6), whether the

1 manufactured home is considered real or personal
2 property under the laws of the state in which it
3 is located; and

4 b. Were originated by a savings and loan asso-
5 ciation, savings bank, commercial bank, credit
6 union, insurance company, or similar institution
7 that is supervised and examined by a federal or
8 state housing authority, or by a mortgagee ap-
9 proved by the secretary of housing and urban de-
10 velopment pursuant to 12 U.S.C. 1709 and 1715b,
11 or, where the notes involve a lien on the manufac-
12 tured home, by an institution or by a financial
13 institution approved for insurance by the secre-
14 tary of housing and urban development pursuant to
15 12 U.S.C. 1703; or

16 (B) Is secured by one (1) or more promissory notes
17 or certificates of deposit or participations in the
18 notes, with or without recourse to the insurer of
19 the notes, and, by its terms, provides for payments
20 of principal in relation to payments, or reasonable
21 projections of payments, or notes meeting the require-
22 ments of items 1.(A)a. and 1.(A)b. of this subpara-
23 graph; and

24 2. "Promissory note," when used in connection with a manu-
25 factured home, shall also include a loan, advance, or credit
26 sale as evidenced by a retail installment sales contract or
27 other instrument.

28 (vi) Equity interests.

29 1. Investments in common shares or partnership interests of
30 a solvent United States institution are permissible if:

31 (A) Its obligations and preferred shares, if any, are
32 eligible as investments under this paragraph; and

33 (B) The equity interests of the institution, except an
34 insurance company, are registered on a national secu-
35 rities exchange as provided in the securities exchange
36 act of 1934, 15 U.S.C. 78a to 78kk or otherwise reg-
37 istered pursuant to that act and, if otherwise regis-
38 tered, price quotations for them are furnished through
39 a nationwide automated quotations system approved by
40 the financial industry regulatory authority, or suc-
41 cessor organization. A trust shall not invest in equ-
42 ity interests under this paragraph an amount exceed-
43 ing one percent (1%) of the assets of the trust even
44 though the equity interests are not so registered and
45 are not issued by an insurance company;

46 2. Investments in common shares of a solvent institution or-
47 ganized under the laws of a country that is a member of the
48 organization for economic cooperation and development, if:

1 (A) All its obligations are rated A or higher, or the
2 equivalent, by a rating agency recognized by the secu-
3 rities valuation office of the NAIC; and

4 (B) The equity interests of the institution are regis-
5 tered on a securities exchange regulated by the govern-
6 ment of a country that is a member of the organization
7 for economic cooperation and development.

8 3. An investment in or loan upon any one (1) institution's
9 outstanding equity interests shall not exceed one percent
10 (1%) of the assets of the trust. The cost of an investment in
11 equity interests made pursuant to this paragraph, when added
12 to the aggregate cost of other investments in equity inter-
13 ests then held pursuant to this paragraph, shall not exceed
14 ten percent (10%) of the assets in the trust.

15 (vii) Obligations issued, assumed, or guaranteed by a multina-
16 tional development bank, provided the obligations are rated A or
17 higher, or the equivalent, by a rating agency recognized by the
18 securities valuation office of the NAIC.

19 (viii) Investment companies.

20 1. Securities of an investment company registered pursuant
21 to the investment company act of 1940, 15 U.S.C. 80a, are
22 permissible investments if the investment company:

23 (A) Invests at least ninety percent (90%) of its assets
24 in the types of securities that qualify as an invest-
25 ment under subparagraph (i), (ii), or (iii) of this
26 paragraph or invests in securities that are deter-
27 mined by the director to be substantively similar to
28 the types of securities set forth in subparagraph (i),
29 (ii), or (iii) of this paragraph; or

30 (B) Invests at least ninety percent (90%) of its assets
31 in the types of equity interests that qualify as an in-
32 vestment under subparagraph (vi)1. of this paragraph;

33 2. Investments made by a trust in investment companies under
34 subparagraph (vi) of this paragraph shall not exceed the
35 following limitations:

36 (A) An investment in an investment company qualifying
37 under 1.(A) of this subparagraph shall not exceed ten
38 percent (10%) of the assets in the trust, and the ag-
39 gregate amount of investment in qualifying investment
40 companies shall not exceed twenty-five percent (25%)
41 of the assets in the trust; and

42 (B) Investments in an investment company qualifying
43 under 1.(B) of this subparagraph shall not exceed five
44 percent (5%) of the assets in the trust, and the ag-
45 gregate amount of investment in qualifying investment
46 companies shall be included when calculating the per-
47 missible aggregate value of equity interests pursuant
48 to subparagraph (vi)1. of this paragraph.

49 (ix) Letters of credit.

1 1. In order for a letter of credit to qualify as an asset
 2 of the trust, the trustee shall have the right and the obli-
 3 gation pursuant to the deed of trust or some other binding
 4 agreement, as duly approved by the director, to immediately
 5 draw down the full amount of the letter of credit and hold the
 6 proceeds in trust for the beneficiaries of the trust if the
 7 letter of credit will otherwise expire without being renewed
 8 or replaced.

9 2. The trust agreement shall provide that the trustee shall
 10 be liable for its negligence, willful misconduct, or lack of
 11 good faith. The failure of the trustee to draw against the
 12 letter of credit in circumstances where such draw would be
 13 required shall be deemed to be negligence or willful miscon-
 14 duct, or both.

15 (f) A specific security provided to a ceding insurer by an assuming in-
 16 surer pursuant to subsection (9) of this section shall be applied, un-
 17 til exhausted, to the payment of liabilities of the assuming insurer to
 18 the ceding insurer holding the specific security prior to, and as a con-
 19 dition precedent for, presentation of a claim by the ceding insurer for
 20 payment by a trustee of a trust established by the assuming insurer pur-
 21 suant to this subsection.

22 (6) Certified reinsurers.

23 (a) Pursuant to section 41-515(2)(e), Idaho Code, the director shall
 24 allow credit for reinsurance ceded by a domestic insurer to an assum-
 25 ing insurer that has been certified as a reinsurer in this state at all
 26 times for which statutory financial statement credit for reinsurance is
 27 claimed under this subsection. The credit allowed shall be based upon
 28 the security held by or on behalf of the ceding insurer in accordance
 29 with a rating assigned to the certified reinsurer by the director. The
 30 security shall be in a form consistent with the provisions of section
 31 41-515(2)(e), Idaho Code, and subsection (10), (11), or (12) of this
 32 section. The amount of security necessary in order for full credit to be
 33 allowed shall correspond with the following requirements:

34 (i)

35 Ratings	Security Necessary
36 Secure - 1	0%
37 Secure - 2	10%
38 Secure - 3	20%
39 Secure - 4	50%
40 Secure - 5	75%
41 Vulnerable - 6	100%

42 (ii) Affiliated reinsurance transactions shall receive the same
 43 opportunity for reduced security requirements as all other rein-
 44 surance transactions.

45 (iii) The director shall require the certified reinsurer to post
 46 one hundred percent (100%) security, for the benefit of the ceding

1 insurer or its estate, upon the entry of an order of rehabilita-
2 tion, liquidation, or conservation against the ceding insurer.

3 (iv) In order to facilitate the prompt payment of claims, a cer-
4 tified reinsurer shall not be required to post security for catas-
5 trophe recoverables for a period of one (1) year from the date of
6 the first instance of a liability reserve entry by the ceding com-
7 pany as a result of a loss from a catastrophic occurrence as rec-
8 ognized by the director. The one (1) year deferral period is con-
9 tingent upon the certified reinsurer continuing to pay claims in
10 a timely manner. Reinsurance recoverables for only the following
11 lines of business as reported on the NAIC annual financial state-
12 ment related specifically to the catastrophic occurrence will be
13 included in the deferral:

- 14 1. Line 1: Fire;
- 15 2. Line 2: Allied lines;
- 16 3. Line 3: Farmowners multiple peril;
- 17 4. Line 4: Homeowners multiple peril;
- 18 5. Line 5: Commercial multiple peril;
- 19 6. Line 9: Inland marine;
- 20 7. Line 12: Earthquake; and
- 21 8. Line 21: Auto physical damage.

22 (v) Credit for reinsurance under this subsection shall apply only
23 to reinsurance contracts entered into or renewed on or after the
24 effective date of the certification of the assuming insurer. Any
25 reinsurance contract entered into prior to the effective date of
26 the certification of the assuming insurer that is subsequently
27 amended after the effective date of the certification of the as-
28 suming insurer, or a new reinsurance contract, covering any risk
29 for which collateral was provided previously, shall be subject to
30 this subsection only with respect to losses incurred and reserves
31 reported from and after the effective date of the amendment or new
32 contract.

33 (vi) Nothing in this section shall prohibit the parties to a rein-
34 surance agreement from agreeing to provisions establishing secu-
35 rity requirements that exceed the minimum security requirements
36 established for certified reinsurers under this subsection.

37 (b) Certification procedure.

38 (i) The director shall post notice on the department's website
39 promptly upon receipt of any application for certification, in-
40 cluding instructions on how members of the public may respond to
41 the application. The director may not take final action on the ap-
42 plication until at least thirty (30) days after posting the notice
43 prescribed by this subparagraph.

44 (ii) The director shall issue written notice to an assuming in-
45 surer that has made application and been approved as a certified
46 reinsurer. Included in such notice shall be the rating assigned
47 the certified reinsurer in accordance with paragraph (a) (i) of
48 this subsection. The director shall publish a list of all certi-
49 fied reinsurers and their ratings.

1 (iii) In order to be eligible for certification, the assuming in-
2 surer shall meet the following requirements:

3 1. The assuming insurer must be domiciled and licensed to
4 transact insurance or reinsurance in a qualified jurisdic-
5 tion, as determined by the director pursuant to paragraph
6 (c) of this subsection.

7 2. The assuming insurer must maintain capital and surplus,
8 or its equivalent, of no less than two hundred fifty million
9 dollars (\$250,000,000), calculated in accordance with para-
10 graph (b)(iv)8. of this subsection. This requirement may
11 also be satisfied by an association including incorporated
12 and individual unincorporated underwriters having minimum
13 capital and surplus equivalents (net of liabilities) of at
14 least two hundred fifty million dollars (\$250,000,000) and
15 a central fund containing a balance of at least two hundred
16 fifty million dollars (\$250,000,000).

17 3. The assuming insurer must maintain financial strength
18 ratings from two (2) or more rating agencies deemed ac-
19 ceptable by the director. These ratings shall be based on
20 interactive communication between the rating agency and the
21 assuming insurer and shall not be based solely on publicly
22 available information. These financial strength ratings
23 will be one (1) factor used by the director in determining
24 the rating that is assigned to the assuming insurer. Accept-
25 able rating agencies include S&P global ratings, Moody's
26 investors service, Fitch ratings, A.M. Best company, or any
27 other nationally recognized statistical rating organiza-
28 tion.

29 4. The certified reinsurer must comply with any other re-
30 quirements reasonably imposed by the director.

31 (iv) Each certified reinsurer shall be rated on a legal entity
32 basis, with due consideration being given to the group rating
33 where appropriate, except that an association, including incorpo-
34 rated and individual unincorporated underwriters, that has been
35 approved to do business as a single certified reinsurer may be
36 evaluated on the basis of its group rating. Factors that may be
37 considered as part of the evaluation process include but are not
38 limited to the following:

39 1. The certified reinsurer's financial strength rating from
40 an acceptable rating agency. The maximum rating that a cer-
41 tified reinsurer may be assigned shall correspond to its fi-
42 nancial strength rating as outlined in the following table.
43 The director shall use the lowest financial strength rating
44 received from an approved rating agency in establishing the
45 maximum rating of a certified reinsurer. A failure to obtain
46 or maintain at least two (2) financial strength ratings from
47 acceptable rating agencies will result in loss of eligibil-
48 ity for certification:

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

2. 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. For certified reinsurers domiciled in the United States, 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);

4. For certified reinsurers not domiciled in the United States, a review annually of form CR-F (for property/casualty reinsurers) or form CR-S (for life and health reinsurers);

5. 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;

6. Regulatory actions against the certified reinsurer;

7. The report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in 8. of this subparagraph;

8. For certified reinsurers not domiciled in the United States, audited financial statements, regulatory filings, and actuarial opinion as filed with the non-United States jurisdiction supervisor, with a translation into English. Upon the initial application for certification, the director will consider audited financial statements for the last two (2) years filed with its non-United States jurisdiction supervisor;

1 9. The liquidation priority of obligations to a ceding insurer
2 in the certified reinsurer's domiciliary jurisdiction
3 in the context of an insolvency proceeding;

4 10. A certified reinsurer's participation in any solvent
5 scheme of arrangement, or similar procedure, that involves
6 United States ceding insurers. The director shall receive
7 prior notice from a certified reinsurer that proposes participation
8 by the certified reinsurer in a solvent scheme of
9 arrangement; and

10 11. Any other information deemed relevant by the director.

11 (v) Based on the analysis conducted under subparagraph (iv)5. of
12 this paragraph of a certified reinsurer's reputation for prompt
13 payment of claims, the director may make appropriate adjustments
14 in the security the certified reinsurer is required to post to protect
15 its liabilities to United States ceding insurers, provided
16 that the director shall, at a minimum, increase the security the
17 certified reinsurer is required to post by one (1) rating level under
18 subparagraph (iv)1. of this paragraph if the director finds
19 that:

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

25 2. The aggregate amount of reinsurance recoverables on paid
26 losses not in dispute overdue by ninety (90) days or more exceeds
27 fifty million dollars (\$50,000,000).

28 (vi) The assuming insurer must submit a properly executed form
29 CR-1 as evidence of its submission to the jurisdiction of this
30 state, appointment of the director as an agent for service of
31 process in this state, and agreement to provide security for one
32 hundred percent (100%) of the assuming insurer's liabilities attributable
33 to reinsurance ceded by United States ceding insurers if it resists
34 enforcement of a final United States judgment. The director shall
35 not certify any assuming insurer that is domiciled in a jurisdiction
36 that the director has determined does not adequately and promptly
37 enforce final United States judgments or arbitration awards.

38 (vii) The certified reinsurer must agree to meet applicable information
39 filing requirements as determined by the director, both with respect
40 to an initial application for certification and on an ongoing basis.
41 All information submitted by certified reinsurers not otherwise public
42 information subject to disclosure shall be exempt from disclosure under
43 chapter 1, title 74, Idaho Code, and shall be withheld from public
44 disclosure. The applicable information filing requirements are as follows:

45 1. Notification within ten (10) days of any regulatory actions
46 taken against the certified reinsurer, any change in the provisions
47 of its domiciliary license, or any change in
48 the provisions of its domiciliary license, or any change in
49

1 rating by an approved rating agency, including a statement
2 describing such changes and the reasons therefor;

3 2. Annually, form CR-F or CR-S as applicable per instruc-
4 tions adopted by the department;

5 3. Annually, the report of the independent auditor on the
6 financial statements of the insurance enterprise, on the ba-
7 sis described in 4. of this subparagraph;

8 4. Annually, the most recent audited financial statements,
9 regulatory filings, and actuarial opinion as filed with the
10 certified reinsurer's supervisor, with a translation into
11 English. Upon the initial certification, audited financial
12 statements for the last two (2) years filed with the certi-
13 fied reinsurer's supervisor;

14 5. At least annually, an updated list of all disputed and
15 overdue reinsurance claims regarding reinsurance assumed
16 from United States domestic ceding insurers;

17 6. A certification from the certified reinsurer's domestic
18 regulator that the certified reinsurer is in good standing
19 and maintains capital in excess of the jurisdiction's high-
20 est regulatory action level; and

21 7. Any other information that the director may reasonably
22 require.

23 (viii) Change in rating or revocation of certification.

24 1. In the case of a downgrade by a rating agency or other
25 disqualifying circumstance, the director shall upon writ-
26 ten notice assign a new rating to the certified reinsurer in
27 accordance with the requirements of subparagraph (iv)1. of
28 this paragraph.

29 2. The director shall have the authority to suspend, revoke,
30 or otherwise modify a certified reinsurer's certification
31 at any time if the certified reinsurer fails to meet its
32 obligations or security requirements under this section or
33 if other financial or operating results of the certified
34 reinsurer, or documented significant delays in payment by
35 the certified reinsurer, lead the director to reconsider the
36 certified reinsurer's ability or willingness to meet its
37 contractual obligations.

38 3. If the rating of a certified reinsurer is upgraded by
39 the director, the certified reinsurer may meet the security
40 requirements applicable to its new rating on a prospective
41 basis, but the director shall require the certified rein-
42 surer to post security under the previously applicable secu-
43 rity requirements as to all contracts in force on or before
44 the effective date of the upgraded rating. If the rating
45 of a certified reinsurer is downgraded by the director, the
46 director shall require the certified reinsurer to meet the
47 security requirements applicable to its new rating for all
48 business it has assumed as a certified reinsurer.

49 4. Upon revocation of the certification of a certified
50 reinsurer by the director, the assuming insurer shall be

1 required to post security in accordance with subsection
2 (9) of this section in order for the ceding insurer to con-
3 tinue to take credit for reinsurance ceded to the assuming
4 insurer. If funds continue to be held in trust in accor-
5 dance with subsection (5) of this section, the director may
6 allow additional credit equal to the ceding insurer's pro
7 rata share of such funds, discounted to reflect the risk
8 of uncollectibility and anticipated expenses of trust ad-
9 ministration. Notwithstanding the change of a certified
10 reinsurer's rating or revocation of its certification, a
11 domestic insurer that has ceded reinsurance to that certi-
12 fied reinsurer may not be denied credit for reinsurance for a
13 period of three (3) months for all reinsurance ceded to that
14 certified reinsurer, unless the reinsurance is found by the
15 director to be at high risk of uncollectibility.

16 (c) Qualified jurisdictions.

17 (i) If, upon conducting an evaluation under this subsection with
18 respect to the reinsurance supervisory system of any non-United
19 States assuming insurer, the director determines that the juris-
20 diction qualifies to be recognized as a qualified jurisdiction,
21 the director shall publish notice and evidence of such recognition
22 in an appropriate manner. The director may establish a procedure
23 to withdraw recognition of those jurisdictions that are no longer
24 qualified.

25 (ii) In order to determine whether the domiciliary jurisdiction
26 of a non-United States assuming insurer is eligible to be recog-
27 nized as a qualified jurisdiction, the director shall evaluate the
28 reinsurance supervisory system of the non-United States juris-
29 diction, both initially and on an ongoing basis, and consider the
30 rights, benefits, and extent of reciprocal recognition afforded
31 by the non-United States jurisdiction to reinsurers licensed and
32 domiciled in the United States. The director shall determine
33 the appropriate approach for evaluating the qualifications of
34 such jurisdictions and create and publish a list of jurisdictions
35 whose reinsurers may be approved by the director as eligible for
36 certification. A qualified jurisdiction must agree to share in-
37 formation and cooperate with the director with respect to all cer-
38 tified reinsurers domiciled within that jurisdiction. Additional
39 factors to be considered in determining whether to recognize a
40 qualified jurisdiction, in the discretion of the director, in-
41 clude but are not limited to the following:

- 42 1. The framework under which the assuming insurer is regu-
43 lated;
- 44 2. The structure and authority of the domiciliary regulator
45 with regard to solvency regulation requirements and finan-
46 cial surveillance;
- 47 3. The substance of financial and operating standards for
48 assuming insurers in the domiciliary jurisdiction;
- 49 4. The form and substance of financial reports required
50 to be filed or made publicly available by reinsurers in the

- 1 domiciliary jurisdiction and the accounting principles
2 used;
- 3 5. The domiciliary regulator's willingness to cooperate
4 with United States regulators in general and the director in
5 particular;
- 6 6. The history of performance by assuming insurers in the
7 domiciliary jurisdiction;
- 8 7. Any documented evidence of substantial problems with the
9 enforcement of final United States judgments in the domicil-
10 iary jurisdiction. A jurisdiction will not be considered
11 to be a qualified jurisdiction if the director has deter-
12 mined that it does not adequately and promptly enforce final
13 United States judgments or arbitration awards;
- 14 8. Any relevant international standards or guidance with
15 respect to mutual recognition of reinsurance supervision
16 adopted by the international association of insurance su-
17 pervisors or its successor organization; and
- 18 9. Any other matters deemed relevant by the director.
- 19 (iii) A list of qualified jurisdictions shall be published through
20 the NAIC committee process. The director shall consider this list
21 in determining qualified jurisdictions. If the director approves
22 a jurisdiction as qualified that does not appear on the list of
23 qualified jurisdictions, the director shall provide thoroughly
24 documented justification with respect to the criteria provided
25 under subparagraph (ii) of this paragraph.
- 26 (iv) United States jurisdictions that meet the requirements for
27 accreditation under the NAIC financial standards and accredita-
28 tion program shall be recognized as qualified jurisdictions.
- 29 (d) Recognition of certification issued by an NAIC-accredited juris-
30 diction.
- 31 (i) If an applicant for certification has been certified as a
32 reinsurer in an NAIC-accredited jurisdiction, the director has
33 the discretion to defer to that jurisdiction's certification, and
34 to defer to the rating assigned by that jurisdiction, if the assum-
35 ing insurer submits a properly executed form CR-1 and such addi-
36 tional information as the director requires. The assuming insurer
37 shall be considered to be a certified reinsurer in this state.
- 38 (ii) Any change in the certified reinsurer's status or rating in
39 the other jurisdiction shall apply automatically in this state as
40 of the date it takes effect in the other jurisdiction. The certi-
41 fied reinsurer shall notify the director of any change in its sta-
42 tus or rating within ten (10) days after receiving notice of the
43 change.
- 44 (iii) The director may withdraw recognition of the other juris-
45 diction's rating at any time and assign a new rating in accordance
46 with paragraph (b) (viii) of this subsection.
- 47 (iv) The director may withdraw recognition of the other juris-
48 diction's certification at any time, with written notice to the
49 certified reinsurer. Unless the director suspends or revokes the
50 certified reinsurer's certification in accordance with paragraph

1 (b) (viii) of this subsection, the certified reinsurer's certifi-
2 cation shall remain in good standing in this state for a period of
3 three (3) months, which shall be extended if additional time is
4 necessary to consider the assuming insurer's application for cer-
5 tification in this state.

6 (e) Mandatory funding clause. In addition to the clauses required un-
7 der subsection (13) of this section, reinsurance contracts entered into
8 or renewed under this section shall include a proper funding clause,
9 which requires the certified reinsurer to provide and maintain security
10 in an amount sufficient to avoid the imposition of any financial state-
11 ment penalty on the ceding insurer under this section for reinsurance
12 ceded to the certified reinsurer.

13 (f) The director shall comply with all reporting and notification re-
14 quirements that may be established by the NAIC with respect to certified
15 reinsurers and qualified jurisdictions.

16 (7) Reciprocal jurisdictions.

17 (a) Pursuant to section 41-515(2) (f), Idaho Code, the director shall
18 allow credit for reinsurance ceded by a domestic insurer to an assum-
19 ing insurer licensed to write reinsurance by, and has its head office or
20 is domiciled in, a reciprocal jurisdiction and that meets the other re-
21 quirements of this section.

22 (b) A reciprocal jurisdiction is a jurisdiction, as designated by the
23 director pursuant to paragraph (d) of this subsection, that meets one
24 (1) of the following:

25 (i) A non-United States jurisdiction that is subject to an
26 in-force covered agreement with the United States, each within its
27 legal authority, or, in the case of a covered agreement between
28 the United States and the European Union, is a member state of the
29 European Union. For purposes of this paragraph, a covered agree-
30 ment is an agreement entered into pursuant to the Dodd-Frank Wall
31 Street reform and consumer protection act, 31 U.S.C. 313 and 314,
32 that is currently in effect or in a period of provisional applica-
33 tion and addresses the elimination, under specified conditions,
34 of collateral requirements as a condition for entering into any
35 reinsurance agreement with a ceding insurer domiciled in this
36 state or for allowing the ceding insurer to recognize credit for
37 reinsurance;

38 (ii) A United States jurisdiction that meets the requirements for
39 accreditation under the NAIC financial standards and accredita-
40 tion program; or

41 (iii) A qualified jurisdiction, as determined by the director
42 pursuant to section 41-515(2) (e) (iii), Idaho Code, and subsec-
43 tion (6) (c) of this section, that is not otherwise described in
44 subparagraph (i) or (ii) of this paragraph and that the director
45 determines meets all of the following additional requirements:

46 1. Provides that an insurer that has its head office or
47 is domiciled in such qualified jurisdiction shall receive
48 credit for reinsurance ceded to a United States-domiciled
49 assuming insurer in the same manner as credit for reinsur-

1 ance is received for reinsurance assumed by insurers domi-
2 ciled in such qualified jurisdiction;

3 2. Does not require a United States-domiciled assuming in-
4 surer to establish or maintain a local presence as a condi-
5 tion for entering into a reinsurance agreement with any ced-
6 ing insurer subject to regulation by the non-United States
7 jurisdiction or as a condition to allow the ceding insurer to
8 recognize credit for such reinsurance;

9 3. Recognizes the United States state regulatory approach
10 to group supervision and group capital, by providing written
11 confirmation by a competent regulatory authority, in such
12 qualified jurisdiction, that insurers and insurance groups
13 that are domiciled or maintain their headquarters in this
14 state or another jurisdiction accredited by the NAIC shall
15 be subject only to worldwide prudential insurance group su-
16 pervision, including worldwide group governance, solvency,
17 and capital, and reporting, as applicable, by the director
18 or the commissioner of the domiciliary state and will not be
19 subject to group supervision at the level of the worldwide
20 parent undertaking of the insurance or reinsurance group by
21 the qualified jurisdiction; and

22 4. Provides written confirmation by a competent regulatory
23 authority in such qualified jurisdiction that information
24 regarding insurers and their parent, subsidiary, or affil-
25 iated entities, if applicable, shall be provided to the di-
26 rector in accordance with a memorandum of understanding or
27 similar document between the director and such qualified ju-
28 risdiction, including but not limited to the international
29 association of insurance supervisors multilateral memoran-
30 dum of understanding or other multilateral memoranda of un-
31 derstanding coordinated by the NAIC.

32 (c) Credit shall be allowed when the reinsurance is ceded from an in-
33 surer domiciled in this state to an assuming insurer meeting each of the
34 following conditions:

35 (i) The assuming insurer must be licensed to transact reinsurance
36 by, and have its head office or be domiciled in, a reciprocal ju-
37 risdiction.

38 (ii) The assuming insurer must have and maintain on an ongoing ba-
39 sis minimum capital and surplus, or its equivalent, calculated on
40 at least an annual basis as of the preceding December 31 or at the
41 annual date otherwise statutorily reported to the reciprocal ju-
42 risdiction, and confirmed as set forth in subparagraph (vii) of
43 this paragraph according to the methodology of its domiciliary ju-
44 risdiction, in the following amounts:

45 1. No less than two hundred fifty million dollars
46 (\$250,000,000); or

47 2. If the assuming insurer is an association, including in-
48 corporated and individual unincorporated underwriters:

1 (A) Minimum capital and surplus equivalents (net of
2 liabilities) or own funds of the equivalent of at least
3 two hundred fifty million dollars (\$250,000,000); and

4 (B) A central fund containing a balance of the equiv-
5 alent of at least two hundred fifty million dollars
6 (\$250,000,000).

7 (iii) The assuming insurer must have and maintain on an ongoing
8 basis a minimum solvency or capital ratio, as applicable, as fol-
9 lows:

10 1. If the assuming insurer has its head office or is domi-
11 ciled in a reciprocal jurisdiction as defined in paragraph
12 (b) (i) of this subsection, the ratio specified in the appli-
13 cable covered agreement;

14 2. If the assuming insurer is domiciled in a reciprocal ju-
15 risdiction as defined in paragraph (b) (ii) of this subsec-
16 tion, a risk-based capital (RBC) ratio of three hundred per-
17 cent (300%) of the authorized control level, calculated in
18 accordance with the formula developed by the NAIC; or

19 3. If the assuming insurer is domiciled in a reciprocal ju-
20 risdiction as defined in paragraph (b) (iii) of this subsec-
21 tion, after consultation with the reciprocal jurisdiction
22 and considering any recommendations published through the
23 NAIC committee process, such solvency or capital ratio as
24 the director determines to be an effective measure of sol-
25 vency.

26 (iv) The assuming insurer must agree to and provide adequate as-
27 surance, in the form of a properly executed form RJ-1, of its
28 agreement to the following:

29 1. The assuming insurer must agree to provide prompt writ-
30 ten notice and explanation to the director if it falls below
31 the minimum requirements set forth in subparagraph (ii) or
32 (iii) of this paragraph or if any regulatory action is taken
33 against it for serious noncompliance with applicable law.

34 2. The assuming insurer must consent in writing to the ju-
35 risdiction of the courts of this state and to the appointment
36 of the director as agent for service of process.

37 (A) The director may also require that such consent
38 be provided and included in each reinsurance agreement
39 under the director's jurisdiction.

40 (B) Nothing in this provision shall limit or in any way
41 alter the capacity of parties to a reinsurance agree-
42 ment to agree to alternative dispute resolution mech-
43 anisms, except to the extent such agreements are unen-
44 forceable under applicable insolvency or delinquency
45 laws.

46 3. The assuming insurer must consent in writing to pay all
47 final judgments, wherever enforcement is sought, obtained
48 by a ceding insurer that have been declared enforceable in
49 the territory where the judgments were obtained.

1 4. Each reinsurance agreement must include a provision
2 requiring the assuming insurer to provide security in an
3 amount equal to one hundred percent (100%) of the assuming
4 insurer's liabilities attributable to reinsurance ceded
5 pursuant to that agreement if the assuming insurer resists
6 enforcement of a final judgment that is enforceable under
7 the law of the jurisdiction in which it was obtained or a
8 properly enforceable arbitration award, whether obtained by
9 the ceding insurer or by its legal successor on behalf of its
10 estate, if applicable.

11 5. The assuming insurer must confirm that it is not
12 presently participating in any solvent scheme of arrange-
13 ment that involves this state's ceding insurers and agrees
14 to notify the ceding insurer and the director and to provide
15 one hundred percent (100%) security to the ceding insurer
16 consistent with the terms of the scheme, should the assum-
17 ing insurer enter into such a solvent scheme of arrangement.
18 Such security shall be in a form consistent with the pro-
19 visions of section 41-515(2) (e) and (3), Idaho Code, and
20 subsections (10) through (12) of this section. For purposes
21 of this section, the term "solvent scheme of arrangement"
22 means a foreign or alien statutory or regulatory compromise
23 procedure subject to requisite majority creditor approval
24 and judicial sanction in the assuming insurer's home ju-
25 risdiction either to finally commute liabilities of duly
26 noticed classed members or creditors of a solvent debtor or
27 to reorganize or restructure the debts and obligations of
28 a solvent debtor on a final basis, which may be subject to
29 judicial recognition and enforcement of the arrangement by
30 a governing authority outside the ceding insurer's home ju-
31 risdiction.

32 6. The assuming insurer must agree in writing to meet the
33 applicable information filing requirements as set forth in
34 subparagraph (v) of this paragraph.

35 (v) The assuming insurer or its legal successor must provide, if
36 requested by the director, on behalf of itself and any legal prede-
37 cessors, the following documentation to the director:

38 1. For the two (2) years preceding entry into the reinsur-
39 ance agreement and on an annual basis thereafter, the assum-
40 ing insurer's annual audited financial statements, in ac-
41 cordance with the applicable law of the jurisdiction of its
42 head office or domiciliary jurisdiction, as applicable, in-
43 cluding the external audit report;

44 2. For the two (2) years preceding entry into the reinsur-
45 ance agreement, the solvency and financial condition report
46 or actuarial opinion, if filed with the assuming insurer's
47 supervisor;

48 3. Prior to entry into the reinsurance agreement and not
49 more than semiannually thereafter, an updated list of all
50 disputed and overdue reinsurance claims outstanding for

1 ninety (90) days or more regarding reinsurance assumed from
2 ceding insurers domiciled in the United States; and

3 4. Prior to entry into the reinsurance agreement and not
4 more than semiannually thereafter, information regard-
5 ing the assuming insurer's assumed reinsurance by ceding
6 insurer, ceded reinsurance by the assuming insurer, and
7 reinsurance recoverable on paid and unpaid losses by the as-
8 suming insurer to allow for the evaluation of the criteria
9 set forth in subparagraph (vi) of this paragraph.

10 (vi) The assuming insurer must maintain a practice of prompt pay-
11 ment of claims under reinsurance agreements. The lack of prompt
12 payment will be evidenced if any of the following criteria are met:

13 1. More than fifteen percent (15%) of the reinsurance recov-
14 erables from the assuming insurer are overdue and in dispute
15 as reported to the director;

16 2. More than fifteen percent (15%) of the assuming insurer's
17 ceding insurers or reinsurers have overdue reinsurance re-
18 coverable on paid losses of ninety (90) days or more that are
19 not in dispute and that exceed for each ceding insurer one
20 hundred thousand dollars (\$100,000), or as otherwise speci-
21 fied in a covered agreement; or

22 3. The aggregate amount of reinsurance recoverable on
23 paid losses that are not in dispute, but are overdue by
24 ninety (90) days or more, exceeds fifty million dollars
25 (\$50,000,000), or as otherwise specified in a covered agree-
26 ment.

27 (vii) The assuming insurer's supervisory authority must confirm
28 to the director on an annual basis that the assuming insurer com-
29 plies with the requirements set forth in subparagraphs (ii) and
30 (iii) of this paragraph.

31 (viii) Nothing in this provision precludes an assuming insurer
32 from providing the director with information on a voluntary basis.

33 (d) The director shall timely create and publish a list of reciprocal
34 jurisdictions.

35 (i) A list of reciprocal jurisdictions is published through the
36 NAIC committee process. The director's list shall include any re-
37 ciprocal jurisdiction as defined under paragraph (b) (i) and (ii)
38 of this subsection and shall consider any other reciprocal juris-
39 diction included on the NAIC list. The director may approve a ju-
40 risdiction that does not appear on the NAIC list of reciprocal ju-
41 risdictions as provided by applicable law or rule or in accordance
42 with criteria published through the NAIC committee process.

43 (ii) The director may remove a jurisdiction from the list of re-
44 ciprocal jurisdictions upon a determination that the jurisdiction
45 no longer meets one (1) or more of the requirements of a reciprocal
46 jurisdiction, as provided by applicable law or rule or in accor-
47 dance with a process published through the NAIC committee process,
48 except that the director shall not remove from the list a recip-
49 rocal jurisdiction as described under paragraph (b) (i) and (ii) of
50 this subsection. Upon removal of a reciprocal jurisdiction from

1 this list, credit for reinsurance ceded to an assuming insurer
2 domiciled in that jurisdiction shall be allowed, if otherwise al-
3 lowed pursuant to section 41-515, Idaho Code, or this section.

4 (e) The director shall timely create and publish a list of assuming in-
5 surers that have satisfied the conditions set forth in this section and
6 to which cessions shall be granted credit in accordance with this sec-
7 tion.

8 (i) If an NAIC-accredited jurisdiction has determined that the
9 conditions set forth in paragraph (c) of this subsection have been
10 met, the director has the discretion to defer to that jurisdic-
11 tion's determination and to add such assuming insurer to the list
12 of assuming insurers to which cessions shall be granted credit in
13 accordance with this paragraph. The director may accept financial
14 documentation filed with another NAIC-accredited jurisdiction or
15 with the NAIC in satisfaction of the requirements of paragraph (c)
16 of this subsection.

17 (ii) When requesting that the director defer to another NAIC-ac-
18 credited jurisdiction's determination, an assuming insurer must
19 submit a properly executed form RJ-1 and additional information as
20 the director may require. A state that has received such a request
21 shall notify other states through the NAIC committee process and
22 provide relevant information with respect to the determination of
23 eligibility.

24 (f) If the director determines that an assuming insurer no longer meets
25 one (1) or more of the requirements under this subsection, the director
26 may revoke or suspend the eligibility of the assuming insurer for recog-
27 nition under this subsection.

28 (i) While an assuming insurer's eligibility is suspended, no
29 reinsurance agreement issued, amended, or renewed after the ef-
30 fective date of the suspension qualifies for credit except to the
31 extent that the assuming insurer's obligations under the contract
32 are secured in accordance with subsection (9) of this section.

33 (ii) If an assuming insurer's eligibility is revoked, no credit
34 for reinsurance may be granted after the effective date of the re-
35 vocation with respect to any reinsurance agreements entered into
36 by the assuming insurer, including reinsurance agreements entered
37 into prior to the date of revocation, except to the extent that the
38 assuming insurer's obligations under the contract are secured in a
39 form acceptable to the director and consistent with the provisions
40 of subsection (9) of this section.

41 (g) Before denying statement credit or imposing a requirement to post
42 security with respect to paragraph (f) of this subsection, or adopting
43 any similar requirement that will have substantially the same regula-
44 tory impact as security, the director shall:

45 (i) Communicate with the ceding insurer, the assuming insurer,
46 and the assuming insurer's supervisory authority that the assum-
47 ing insurer no longer satisfies any of the conditions listed in
48 paragraph (c) of this subsection;

49 (ii) 1. Provide the assuming insurer with thirty (30) days
50 from the initial communication to submit a plan to remedy the

1 defect, and ninety (90) days from the initial communication
2 to remedy the defect, except in exceptional circumstances
3 in which a shorter period is necessary for policyholder and
4 other consumer protection.

5 2. After the expiration of ninety (90) days or less, as set
6 out in 1. of this subparagraph, if the director determines
7 that no or insufficient action was taken by the assuming in-
8 surer, the director may impose any of the requirements as set
9 out in this paragraph; and

10 (iii) Provide a written explanation to the assuming insurer of any
11 of the requirements set out in this subsection.

12 (h) If subject to a legal process of rehabilitation, liquidation, or
13 conservation, as applicable, the ceding insurer or its representative
14 may seek and, if determined appropriate by the court in which the pro-
15 ceedings are pending, may obtain an order requiring that the assuming
16 insurer post security for all outstanding liabilities.

17 (8) Credit for reinsurance required by law. Pursuant to section
18 41-515(2)(g), Idaho Code, the director shall allow credit for reinsurance
19 ceded by a domestic insurer to an assuming insurer not meeting the require-
20 ments of section 41-515(2)(a), (b), (c), (d), (e), or (f), Idaho Code, but
21 only as to the insurance of risks located in jurisdictions where the reinsur-
22 ance is required by the applicable law or regulation of that jurisdiction.
23 As used in this subsection, the term "jurisdiction" means a state, district,
24 or territory of the United States and any lawful national government.

25 (9) Asset or reduction from liability for reinsurance ceded to an unau-
26 thorized assuming insurer not meeting the requirements of subsections (2)
27 through (8) of this section.

28 (a) Pursuant to section 41-515(3), Idaho Code, the director shall
29 allow a reduction from liability for reinsurance ceded by a domestic
30 insurer to an assuming insurer not meeting the requirements of section
31 41-515(2), Idaho Code, in an amount not exceeding the liabilities car-
32 ried by the ceding insurer. The reduction shall be in the amount of
33 funds held by or on behalf of the ceding insurer, including funds held
34 in trust for the exclusive benefit of the ceding insurer, under a rein-
35 surance contract with such assuming insurer as security for the payment
36 of obligations under the reinsurance contract. The security shall be
37 held in the United States subject to withdrawal solely by, and under
38 the exclusive control of, the ceding insurer or, in the case of a trust,
39 held in a qualified United States financial institution as defined in
40 section 41-515(4)(b), Idaho Code. This security may be in the form of
41 any of the following:

42 (i) Cash;

43 (ii) Securities listed by the securities valuation office of the
44 NAIC, including those deemed exempt from filing as defined by the
45 purposes and procedures manual of the securities valuation of-
46 fice, and qualifying as admitted assets;

47 (iii) Clean, irrevocable, unconditional, and evergreen letters of
48 credit issued or confirmed by a qualified United States institu-
49 tion, as defined in section 41-515(4)(a), Idaho Code, effective
50 no later than December 31 of the year for which filing is being

1 made, and in the possession of, or in trust for, the ceding insurer
 2 on or before the filing date of its annual statement. Letters of
 3 credit meeting applicable standards of issuer acceptability as of
 4 the dates of their issuance or confirmation shall, notwithstanding
 5 the issuing or confirming institution's subsequent failure
 6 to meet applicable standards of issuer acceptability, continue
 7 to be acceptable as security until their expiration, extension,
 8 renewal, modification, or amendment, whichever first occurs; or

9 (iv) Any other form of security acceptable to the director.

10 (b) An admitted asset or a reduction from liability for reinsurance
 11 ceded to an unauthorized assuming insurer pursuant to this section
 12 shall be allowed only when the requirements of subsection (13) of this
 13 section and the applicable portions of subsection (10), (11), or (12) of
 14 this section have been satisfied.

15 (10) Trust agreements qualified under subsection (9) of this section.

16 (a) As used in this subsection:

17 (i) "Beneficiary" means the entity for whose sole benefit the
 18 trust has been established and any successor of the beneficiary by
 19 operation of law. If a court of law appoints a successor in interest
 20 to the named beneficiary, then the named beneficiary includes
 21 and is limited to the court-appointed domiciliary receiver, including
 22 conservator, rehabilitator, or liquidator.

23 (ii) "Grantor" means the entity that has established a trust for
 24 the sole benefit of the beneficiary. When established in conjunction
 25 with a reinsurance agreement, the grantor is the unlicensed,
 26 unaccredited assuming insurer.

27 (iii) "Obligations," as used in paragraph (b) (xi) of this subsection,
 28 means:

- 29 1. Reinsured losses and allocated loss expenses paid by the
- 30 ceding company but not recovered from the assuming insurer;
- 31 2. Reserves for reinsured losses reported and outstanding;
- 32 3. Reserves for reinsured losses incurred but not reported;
- 33 and
- 34 4. Reserves for allocated reinsured loss expenses and un-
- 35 earned premiums.

36 (b) Required conditions.

37 (i) The trust agreement shall be entered into between the
 38 beneficiary, the grantor, and a trustee, which shall be a qualified
 39 United States financial institution as defined in section
 40 41-515(4) (b), Idaho Code.

41 (ii) The trust agreement shall create a trust account into which
 42 assets shall be deposited.

43 (iii) All assets in the trust account shall be held by the trustee
 44 at the trustee's office in the United States.

45 (iv) The trust agreement shall provide that:

- 46 1. The beneficiary shall have the right to withdraw assets
- 47 from the trust account at any time, without notice to the
- 48 grantor, subject only to written notice from the beneficiary
- 49 to the trustee;

1 2. No other statement or document is required to be pre-
2 sented to withdraw assets, except that the beneficiary may
3 be required to acknowledge receipt of withdrawn assets;

4 3. It is not subject to any conditions or qualifications
5 outside of the trust agreement; and

6 4. It shall not contain references to any other agreements
7 or documents except as provided for in subparagraphs (xi)
8 and (xii) of this paragraph.

9 (v) The trust agreement shall be established for the sole benefit
10 of the beneficiary.

11 (vi) The trust agreement shall require the trustee to:

12 1. Receive assets and hold all assets in a safe place;

13 2. Determine that all assets are in such form that the ben-
14 eficiary, or the trustee upon direction by the beneficiary,
15 may whenever necessary negotiate any such assets without
16 consent or signature from the grantor or any other person or
17 entity;

18 3. Furnish to the grantor and the beneficiary a statement of
19 all assets in the trust account upon its inception and at in-
20 tervals no less frequent than the end of each calendar quar-
21 ter;

22 4. Notify the grantor and the beneficiary within ten (10)
23 days of any deposits to or withdrawals from the trust ac-
24 count;

25 5. Upon written demand of the beneficiary, immediately take
26 any and all steps necessary to transfer absolutely and un-
27 equivocally all right, title, and interest in the assets
28 held in the trust account to the beneficiary and deliver
29 physical custody of the assets to the beneficiary; and

30 6. Allow no substitutions or withdrawals of assets from the
31 trust account, except on written instructions from the bene-
32 ficiary, except that the trustee may, without the consent of
33 but with notice to the beneficiary, upon call or maturity of
34 any trust asset, withdraw such asset upon condition that the
35 proceeds are paid into the trust account.

36 (vii) The trust agreement shall provide that at least thirty (30)
37 days, but not more than forty-five (45) days, prior to termination
38 of the trust account written notification of termination shall be
39 delivered by the trustee to the beneficiary.

40 (viii) The trust agreement shall be made subject to and governed by
41 the laws of the state in which the trust is domiciled.

42 (ix) The trust agreement shall prohibit invasion of the trust cor-
43 pus for the purpose of paying commission to, or reimbursing the ex-
44 penses of, the trustee. In order for a letter of credit to qual-
45 ify as an asset of the trust, the trustee shall have the right and
46 the obligation pursuant to the deed of trust or some other binding
47 agreement, as duly approved by the director, to immediately draw
48 down the full amount of the letter of credit and hold the proceeds
49 in trust for the beneficiaries of the trust if the letter of credit
50 will otherwise expire without being renewed or replaced.

1 (x) The trust agreement shall provide that the trustee shall be
2 liable for its negligence, willful misconduct, or lack of good
3 faith. The failure of the trustee to draw against the letter of
4 credit in circumstances where such draw would be required shall be
5 deemed to be negligence or willful misconduct, or both.

6 (xi) Notwithstanding other provisions of this section, when a
7 trust agreement is established in conjunction with a reinsurance
8 agreement covering risks other than life, annuities, and acci-
9 dent and health, where it is customary practice to provide a trust
10 agreement for a specific purpose, the trust agreement may provide
11 that the ceding insurer shall undertake to use and apply amounts
12 drawn upon the trust account, without diminution because of the
13 insolvency of the ceding insurer or the assuming insurer, only for
14 the following purposes:

15 1. To pay or reimburse the ceding insurer for the assuming
16 insurer's share under the specific reinsurance agreement
17 regarding any losses and allocated loss expenses paid by the
18 ceding insurer, but not recovered from the assuming insurer,
19 or for unearned premiums due to the ceding insurer if not
20 otherwise paid by the assuming insurer;

21 2. To make payment to the assuming insurer of any amounts
22 held in the trust account that exceed one hundred two percent
23 (102%) of the actual amount required to fund the assuming in-
24 surer's obligations under the specific reinsurance agree-
25 ment; or

26 3. Where the ceding insurer has received notification of
27 termination of the trust account and where the assuming in-
28 surer's entire obligations under the specific reinsurance
29 agreement remain unliquidated and undischarged ten (10)
30 days prior to the termination date, to withdraw amounts
31 equal to the obligations and deposit those amounts in a
32 separate account, in the name of the ceding insurer in any
33 qualified United States financial institution as defined in
34 section 41-515(4) (b), Idaho Code, apart from its general as-
35 sets, in trust for such uses and purposes specified in 1. and
36 2. of this subparagraph as may remain executory after such
37 withdrawal and for any period after the termination date.

38 (xii) Notwithstanding other provisions of this section, when a
39 trust agreement is established to meet the requirements of sub-
40 section (9) of this section in conjunction with a reinsurance
41 agreement covering life, annuities, or accident and health risks,
42 where it is customary to provide a trust agreement for a specific
43 purpose, the trust agreement may provide that the ceding insurer
44 shall undertake to use and apply amounts drawn upon the trust ac-
45 count, without diminution because of the insolvency of the ceding
46 insurer or the assuming insurer, only for the following purposes:

47 1. To pay or reimburse the ceding insurer for:

48 (A) The assuming insurer's share under the specific
49 reinsurance agreement of premiums returned, but not
50 yet recovered from the assuming insurer, to the owners

1 of policies reinsured under the reinsurance agreement
2 on account of cancellations of the policies; and

3 (B) The assuming insurer's share under the specific
4 reinsurance agreement of surrenders and benefits or
5 losses paid by the ceding insurer, but not yet recovered
6 from the assuming insurer, under the terms and
7 provisions of the policies reinsured under the reinsurance
8 agreement;

9 2. To pay to the assuming insurer amounts held in the trust
10 account in excess of the amount necessary to secure the
11 credit or reduction from liability for reinsurance taken by
12 the ceding insurer; or

13 3. Where the ceding insurer has received notification of
14 termination of the trust and where the assuming insurer's
15 entire obligations under the specific reinsurance agreement
16 remain unliquidated and undischarged ten (10) days prior to
17 the termination date, to withdraw amounts equal to the assuming
18 insurer's share of liabilities, to the extent that
19 the liabilities have not yet been funded by the assuming
20 insurer, and deposit those amounts in a separate account,
21 in the name of the ceding insurer in any qualified United
22 States financial institution apart from its general assets,
23 in trust for the uses and purposes specified in 1. and 2. of
24 this subparagraph as may remain executory after withdrawal
25 and for any period after the termination date.

26 (xiii) Either the reinsurance agreement or the trust agreement
27 must stipulate that assets deposited in the trust account shall
28 be valued according to their current fair market value and shall
29 consist only of cash in United States dollars, certificates of
30 deposit issued by a United States bank and payable in United States
31 dollars, and investments permitted by this title of the Idaho
32 Code, or any combination thereof, provided investments in or issued
33 by an entity controlling, controlled by, or under common control
34 with either the grantor or the beneficiary of the trust shall
35 not exceed five percent (5%) of total investments. The agreement
36 may further specify the types of investments to be deposited. If
37 the reinsurance agreement covers life, annuities, or accident and
38 health risks, then the provisions required by this subparagraph
39 must be included in the reinsurance agreement.

40 (c) Permitted conditions.

41 (i) The trust agreement may provide that the trustee may resign
42 upon delivery of a written notice of resignation, effective
43 not less than ninety (90) days after the beneficiary and grantor
44 receive the notice, and that the trustee may be removed by the
45 grantor by delivery to the trustee and the beneficiary of a written
46 notice of removal, effective not less than ninety (90) days after
47 the trustee and the beneficiary receive the notice, provided
48 that no such resignation or removal shall be effective until a
49 successor trustee has been duly appointed and approved by the ben-

1 eficiary and the grantor and all assets in the trust have been duly
2 transferred to the new trustee.

3 (ii) The grantor may have the full and unqualified right to vote
4 any shares of stock in the trust account and to receive from time
5 to time payments of any dividends or interest upon any shares of
6 stock or obligations included in the trust account. Any interest
7 or dividends shall be either forwarded promptly upon receipt to
8 the grantor or deposited in a separate account established in the
9 grantor's name.

10 (iii) The trustee may be given authority to invest, and accept
11 substitutions of, any funds in the account, provided that no in-
12 vestment or substitution shall be made without prior approval of
13 the beneficiary, unless the trust agreement specifies categories
14 of investments acceptable to the beneficiary and authorizes the
15 trustee to invest funds and to accept substitutions that the
16 trustee determines are at least equal in current fair market value
17 to the assets withdrawn and that are consistent with the restric-
18 tions in paragraph (d) (i)2. of this subsection.

19 (iv) The trust agreement may provide that the beneficiary may at
20 any time designate a party to which all or part of the trust as-
21 sets are to be transferred. Transfer may be conditioned upon the
22 trustee receiving, prior to or simultaneously, other specified
23 assets.

24 (v) The trust agreement may provide that, upon termination of the
25 trust account, all assets not previously withdrawn by the benefi-
26 ciary shall, with written approval by the beneficiary, be deliv-
27 ered over to the grantor.

28 (d) Additional conditions applicable to reinsurance agreements.

29 (i) A reinsurance agreement may contain provisions that:

30 1. Require the assuming insurer to enter into a trust agree-
31 ment and to establish a trust account for the benefit of the
32 ceding insurer, specifying what the agreement is to cover;

33 2. Require the assuming insurer, prior to depositing assets
34 with the trustee, to execute assignments or endorsements
35 in blank, or to transfer legal title to the trustee of all
36 shares, obligations, or any other assets requiring assign-
37 ments, in order that the ceding insurer, or the trustee upon
38 the direction of the ceding insurer, may whenever necessary
39 negotiate these assets without consent or signature from the
40 assuming insurer or any other entity;

41 3. Require that all settlements of account between the ced-
42 ing insurer and the assuming insurer be made in cash or its
43 equivalent; and

44 4. Stipulate that the assuming insurer and the ceding
45 insurer agree that the assets in the trust account, es-
46 tablished pursuant to the provisions of the reinsurance
47 agreement, may be withdrawn by the ceding insurer at any
48 time, notwithstanding any other provisions in the reinsur-
49 ance agreement, and shall be utilized and applied by the
50 ceding insurer or its successors in interest by operation of

1 law, including without limitation any liquidator, rehabil-
 2 itator, receiver, or conservator of such company, without
 3 diminution because of insolvency on the part of the ceding
 4 insurer or the assuming insurer, only for the following pur-
 5 poses:

6 (A) To pay or reimburse the ceding insurer for:

7 a. The assuming insurer's share under the spe-
 8 cific reinsurance agreement of premiums re-
 9 turned, but not yet recovered from the assuming
 10 insurer, to the owners of policies reinsured
 11 under the reinsurance agreement because of can-
 12 cellations of such policies;

13 b. The assuming insurer's share of surrenders
 14 and benefits or losses paid by the ceding insurer
 15 pursuant to the provisions of the policies rein-
 16 sured under the reinsurance agreement; and

17 c. Any other amounts necessary to secure the
 18 credit or reduction from liability for reinsur-
 19 ance taken by the ceding insurer; and

20 (B) To make payment to the assuming insurer of amounts
 21 held in the trust account in excess of the amount nec-
 22 essary to secure the credit or reduction from liability
 23 for reinsurance taken by the ceding insurer.

24 (ii) The reinsurance agreement also may contain provisions that:

25 1. Give the assuming insurer the right to seek approval from
 26 the ceding insurer, which shall not be unreasonably or arbi-
 27 trarily withheld, to withdraw from the trust account all or
 28 any part of the trust assets and transfer those assets to the
 29 assuming insurer, provided:

30 (A) The assuming insurer shall, at the time of with-
 31 drawal, replace the withdrawn assets with other quali-
 32 fied assets having a current fair market value equal to
 33 the market value of the assets withdrawn so as to main-
 34 tain at all times the deposit in the required amount; or

35 (B) After withdrawal and transfer, the current fair
 36 market value of the trust account is no less than one
 37 hundred two percent (102%) of the required amount.

38 2. Provide for the return of any amount withdrawn in excess
 39 of the actual amounts required for subparagraph (i)4. of
 40 this paragraph and for interest payments at a rate not in ex-
 41 cess of the prime rate of interest on such amounts;

42 3. Permit the award by any arbitration panel or court of com-
 43 petent jurisdiction of:

44 (A) Interest at a rate different from that provided in
 45 2. of this subparagraph;

46 (B) Court or arbitration costs;

47 (C) Attorney's fees; and

48 (D) Any other reasonable expenses.

49 (e) Financial reporting. A trust agreement may be used to reduce any
 50 liability for reinsurance ceded to an unauthorized assuming insurer

1 in financial statements required to be filed with this department in
2 compliance with the provisions of this section when established on or
3 before the date of filing of the financial statement of the ceding in-
4 surer. Further, the reduction for the existence of an acceptable trust
5 account may be up to the current fair market value of acceptable assets
6 available to be withdrawn from the trust account at that time, but such
7 reduction shall be no greater than the specific obligations under the
8 reinsurance agreement that the trust account was established to secure.

9 (f) Existing agreements. Notwithstanding the effective date of this
10 section, any trust agreement or underlying reinsurance agreement in ex-
11 istence prior to July 1, 2021, will continue to be acceptable until July
12 1, 2022, at which time such agreement will have to fully comply with this
13 section for the trust agreement to be acceptable.

14 (g) The failure of any trust agreement to specifically identify the
15 beneficiary as defined in paragraph (a) of this subsection shall not be
16 construed to affect any actions or rights that the director may take or
17 possess pursuant to the provisions of the laws of this state.

18 (11) Letters of credit qualified under subsection (9) of this section.

19 (a) The letter of credit must be clean, irrevocable, unconditional, and
20 issued or confirmed by a qualified United States financial institution
21 as defined in section 41-515(4) (a), Idaho Code. The letter of credit
22 shall contain an issue date and expiration date and shall stipulate that
23 the beneficiary need only draw a sight draft under the letter of credit
24 and present it to obtain funds and that no other document need be pre-
25 sented. The letter of credit also shall indicate that it is not subject
26 to any conditions or qualifications outside of the letter of credit. In
27 addition, the letter of credit itself shall not contain reference to any
28 other agreements, documents, or entities, except as provided in para-
29 graph (h) (i) of this subsection. As used in this subsection, "benefi-
30 ciary" means the domestic insurer for whose benefit the letter of credit
31 has been established and any successor of the beneficiary by operation
32 of law. If a court of law appoints a successor in interest to the named
33 beneficiary, then the named beneficiary includes and is limited to the
34 court-appointed domiciliary receiver, including conservator, rehabil-
35 itator, or liquidator.

36 (b) The heading of the letter of credit may include a boxed section
37 containing the name of the applicant and other appropriate notations to
38 provide a reference for the letter of credit. The boxed section shall be
39 clearly marked to indicate that such information is for internal iden-
40 tification purposes only.

41 (c) The letter of credit shall contain a statement to the effect that
42 the obligation of the qualified United States financial institution un-
43 der the letter of credit is in no way contingent upon reimbursement with
44 respect thereto.

45 (d) The term of the letter of credit shall be for at least one (1) year
46 and shall contain an evergreen clause that prevents the expiration of
47 the letter of credit without due notice from the issuer. The evergreen
48 clause shall provide for a period of no less than thirty (30) days' no-
49 tice prior to its expiration date or nonrenewal.

1 (e) The letter of credit shall state whether it is subject to and gov-
2 erned by the laws of this state or the uniform customs and practice for
3 documentary credits of the international chamber of commerce publica-
4 tion 600 (UCP 600) or international standby practices of the interna-
5 tional chamber of commerce publication 590 (ISP98), or any successor
6 publication, and all drafts drawn thereunder shall be presentable at an
7 office in the United States of a qualified United States financial in-
8 stitution.

9 (f) If the letter of credit is made subject to the uniform customs and
10 practice for documentary credits of the international chamber of com-
11 merce publication 600 (UCP 600) or international standby practices of
12 the international chamber of commerce publication 590 (ISP98), or any
13 successor publication, then the letter of credit shall specifically ad-
14 dress and provide for an extension of time to draw against the letter of
15 credit in the event that one (1) or more of the occurrences specified in
16 article 36 of UCP 600 or any other successor publication occur.

17 (g) If the letter of credit is issued by a financial institution autho-
18 rized to issue letters of credit, other than a qualified United States
19 financial institution as described in paragraph (a) of this subsection,
20 then the following additional requirements shall be met:

21 (i) The issuing financial institution shall formally designate
22 the confirming qualified United States financial institution as
23 its agent for the receipt and payment of the drafts; and

24 (ii) The evergreen clause shall provide for thirty (30) days' no-
25 tice prior to its expiration date or nonrenewal.

26 (h) Reinsurance agreement provisions.

27 (i) The reinsurance agreement in conjunction with which the let-
28 ter of credit is obtained may contain provisions that:

29 1. Require the assuming insurer to provide letters of credit
30 to the ceding insurer and specify what they are to cover;

31 2. Stipulate that the assuming insurer and ceding insurer
32 agree that the letter of credit provided by the assuming
33 insurer pursuant to the provisions of the reinsurance agree-
34 ment may be drawn upon at any time, notwithstanding any other
35 provisions in the agreement, and shall be utilized by the
36 ceding insurer or its successors in interest only for one (1)
37 or more of the following reasons:

38 (A) To pay or reimburse the ceding insurer for:

39 a. The assuming insurer's share under the spe-
40 cific reinsurance agreement of premiums re-
41 turned, but not yet recovered from the assuming
42 insurers, to the owners of policies reinsured
43 under the reinsurance agreement on account of
44 cancellations of such policies;

45 b. The assuming insurer's share, under the spe-
46 cific reinsurance agreement, of surrenders and
47 benefits or losses paid by the ceding insurer,
48 but not yet recovered from the assuming insurers,
49 under the terms and provisions of the policies
50 reinsured under the reinsurance agreement; and

1 c. Any other amounts necessary to secure the
 2 credit or reduction from liability for reinsur-
 3 ance taken by the ceding insurer;

4 (B) Where the letter of credit will expire without re-
 5 newal or be reduced or replaced by a letter of credit
 6 for a reduced amount and where the assuming insurer's
 7 entire obligations under the reinsurance agreement re-
 8 main unliquidated and undischarged ten (10) days prior
 9 to the termination date, to withdraw amounts equal to
 10 the assuming insurer's share of the liabilities, to the
 11 extent that the liabilities have not yet been funded
 12 by the assuming insurer and exceed the amount of any
 13 reduced or replacement letter of credit, and deposit
 14 those amounts in a separate account in the name of the
 15 ceding insurer in a qualified United States financial
 16 institution apart from its general assets, in trust for
 17 such uses and purposes specified in 2. (A) of this sub-
 18 paragraph as may remain after withdrawal and for any
 19 period after the termination date.

20 (C) All of the provisions of this subparagraph shall
 21 be applied without diminution because of insolvency on
 22 the part of the ceding insurer or assuming insurer.

23 (ii) Nothing contained in subparagraph (i) of this paragraph
 24 shall preclude the ceding insurer and assuming insurer from pro-
 25 viding for:

- 26 1. An interest payment, at a rate not in excess of the prime
 27 rate of interest, on the amounts held pursuant to subpara-
 28 graph (i)2. of this paragraph; or
- 29 2. The return of any amounts drawn down on the letters of
 30 credit in excess of the actual amounts specified in this
 31 paragraph or any amounts that are subsequently determined
 32 not to be due.

33 (12) Other security. A ceding insurer may take credit for unencumbered
 34 funds withheld by the ceding insurer in the United States subject to with-
 35 drawal solely by the ceding insurer and under its exclusive control.

36 (13) Reinsurance contract. Credit shall not be granted, and an asset or
 37 reduction from liability shall not be allowed, to a ceding insurer for rein-
 38 surance effected with assuming insurers meeting the requirements of subsec-
 39 tion (2), (3), (4), (5), (6), (7), or (9) of this section or otherwise in com-
 40 pliance with section 41-515(2), Idaho Code, after the adoption of this sec-
 41 tion unless the reinsurance agreement:

42 (a) Includes a proper insolvency clause that stipulates reinsurance is
 43 payable directly to the liquidator or successor without diminution re-
 44 gardless of the status of the ceding company, pursuant to chapter 33 of
 45 this title;

46 (b) Includes a provision pursuant to section 41-515(2), Idaho Code,
 47 whereby the assuming insurer, if an unauthorized assuming insurer,
 48 has submitted to the jurisdiction of an alternative dispute resolution
 49 panel or court of competent jurisdiction within the United States,
 50 has agreed to comply with all requirements necessary to give the court

1 or panel jurisdiction, has designated an agent upon whom service of
2 process may be effected, and has agreed to abide by the final decision of
3 the court or panel; and

4 (c) Includes a proper reinsurance intermediary clause, if applicable,
5 that stipulates the credit risk for the intermediary is carried by the
6 assuming insurer.

7 (14) Contracts affected. All new and renewal reinsurance transactions
8 entered into after the adoption of this section shall conform to the require-
9 ments of this section if credit is to be given to the ceding insurer for such
10 reinsurance. Consistent with NAIC model regulation 786, various forms have
11 been adopted and need to be received by the department to be compliant with
12 this statute, including forms AR-1, CR-1, RJ-1, CR-F, and CR-S. These forms
13 can be obtained from the department's website.