

1. The public school in which the teacher is employed loses its designation as a low-performing school or the teacher is transferred to a school in the district that is not a low-performing school; or

2. The high-need field in which the Program participant is teaching pursuant to the Program service obligation subsequently loses its designation as a high-need field, and the Program participant continues to teach in the same field, in accordance with the Program participant's contractual agreement with the Authority.

(e) No amount of loan redemption shall be provided for service performed for less than a full school year.

9A:10-8.6 Termination or suspension of the Program participant's participation contract

(a) The Authority shall terminate the Program participant's participation contract if it determines:

1. On the basis of a sworn affidavit of a qualified physician, that the participant is totally and permanently disabled;

2. On the basis of a death certificate, or other evidence of death that is conclusive under State law, that the participant has died;

3. On the basis of substantiating documentation, as may be deemed necessary by the Authority upon specific case review, that continued enforcement of the employment service obligation may result in extreme hardship for the participant;

4. That the participant is no longer teaching in a high-need field at a low-performing school, except as permitted at N.J.A.C. 9A:10-8.5(d);

5. That the participant's certification has been revoked;

6. That the participant has been convicted of a felony and/or a high misdemeanor, as defined at N.J.S.A. 2C:1-4.d, has committed an act of gross negligence in the performance of his or her employment service obligation, or that the participant has not met the employer's performance standards; or

7. The participant has not submitted the certification required pursuant to N.J.A.C. 9A:10-8.5(c) to receive the loan redemption within 60 days of written request for the required documents by the Authority.

(b) The Authority may suspend the Program participant's participation contract if the Authority determines, on the basis of substantiating documentation, as may be deemed necessary by the Authority upon specific case review, that continued enforcement of the employment service obligation may result in extreme hardship for the participant. Extreme hardships include, but are not limited to, temporary disability, active duty military service, or temporary suspension of the participant's professional license pending the outcome of an investigation.

1. The Authority may suspend the Program participant's participation contract for a period of up to two calendar years from the date the suspension commences. At the end of the first year of suspension, the participant must provide the Authority with substantiating documentation, as defined in this subsection, to renew the suspension for a second year.

2. The suspension, as stipulated at (b)1 above, may be extended beyond two years for exceptional circumstances at the discretion of the Authority on the basis of substantiating documentation, as defined in this subsection.

(c) A participant may nullify the participation contract by notifying the Authority, in writing.

(d) The Authority shall have final decision-making authority to terminate a participant's participation contract.

(e) Participants who nullify their participation agreement, or whose participation agreements are terminated by the Authority, are not eligible to reapply to participate in the Program.

9A:10-8.7 Appeals process

(a) When an applicant has received a notification of ineligibility for Program participation, the applicant may submit a written appeal to the Authority within 30 days of the date of the notification. The written appeal must include the following:

1. A copy of the notification of ineligibility received by the applicant from the Authority; and

2. The reason(s) why the applicant feels the applicant is eligible to participate in the Program, along with any documentation that the applicant has obtained to support the appeal, if applicable.

(b) Within 30 days of the receipt of the appeal, the Authority shall provide the applicant with the Authority's final determination of the

appeal. Final decisions of the Authority can be appealed to the Appellate Division of the Superior Court.

## INSURANCE

### (a)

#### DEPARTMENT OF BANKING AND INSURANCE OFFICE OF SOLVENCY REGULATION

##### Credit for Reinsurance

##### Proposed Amendments: N.J.A.C. 11:2-28.7 through 28.7B, 28.8, 28.10, 28.12, and 11:2-28 Appendix

##### Proposed New Rule: N.J.A.C. 11:2-28.7E

Authorized By: Marlene Caride, Commissioner, Department of Banking and Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1-15.e, and 17:51B-1 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2022-071.

Submit comments by August 5, 2022, to:

Denise M. Illes, Chief  
Office of Regulatory Affairs  
New Jersey Department of Banking and Insurance  
20 West State Street  
PO Box 325  
Trenton, NJ 08625-0325  
Fax: (609) 292-0896  
Email: [legsregs@dob.nj.gov](mailto:legsregs@dob.nj.gov)

The agency proposal follows:

#### Summary

The Department of Banking and Insurance (Department) proposes amendments and a new rule to reflect amendments to the National Association of Insurance Commissioners (NAIC) Credit for Reinsurance Model Regulation. The proposed amendments and new rule are necessary to avoid Federal preemption and maintain New Jersey's NAIC accreditation status, as described more fully below.

Title V of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C. §§ 313 and 314, established the Federal Insurance Office (FIO), and authorizes the United States Secretary of the Treasury and the United States Trade Representative to negotiate and enter into covered agreements on behalf of the United States. A covered agreement is defined at 31 U.S.C. § 313(r)(2) as an agreement entered into between the United States and foreign government(s) on prudential measures with respect to the business of insurance or reinsurance that achieves a level of protection for consumers that is "substantially equivalent" to the level of protection under state law. 31 U.S.C. § 313(f) mandates the preemption of state law insurance measures to the extent that the Director of the FIO determines that the measure is inconsistent with a covered agreement and results in less favorable treatment of a non-U.S. insurer domiciled in a foreign jurisdiction that is subject to a covered agreement than a U.S. insurer domiciled, licensed, or otherwise admitted in that state.

On September 22, 2017 and December 19, 2018, the United States entered into covered agreements with the European Union (E.U.) and the United Kingdom (U.K.), respectively (Covered Agreements). Among other things, the Covered Agreements bilaterally eliminate local requirements for reinsurers based in the other jurisdiction to post collateral or establish a local presence, both as a prerequisite to reinsurance placement, as well as a condition to receive financial statement credit for the reinsurance. Article 9(4) of the Covered Agreements require the Director of the FIO to complete any necessary preemption determinations, regarding state law insurance measures, 60 months after the date of signature.

On June 25, 2019, the NAIC adopted amendments to the Credit for Reinsurance Model Law (Model Law) and Credit for Reinsurance Model

Regulation (Model Regulation) (collectively, “Models”) to conform to the Covered Agreements. Specifically, the amendments create a “reciprocal jurisdiction” category, which includes the E.U. and the U.K., and eliminates reinsurance collateral and local presence requirements for assuming insurers licensed, and headquartered or domiciled, therein, that maintain certain minimum capital and surplus requirements and comply with the other requirements set forth in the Models. State adoption of the amendments by September 1, 2022, is required for State insurance departments to maintain accreditation status under the NAIC Financial Regulation Standards and Accreditation Program. The amendments also provide reciprocal jurisdiction status for NAIC-accredited U.S. jurisdictions and other qualified jurisdictions that meet certain requirements set forth in the Models. P.L. 2021, c. 354, enacted on January 10, 2022, amended N.J.S.A. 17:51B-1 et seq., to incorporate relevant portions of the amendments to the Model Law, and to conform New Jersey law to the Covered Agreements.

The proposed amendments and new rule, which implement P.L. 2021, c. 354, reflect the Model Regulation in order to ensure consistency with the Model Law and Covered Agreements. The proposed amendments and new rule set forth the framework and requirements for a New Jersey-domiciled insurer to receive credit for reinsurance ceded to an assuming insurer licensed, and domiciled or headquartered in, a reciprocal jurisdiction, as defined by the proposed new rule. The specific regulatory requirements are described in greater detail below.

The proposed amendments and new rule effectuate the elimination of collateral and local presence requirements for assuming insurers licensed, and domiciled or headquartered in, a reciprocal jurisdiction, including the E.U. and the U.K., in order to avoid Federal preemption. Further, as stated above, the proposed amendments and new rule are required for New Jersey to maintain its NAIC accreditation. Implementation of these amendments and new rule will ensure that the Department’s rules of credit for reinsurance transactions in this State are consistent with the national standard as reflected by the NAIC, and does not conflict with the terms of the Covered Agreements.

A summary of the proposed amendments and new rule follows:

The Department proposes to amend N.J.A.C. 11:2-28.7(a) to include references to sections 28.7A and 28.7E, the sections listed in reference to the methods through which an insurer may be permitted to take credit for reinsurance ceded to an assuming insurer. This amendment reflects the changes made at P.L. 2021, c. 354, as well as the Model Regulation.

The Department proposes to amend N.J.A.C. 11:2-28.7A(a) to revise two cross-references. Specifically, the subsection includes two references to N.J.S.A. 17:51B-2f, which are changed to N.J.S.A. 17:51B-2.g, to reflect the new cross-reference, as recodified at P.L. 2021, c. 354.

The proposed amendments at N.J.A.C. 11:2-28.7B(c)8 remove the requirement for GAAP based accounting, or a reconciliation thereto, for financial statements considered in the rating evaluation for certified reinsurers not domiciled in the United States. The proposed amendments at N.J.A.C. 11:2-28.7B(c)8 further include a requirement that financial statements include an English translation; and a reduction in the years of financial statements considered by the Commissioner of the Department (Commissioner) in the initial certification application from three years to two years. These amendments track the Model Regulation.

The Department also proposes amending the filing requirements set forth at N.J.A.C. 11:2-28.7B(f)4 to include that annual audited financial statements must be the most recent available. The proposed amendments at N.J.A.C. 11:2-28.7B(f)4 also delete the requirement for GAAP based accounting, or a reconciliation thereto, and add a requirement for an English translation, to the annual financial filing requirements for certified reinsurers. The proposed amendments further include a reduction in the years of financial statements considered by the Commissioner in the initial certification application from three years to two years. These amendments track the Model Regulation.

Proposed new N.J.A.C. 11:2-28.7E provides an additional method for ceding insurers to take credit for cessions to otherwise unauthorized assuming insurers. This section eliminates the requirement for the posting of collateral by reinsurers domiciled or headquartered in “reciprocal jurisdictions,” which includes the United Kingdom, member nations of the European Union, NAIC-accredited jurisdictions, and any other jurisdiction that is a qualified jurisdiction pursuant to N.J.A.C. 11:2-

28.7C, and that the Commissioner determines meets certain additional requirements. In order for the ceding insurer to take full credit for the reinsurance without the assuming insurer posting 100 percent collateral, the assuming insurer must also meet certain requirements, such as being licensed to transact reinsurance by, and have its head office or be domiciled in, a reciprocal jurisdiction, and maintaining a minimum capital and surplus of at least \$250 million. This new rule tracks the Model Regulation and reflects the amendments at N.J.S.A. 17:51B-1 et seq., as discussed above.

The Department proposes to amend N.J.A.C. 11:2-28.8(a) to add cross-references to N.J.A.C. 11:2-28.7A through 28.7E. This amendment reflects the Model Regulation.

The Department proposes to amend N.J.A.C. 11:2-28.10(e) to delete paragraph (e)1, which contains an outdated address for ICC Publishing Inc. As the documents are widely available through electronic and other means, the proposed amendments do not include an updated address. This amendment reflects the Model Regulation.

The Department also proposes to amend N.J.A.C. 11:2-28.10(f) to update outdated references, as follows. The reference to Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce Publication 500 is proposed to be changed to Publication 600 (UCP 600). Further, a reference is proposed to be added to the International Standby Practices of the International Chamber of Commerce, Publication 590 (ISP 98). Finally, the outdated reference to Article 17 of Publication 500 is updated to read Article 36 of Publication 600, or any other successor publication. These proposed amendments track the Model Regulation.

The Department also proposes to amend N.J.A.C. 11:2-28.12 to include a cross-reference to proposed new N.J.A.C. 11:2-28.7E, which sets forth an additional means by which an insurer may be permitted to take credit for reinsurance ceded to an assuming insurer. This amendment reflects the changes made at P.L. 2021, c. 354, as well as the NAIC Credit for Reinsurance Model Regulation.

Finally, the Department proposes to amend the Appendix to the subchapter to set forth the form designated as RJ-1, the Certificate of Reinsurer Domiciled in Reciprocal Jurisdiction, which must be filed with the Commissioner by an assuming insurer for reinsurance cessions to be granted credit, pursuant to N.J.A.C. 11:2-28.8E(c)4 and (e)2. This form tracks the Model Regulation.

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

#### Social Impact

The proposed amendments and new rule reflect the national standard as adopted by the NAIC regarding credit for reinsurance transactions and implements the amendments at N.J.S.A. 17:51B-1 et seq., as set forth in the Summary above. Further, this notice of proposal conforms New Jersey law to the Covered Agreements, which sets forth international standards regarding reinsurance transactions among U.S., E.U., and U.K. insurers. The proposed amendments and new rule thus will help ensure uniformity and cohesiveness in the application of standards governing credit for reinsurance transactions with other states and the international community.

#### Economic Impact

Assuming insurers domiciled in the European Union, the United Kingdom, or other reciprocal jurisdictions will be required to bear the costs associated with annual filing requirements prescribed by the proposed amendments and new rule. However, these costs will be minimal in that such entities should be in a position to provide the required information as part of their routine business activities. These services include financial and legal services. Further, these requirements reflect those adopted by the NAIC, which will be required to be adopted by states to implement the Covered Agreements and for a state insurance department to maintain accreditation by the NAIC. Further, the proposed amendments and new rule eliminates collateral and local presence requirements, which will result in a cost reduction overall. Moreover, New Jersey-domiciled ceding insurers will not incur additional costs as a result of the proposed amendments and new rule. The Department, therefore,

believes that the proposed amendments and new rule will not impose undue economic cost to insurers.

The Department may incur costs to implement the proposed amendments and new rule because staff will be required to review filings by assuming insurers to ensure adherence to the financial and other standards set forth in the proposed new rule. However, the Department anticipates such additional costs to be minimal and inconsequential to its ordinary budget.

As noted above, the proposed amendments and new rule reflect the national standard adopted by the NAIC and it will be required for the Department to maintain its NAIC accreditation beginning September 1, 2022. The purpose of the NAIC accreditation program is to ensure effective insurer financial solvency regulation across the United States. Further, the proposed amendments and new rule conform New Jersey's rules to the Covered Agreements, to avoid Federal preemption, as discussed above. Accordingly, the benefits to be achieved by the proposed amendments and new rule as set forth above outweigh any costs that may be imposed.

#### Federal Standards Statement

The proposed amendments and new rule conform New Jersey rules to the Covered Agreements, which were executed by the U.S. government pursuant to 31 U.S.C. § 314. Further, the amendments and new rule proposed ensure that non-U.S. insurers domiciled in a foreign jurisdiction subject to the Covered Agreements are not subject to treatment less favorable than that of insurers that are domiciled, licensed, or admitted to do business in New Jersey, as contemplated by 31 U.S.C. § 313. Therefore, the proposed amendments and new rule do not exceed any minimum standards of the Federal government.

#### Jobs Impact

The Department does not anticipate that any jobs will be generated or lost due to the proposed amendments and new rule. The Department invites commenters to submit any data or studies concerning the jobs impact of the proposed amendments and new rule together with their comments on other aspects of the rulemaking.

#### Agricultural Industry Impact

The proposed amendments and new rule will not have any impact on the agricultural industry in New Jersey.

#### Regulatory Flexibility Analysis

The proposed amendments and new rule may apply to some "small businesses," as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. As explained above, the proposed amendments and new rule allows New Jersey insurers to take credit for reinsurance recoverable ceded to assuming insurers headquartered or domiciled in the E.U., U.K., or other reciprocal jurisdictions. Such assuming insurers are not "small businesses" as defined at N.J.S.A. 52:14B-17 because they are not residents of New Jersey, are not independently owned and operated, and do not employ 100 or less full-time employees. Certain domestic ceding insurers may be considered "small businesses" under the statutory definition; however, ceding insurers will not incur additional compliance costs as a result of the proposed amendments or new rule, and any reporting, recordkeeping, or compliance requirements are addressed in the Summary above. Further, the standards set forth in the amendments at N.J.S.A. 17:51B-1 et seq., and the requirements in the Covered Agreements, do not vary based on insurer size. Therefore, the Department believes that these proposed amendments and new rule should be applied uniformly, and accordingly proposes no difference in the compliance requirements is provided based on business size.

#### Housing Affordability Impact Analysis

The proposed amendments and new rule will not have an impact on housing affordability and are unlikely to evoke a change in the average costs associated with housing in this State in that the proposed amendments and new rule relate to credit for reinsurance transactions.

#### Smart Growth Development Impact Analysis

The proposed amendments and new rule will not have an impact on smart growth in this State and there is an extreme unlikelihood that the proposed amendments and new rule would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under

the State Development and Redevelopment Plan in New Jersey in that the proposed amendments and new rule relate to credit for reinsurance transactions.

#### Racial and Ethnic Community Criminal Justice and Public Safety Impact

The proposed amendments and new rule will have no impact on pretrial detention, sentencing, probation, or parole policies concerning juveniles and adults in the State because the proposed amendments and new rule concern credit for reinsurance transactions. Accordingly, no further analysis is required.

**Full text** of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

### SUBCHAPTER 28. CREDIT FOR REINSURANCE

#### 11:2-28.7 Credit for reinsurance required by law

(a) An insurer may be permitted to take a credit for reinsurance ceded to an assuming insurer which does not meet any of the requirements set forth at [section] **N.J.A.C. 11:2-28.3, 28.4, 28.5, [or] 28.6, 28.7A, or 28.7E**, but only with respect to the insurance of risks located in jurisdictions where such reinsurance is required or provided by the applicable law or regulation of that jurisdiction. As used in this section, "jurisdiction" means any state, district, or territory of the United States and any lawful national government.

(b) (No change.)

#### 11:2-28.7A Credit for reinsurance from certified reinsurers

(a) Pursuant to N.J.S.A. 17:51B-[2f]**2.g**, the Commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements set forth [in] **at** N.J.A.C. 11:2-28.3, 28.4, 28.5, or 28.6 that has been certified as a reinsurer in this State at all times for which statutory financial statement credit for reinsurance is claimed [under] **pursuant to** this section. The credit allowed shall be based upon the security held by or on behalf of the ceding insurer, in accordance with a rating assigned to the certified reinsurer pursuant to this section. The security shall be in a form consistent with the provisions [of] **at** N.J.S.A. 17:51B-[2f]**2.g** and this subchapter. The amount of security required in order for full credit to be allowed shall correspond with the requirements as set forth [in] **at** Exhibit A in the Appendix to this subchapter, incorporated herein by reference.

(b)-(k) (No change.)

#### 11:2-28.7B Certification procedure

(a)-(b) (No change.)

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

1.-7. (No change.)

8. For certified reinsurers not domiciled in the United States, audited financial statements [(audited United States GAAP basis if available, audited International Financial Reporting Standards (IFRS) basis statements are allowed but shall include an audited footnote reconciling equity and net income to a United States GAAP basis, or, with the approval of the Commissioner, audited IFRS statements with reconciliation to United States GAAP certified by an officer of the company)], 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 Commissioner will consider audited financial statements for the last [three] **two** years filed with its non-United States jurisdiction supervisor;

9.-11. (No change.)

(d)-(e) (No change.)

(f) The certified reinsurer shall meet applicable information filing requirements as determined by the Commissioner, both with respect to an initial application for certification and on an ongoing basis. All information submitted by certified reinsurers, which is not otherwise

public information subject to disclosure shall not be considered a government record subject to public inspection and copying [under] pursuant to the Open Public Records Act, N.J.S.A. 47:1A-1 et seq. The applicable information filing requirements are, as follows:

1.-3. (No change.)

4. Annually, **the most recent** audited financial statements [(audited United States GAAP basis if available, audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a United States GAAP basis, or, with the approval of the Commissioner, audited IFRS statements with reconciliation to United States GAAP certified by an officer of the company)], regulatory filings, and actuarial opinion (as filed with the certified reinsurer's supervisor, **with a translation into English**). Upon application for initial certification, audited financial statements for the last [three] **two** years filed with the certified reinsurer's supervisor;

5.-7. (No change.)

(g)-(j) (No change.)

#### 11:2-28.7E Reciprocal jurisdictions

(a) Pursuant to N.J.S.A. 17:51B-2.e, the Commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that is licensed to write reinsurance by, and has its head office or is domiciled in, a reciprocal jurisdiction, and which meets the other requirements of this section.

(b) A "reciprocal jurisdiction" is a jurisdiction, as designated by the Commissioner pursuant to (d) below, that meets one of the following:

1. A non-U.S. jurisdiction that is subject to an in-force covered agreement with the United States, each within its legal authority, or, in the case of a covered agreement between the United States and the European Union, is a member state of the European Union. For purposes of this subsection, a "covered agreement" is an agreement entered into pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C. §§ 313 and 314, that is currently in effect or in a period of provisional application and addresses the elimination, under specified conditions, of collateral requirements as a condition for entering into any reinsurance agreement with a ceding insurer domiciled in this State or for allowing the ceding insurer to recognize credit for reinsurance;

2. A U.S. jurisdiction that meets the requirements for accreditation pursuant to the NAIC financial standards and accreditation program; or

3. A qualified jurisdiction, as determined by the Commissioner pursuant to N.J.A.C. 11:2-28.7C, which is not otherwise described at (b)1 or 2 above and which the Commissioner determines meets all of the following additional requirements:

i. Provides that an insurer that has its head office or is domiciled in such qualified jurisdiction shall receive credit for reinsurance ceded to a U.S.-domiciled assuming insurer in the same manner as credit for reinsurance is received for reinsurance assumed by insurers domiciled in such qualified jurisdiction;

ii. Does not require a U.S.-domiciled assuming insurer to establish or maintain a local presence as a condition for entering into a reinsurance agreement with any ceding insurer subject to rules by the non-U.S. jurisdiction or as a condition to allow the ceding insurer to recognize credit for such reinsurance;

iii. Recognizes the U.S. State regulatory approach to group supervision and group capital, by providing written confirmation by a competent regulatory authority, in such qualified jurisdiction, that insurers and insurance groups that are domiciled or maintain their headquarters in this State or another jurisdiction accredited by the NAIC shall be subject only to worldwide prudential insurance group supervision, including worldwide group governance, solvency and capital, and reporting, as applicable, by the Commissioner or the commissioner of the domiciliary state and will not be subject to group supervision at the level of the worldwide parent undertaking of the insurance or reinsurance group by the qualified jurisdiction; and

iv. Provides written confirmation by a competent regulatory authority in such qualified jurisdiction that information regarding insurers and their parent, subsidiary, or affiliated entities, if

applicable, shall be provided to the Commissioner, in accordance with a memorandum of understanding or similar document between the Commissioner and such qualified jurisdiction, including, but not limited to, the International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the NAIC.

(c) Credit shall be allowed when the reinsurance is ceded from an insurer domiciled in this State to an assuming insurer meeting each of the conditions set forth below.

1. The assuming insurer must be licensed to transact reinsurance by, and have its head office or be domiciled in, a reciprocal jurisdiction.

2. The assuming insurer must have and maintain on an ongoing basis, minimum capital and surplus, or its equivalent, calculated on at least an annual basis as of the preceding December 31 or at the annual date otherwise statutorily reported to the reciprocal jurisdiction, and confirmed as set forth at (c)7 below, according to the methodology of its domiciliary jurisdiction, in the following amounts:

i. No less than \$250,000,000; or

ii. If the assuming insurer is an association, including incorporated and individual unincorporated underwriters:

(1) Minimum capital and surplus equivalents (net of liabilities) or own funds of the equivalent of at least \$250,000,000; and

(2) A central fund containing a balance of the equivalent of at least \$250,000,000.

3. The assuming insurer must have and maintain on an ongoing basis, a minimum solvency or capital ratio, as applicable, as follows:

i. If the assuming insurer has its head office or is domiciled in a reciprocal jurisdiction as set forth at (b)1 above, the ratio specified in the applicable covered agreement;

ii. If the assuming insurer is domiciled in a reciprocal jurisdiction as set forth at (b)2 above, a risk-based capital (RBC) ratio of 300 percent of the authorized control level, calculated in accordance with the formula developed by the NAIC; or

iii. If the assuming insurer is domiciled in a reciprocal jurisdiction as set forth at (b)3 above, after consultation with the reciprocal jurisdiction and considering any recommendations published through the NAIC Committee Process, such solvency or capital ratio as the Commissioner determines to be an effective measure of solvency.

4. The assuming insurer must agree to and provide adequate assurance, in the form of a properly executed Form RJ-1, set forth in the chapter Appendix, Exhibit F, of its agreement to the following:

i. The assuming insurer must agree to provide prompt written notice and explanation to the Commissioner if it falls below the minimum requirements set forth at (c)2 or 3 above, or if any regulatory action is taken against it for serious noncompliance with applicable law.

ii. The assuming insurer must consent, in writing, to the jurisdiction of the courts of this State and to the appointment of the Commissioner as agent for service of process.

(1) The Commissioner may also require that such consent be provided and included in each reinsurance agreement under the Commissioner's jurisdiction.

(2) Nothing in this provision shall limit or in any way alter the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms, except to the extent such agreements are unenforceable under applicable insolvency or delinquency laws.

iii. The assuming insurer must consent, in writing, to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer, that have been declared enforceable in the territory where the judgment was obtained.

iv. Each reinsurance agreement must include a provision requiring the assuming insurer to provide security in an amount equal to 100 percent of the assuming insurer's liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming insurer resists enforcement of a final judgment that is enforceable under the law of the jurisdiction in which it was obtained or a properly enforceable arbitration award, whether obtained by the ceding insurer or by its legal successor on behalf of its estate, if applicable.

v. The assuming insurer must confirm that it is not presently participating in any solvent scheme of arrangement, which involves this State's ceding insurers, and agrees to notify the ceding insurer and the Commissioner and to provide 100 percent security to the ceding insurer consistent with the terms of the scheme, should the assuming insurer enter into such a solvent scheme of arrangement. Such security shall be in a form consistent with the provisions at N.J.S.A. 17:51B-2.g and 17:51B-3 and N.J.A.C. 11:2-28.9, 28.10, or 28.11. For purposes of this section, the term "solvent scheme of arrangement" means a foreign or alien statutory or regulatory compromise procedure subject to requisite majority creditor approval and judicial sanction in the assuming insurer's home jurisdiction either to finally commute liabilities of duly noticed classed members or creditors of a solvent debtor, or to reorganize or restructure the debts and obligations of a solvent debtor on a final basis, and which may be subject to judicial recognition and enforcement of the arrangement by a governing authority outside the ceding insurer's home jurisdiction.

vi. The assuming insurer must agree, in writing, to meet the applicable information filing requirements as set forth at (c)5 below.

5. The assuming insurer or its legal successor must provide, if requested by the Commissioner, on behalf of itself and any legal predecessors, the following documentation to the Commissioner:

i. For the two years preceding entry into the reinsurance agreement, and on an annual basis thereafter, the assuming insurer's annual audited financial statements, in accordance with the applicable law of the jurisdiction of its head office or domiciliary jurisdiction, as applicable, including the external audit report;

ii. For the two years preceding entry into the reinsurance agreement, the solvency and financial condition report or actuarial opinion, if filed with the assuming insurer's supervisor;

iii. Prior to entry into the reinsurance agreement, and not more than semi-annually thereafter, an updated list of all disputed and overdue reinsurance claims outstanding for 90 days or more, regarding reinsurance assumed from ceding insurers domiciled in the United States; and

iv. Prior to entry into the reinsurance agreement, and not more than semi-annually thereafter, information regarding the assuming insurer's assumed reinsurance by the ceding insurer, ceded reinsurance by the assuming insurer, and reinsurance recoverable on paid and unpaid losses by the assuming insurer to allow for the evaluation of the criteria set forth at (c)6 below.

6. The assuming insurer must maintain a practice of prompt payment of claims under reinsurance agreements. The lack of prompt payment will be evidenced if any of the following criteria is met:

i. More than 15 percent of the reinsurance recoverables from the assuming insurer are overdue and in dispute, as reported to the Commissioner;

ii. More than 15 percent of the assuming insurer's ceding insurers or reinsurers have overdue reinsurance recoverables on paid losses of 90 days or more, which are not in dispute, and which exceed for each ceding insurer \$100,000, or as otherwise specified in a covered agreement; or

iii. The aggregate amount of reinsurance recoverable on paid losses that are not in dispute, but are overdue by 90 days or more, exceeds \$50,000,000, or as otherwise specified in a covered agreement.

7. The assuming insurer's supervisory authority must confirm, to the Commissioner, on an annual basis, that the assuming insurer complies with the requirements set forth at (c)2 and 3 above.

8. Nothing in this subsection precludes an assuming insurer from providing the Commissioner with information on a voluntary basis.

(d) The Commissioner shall timely create and publish a list of reciprocal jurisdictions.

1. A list of reciprocal jurisdictions is published through the NAIC Committee Process. The Commissioner's list shall include any reciprocal jurisdiction as defined pursuant to (b)1 and 2 above and shall consider any other reciprocal jurisdiction included on the NAIC list. The Commissioner may approve a jurisdiction that does not appear on the NAIC list of reciprocal jurisdictions as provided by

applicable law, rule, or in accordance with criteria published through the NAIC Committee Process.

2. The Commissioner may remove a jurisdiction from the list of reciprocal jurisdictions upon a determination that the jurisdiction no longer meets one or more of the requirements of a reciprocal jurisdiction, as provided by applicable law, rule, or in accordance with a process published through the NAIC Committee Process, except that the Commissioner shall not remove from the list a reciprocal jurisdiction as defined pursuant to (b)1 and 2 above. Upon removal of a reciprocal jurisdiction from this list credit for reinsurance ceded to an assuming insurer domiciled in that jurisdiction shall be allowed, if otherwise allowed pursuant to N.J.S.A. 17:51B-1 et seq., or N.J.A.C. 11:2-28.1.

(e) The Commissioner shall timely create and publish a list of assuming insurers that have satisfied the conditions set forth in this section and to which cessions shall be granted credit, in accordance with this section.

1. If an NAIC-accredited jurisdiction has determined that the conditions set forth at (c) above have been met, the Commissioner has the discretion to defer to that jurisdiction's determination and add such assuming insurer to the list of assuming insurers to which cessions shall be granted credit, in accordance with this subsection. The Commissioner may accept financial documentation filed with another NAIC-accredited jurisdiction or with the NAIC in satisfaction of the requirements set forth at (c) above.

2. When requesting that the Commissioner defer to another NAIC accredited jurisdiction's determination, an assuming insurer must submit a properly executed Form RJ-1, set forth in the chapter Appendix, Exhibit F, and additional information as the Commissioner may require. A state that has received such a request will notify other states through the NAIC Committee Process and provide relevant information with respect to the determination of eligibility.

(f) If the Commissioner determines that an assuming insurer no longer meets one or more of the requirements under this section, the Commissioner may revoke or suspend the eligibility of the assuming insurer for recognition under this section.

1. While an assuming insurer's eligibility is suspended, no reinsurance agreement issued, amended, or renewed after the effective date of the suspension qualifies for credit except to the extent that the assuming insurer's obligations under the contract are secured, in accordance with N.J.A.C. 11:2-28.8.

2. If an assuming insurer's eligibility is revoked, no credit for reinsurance may be granted after the effective date of the revocation with respect to any reinsurance agreements entered into by the assuming insurer, including reinsurance agreements entered into prior to the date of revocation, except to the extent that the assuming insurer's obligations under the contract are secured in a form acceptable to the Commissioner and consistent with the provisions at N.J.A.C. 11:2-28.8.

(g) Before denying statement credit or imposing a requirement to post security with respect to (f) above or adopting any similar requirement that will have substantially the same regulatory impact as security, the Commissioner shall:

1. Communicate with the ceding insurer, the assuming insurer, and the assuming insurer's supervisory authority that the assuming insurer no longer satisfies one of the conditions listed at (c) above;

2. Provide the assuming insurer with 30 days from the initial communication to submit a plan to remedy the defect, and 90 days from the initial communication to remedy the defect, except in exceptional circumstances in which a shorter period is necessary for policyholder and other consumer protection;

3. After the expiration of 90 days or less, as set forth at (g)2 above, if the Commissioner determines that no or insufficient action was taken by the assuming insurer, the Commissioner may impose any of the requirements as set forth in this subsection; and

4. Provide a written explanation to the assuming insurer of any of the requirements set forth in this subsection.

(h) If subject to a legal process of rehabilitation, liquidation, or conservation, as applicable, the ceding insurer, or its representative,

may seek and, if determined appropriate by the court in which the proceedings are pending, may obtain an order requiring that the assuming insurer post security for all outstanding liabilities.

11:2-28.8 Reduction from liability for reinsurance ceded to an unauthorized assuming insurer

(a) An insurer shall be permitted to take a reduction from liability for reinsurance ceded to an assuming insurer not meeting the requirements [of] at N.J.A.C. 11:2-28.3, 28.4, 28.5, 28.6, [or] 28.7, or 28.7A through 28.7E in an amount which does not exceed the liabilities carried by the ceding insurer. Such reduction shall be in the amount of the funds held by or on behalf of the ceding insurer, including funds held in trust for the exclusive benefit of the ceding insurer, under a reinsurance contract with such assuming insurer as security for the payment of obligations thereunder. Such security shall be held in the United States, subject to withdrawal solely by and under the exclusive control of the ceding insurer, or in the case of a trust held in a qualified United States financial institution, subject to withdrawal solely by and under the exclusive control of the ceding insurer.

(b) (No change.)

11:2-28.10 Letters of credit qualified pursuant to N.J.A.C. 11:2-28.8 and 28.9

(a)-(d) (No change.)

(e) The letter of credit shall state whether it is subject to and governed by the laws of this State or the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce, Publication 600 (UCP 600), or the International Standby Practices of the International Chamber of Commerce, Publication 590 (ISP 98), or any subsequent revisions, and all drafts drawn thereunder shall be presentable at an office in the United States of a qualified United States financial institution.

[1. Publications 590 and 600 can be obtained by contacting ICC Publishing, Inc. at (212) 206-1150 or by writing to it at 156 Fifth Avenue, STE 820, New York, New York 10010 and remitting the appropriate fees.]

(f) If the letter of credit is made subject to the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce, Publication [500] 600 (UCP 600), or the International Standby Practices of the International Chamber of Commerce, Publication 590 (ISP 98), or any successor publication, then the letter of credit shall specifically address and make provision for an extension of time to draw against the letter of credit in the event that one or more of the occurrences specified [in] at Article [17] 36 of Publication [500] 600 or any other successor publication, occur.

(g)-(j) (No change.)

11:2-28.12 Reinsurance contract

(a) Credit will not be granted to a ceding insurer for reinsurance effected with assuming insurers meeting the requirements [of] at N.J.A.C. 11:2-28.3, 28.4, 28.5, 28.6, 28.7, 28.7A through [28.7D] 28.7E, or 28.8, unless the reinsurance agreement meets the following standards:

1.-3. (No change.)

## APPENDIX

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## EXHIBIT F

## FORM RJ-1

### CERTIFICATE OF REINSURER DOMICILED IN RECIPROCAL JURISDICTION

I, \_\_\_\_\_, \_\_\_\_\_  
(name of officer) (title of officer)  
of \_\_\_\_\_, the assuming insurer  
(name of assuming insurer)  
under a reinsurance agreement with one or more insurers  
domiciled in \_\_\_\_\_, in order to  
(name of state)  
be considered for approval in this state, hereby certify that  
\_\_\_\_\_. ("Assuming Insurer"):  
(name of assuming insurer)

1. Submits to the jurisdiction of any court of competent jurisdiction in New Jersey for the adjudication of any issues arising out of the reinsurance agreement, agrees to comply with all requirements necessary to give such court jurisdiction, and will abide by the final decision of such court or any appellate court in the event of an appeal. The assuming insurer agrees that it will include such consent in each reinsurance agreement, if requested by the commissioner. Nothing in this paragraph constitutes or should be understood to constitute a waiver of assuming insurer's rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. This paragraph is not intended to conflict with or override the obligation of the parties to the reinsurance agreement to arbitrate their disputes if such an obligation is created in the agreement, except to the extent such agreements are unenforceable under applicable insolvency or delinquency laws.

2. Designates the Insurance Commissioner of New Jersey as its lawful attorney in and for the State of New Jersey upon whom may be served any lawful process in any action, suit or proceeding in this state arising out of the reinsurance agreement instituted by or on behalf of the ceding insurer.

3. Agrees to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer, that have been declared enforceable in the territory where the judgment was obtained.

4. Agrees to provide prompt written notice and explanation if it falls below the minimum capital and surplus or capital or surplus ratio, or if any regulatory action is taken against it for serious noncompliance with applicable law.

5. Confirms that it is not presently participating in any solvent scheme of arrangement, which involves insurers domiciled in New Jersey. If the assuming insurer enters into such an arrangement, the assuming insurer agrees to notify the ceding insurer and the commissioner, and to provide 100% security to the ceding insurer consistent with the terms of the scheme.

6. Agrees that in each reinsurance agreement it will provide security in an amount equal to 100% of the assuming insurer's liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming insurer resists enforcement of a final U.S. judgment, that is enforceable under the law of the territory in which it was obtained, or a properly enforceable arbitration award whether obtained by the ceding insurer or by its resolution estate, if applicable.

7. Agrees to provide the documentation in accordance with N.J.A.C. 11:2-28.7E(c)5, if requested by the commissioner.

Dated: \_\_\_\_\_

(name of assuming insurer)

BY: \_\_\_\_\_

(name of officer)

(title of officer)

## LABOR AND WORKFORCE DEVELOPMENT

(a)

### DIVISION OF WAGE AND HOUR COMPLIANCE

#### Assurances for Payment of Prevailing Wage;

Certification by Bidder with Lowest Bid by 10  
Percent or More; Required Contract Provisions  
Concerning Prevailing Wage Payment

#### Proposed New Rules: N.J.A.C. 12:60-9.1 and 9.2 and 12:60-9 Appendix

Authorized By: Robert Asaro-Angelo, Commissioner, Department  
of Labor and Workforce Development.