

# Chapter 284-13 WAC

## ASSETS—LIABILITIES—INVESTMENTS AND REINSURANCE

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[Statutory Authority: RCW 48.02.060. 87-09-056 (Order R 87-4), § 284-13-110, filed 4/20/87.] Repealed by 95-19-018 (Order 95-4), filed 9/8/95, effective 10/9/95. Statutory Authority: RCW 48.02.-060, 48.05.250 and 48.05.400.</p> <p>284-13-120 Scope. [Statutory Authority: RCW 48.02.060. 87-09-056 (Order R 87-4), § 284-13-120, filed 4/20/87.] Repealed by 95-19-018 (Order 95-4), filed 9/8/95, effective 10/9/95. Statutory Authority: RCW 48.02.-060, 48.05.250 and 48.05.400.</p> <p>284-13-130 Accounting requirements. [Statutory Authority: RCW 48.02.060. 87-09-056 (Order R 87-4), § 284-13-130, filed 4/20/87.] Repealed by 95-19-018 (Order 95-4), filed 9/8/95, effective 10/9/95. Statutory Authority: RCW 48.02.060, 48.05.250 and 48.05.400.</p> <p>284-13-140 Written agreements. [Statutory Authority: RCW 48.02.060. 87-09-056 (Order R 87-4), § 284-13-140, filed 4/20/87.] Repealed by 95-19-018 (Order 95-4), filed 9/8/95, effective 10/9/95. Statutory Authority: RCW 48.02.060, 48.05.250 and 48.05.400.</p>	<p>284-13-150 Existing agreements. [Statutory Authority: RCW 48.02.060. 87-09-056 (Order R 87-4), § 284-13-150, filed 4/20/87.] Repealed by 95-19-018 (Order 95-4), filed 9/8/95, effective 10/9/95. Statutory Authority: RCW 48.02.060, 48.05.250 and 48.05.400.</p> <p>284-13-310 Definitions. [Statutory Authority: RCW 48.02.060 and 48.05.340(4). 93-19-012 (Order R 93-16), § 284-13-310, filed 9/1/93, effective 10/2/93.] Repealed by 95-20-022 (Order R 95-8), filed 9/26/95, effective 10/27/95. Statutory Authority: RCW 48.02.060.</p> <p>284-13-320 RBC reports. [Statutory Authority: RCW 48.02.060 and 48.05.340(4). 93-19-012 (Order R 93-16), § 284-13-320, filed 9/1/93, effective 10/2/93.] Repealed by 95-20-022 (Order R 95-8), filed 9/26/95, effective 10/27/95. Statutory Authority: RCW 48.02.060.</p> <p>284-13-330 Company action level event. [Statutory Authority: RCW 48.02.060 and 48.05.340(4). 93-19-012 (Order R 93-16), § 284-13-330, filed 9/1/93, effective 10/2/93.] Repealed by 95-20-022 (Order R 95-8), filed 9/26/95, effective 10/27/95. Statutory Authority: RCW 48.02.-060.</p> <p>284-13-340 Regulatory action level event. [Statutory Authority: RCW 48.02.060 and 48.05.340(4). 93-19-012 (Order R 93-16), § 284-13-340, filed 9/1/93, effective 10/2/93.] Repealed by 95-20-022 (Order R 95-8), filed 9/26/95, effective 10/27/95. Statutory Authority: RCW 48.02.-060.</p> <p>284-13-350 Authorized control level event. [Statutory Authority: RCW 48.02.060 and 48.05.340(4). 93-19-012 (Order R 93-16), § 284-13-350, filed 9/1/93, effective 10/2/93.] Repealed by 95-20-022 (Order R 95-8), filed 9/26/95, effective 10/27/95. Statutory Authority: RCW 48.02.-060.</p> <p>284-13-360 Mandatory control level event. [Statutory Authority: RCW 48.02.060 and 48.05.340(4). 93-19-012 (Order R 93-16), § 284-13-360, filed 9/1/93, effective 10/2/93.] Repealed by 95-20-022 (Order R 95-8), filed 9/26/95, effective 10/27/95. Statutory Authority: RCW 48.02.-060.</p> <p>284-13-370 Hearings. [Statutory Authority: RCW 48.02.060 and 48.05.340(4). 93-19-012 (Order R 93-16), § 284-13-370, filed 9/1/93, effective 10/2/93.] Repealed by 95-20-022 (Order R 95-8), filed 9/26/95, effective 10/27/95. Statutory Authority: RCW 48.02.060.</p> <p>284-13-380 Confidentiality and prohibition on announcements. [Statutory Authority: RCW 48.02.060 and 48.05.340(4). 93-19-012 (Order R 93-16), § 284-13-380, filed 9/1/93, effective 10/2/93.] Repealed by 95-20-022 (Order R 95-8), filed 9/26/95, effective 10/27/95. Statutory Authority: RCW 48.02.060.</p> <p>284-13-390 Supplemental provisions. [Statutory Authority: RCW 48.02.060 and 48.05.340(4). 93-19-012 (Order R 93-16), § 284-13-390, filed 9/1/93, effective 10/2/93.] Repealed by 95-20-022 (Order R 95-8), filed 9/26/95, effective 10/27/95. Statutory Authority: RCW 48.02.-060.</p> <p>284-13-400 Foreign and alien insurers. [Statutory Authority: RCW 48.02.060 and 48.05.340(4). 93-19-012 (Order R 93-16), § 284-13-400, filed 9/1/93, effective 10/2/93.] Repealed by 95-20-022 (Order R 95-8), filed 9/26/95, effective 10/27/95. Statutory Authority: RCW 48.02.-060.</p> <p>284-13-410 Notices. [Statutory Authority: RCW 48.02.060 and 48.05.340(4). 93-19-012 (Order R 93-16), § 284-13-410, filed 9/1/93, effective 10/2/93.] Repealed by 95-20-022 (Order R 95-8), filed 9/26/95, effective 10/27/95. Statutory Authority: RCW 48.02.060.</p> <p>284-13-420 Phase-in provision. [Statutory Authority: RCW 48.02.-060 and 48.05.340(4). 93-19-012 (Order R 93-16), § 284-13-420, filed 9/1/93, effective 10/2/93.] Repealed by 95-20-022 (Order R 95-8), filed 9/26/95, effective 10/27/95. Statutory Authority: RCW 48.02.060.</p>
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**EARNED SURPLUS****WAC 284-13-160 Definition of "earned surplus."** (1)

As used in RCW 48.08.030(1), "earned surplus" means that part of surplus that represents net earnings, gains, or profits, after deduction of all losses, that have not been distributed to share holders as dividends or transferred to stated capital or capital surplus or lawfully applied to other purposes. It does not include unrealized appreciation of assets, unrealized capital gains, or reevaluation of assets.

(2) Earned surplus can be determined from the annual statement. On the 1992 convention blank, (a) for stock life companies, earned surplus is Unassigned Funds (page 3, line 34) less any unrealized gains included in that figure; and (b) for property and casualty stock companies, earned surplus is Unassigned Funds (page 3, line 25B), less any unrealized gains included in that figure. On convention blanks for other years, the determination is adjusted to allow for changes in the form.

[Statutory Authority: RCW 48.02.060, 48.05.250 and 48.05.400. 93-19-004 (Order R 93-8), § 284-13-160, filed 9/1/93, effective 10/2/93.]

**ASSETS**

**WAC 284-13-210 Valuation of bonds.** All bonds or other evidences of debt having a fixed term and rate of interest held by an insurer may, if amply secured and not in default as to principal or interest, be valued as follows:

(1) If purchased at par, at the par value.

(2) If purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield in the meantime the effective rate of interest at which the purchase was made, or in lieu of such method, according to such accepted method of valuation as is approved by the commissioner.

(3) Purchase price shall in no case be taken at a higher figure than the actual market value at the time of purchase, plus actual brokerage, transfer, postage, or express charges paid in the acquisition of such bonds or other evidences of debt.

(4) No method of valuation shall be inconsistent with any applicable valuation or method used by insurers in general, or any such method then currently formulated or approved by the National Association of Insurance Commissioners or its successor organization.

[Statutory Authority: RCW 48.02.060, 48.12.180, 48.12.190 and 48.12.200. 93-19-007 (Order R 93-11), § 284-13-210, filed 9/1/93, effective 10/2/93.]

**WAC 284-13-220 Valuation of other securities.** (1)

Securities, other than those referred to in WAC 284-13-210, held by an insurer shall be valued, in the discretion of the commissioner, at their market value, or at their appraised value, or at prices determined by the commissioner as representing their fair market value.

(2) Preferred or guaranteed stocks or shares while paying full dividends may be carried at a fixed value in lieu of market value, at the discretion of the commissioner and in accordance with such method of valuation as he or she may approve.

(3) Stock of a subsidiary corporation of an insurer shall not be valued at an amount in excess of the net value thereof

as based upon those assets only of the subsidiary which would be eligible under chapter 48.13 RCW for investment of the funds of the insurer directly.

(4) No valuations under this section shall be inconsistent with any applicable valuation or method then currently formulated or approved by the National Association of Insurance Commissioners or its successor organization.

[Statutory Authority: RCW 48.02.060, 48.12.180, 48.12.190 and 48.12.200. 93-19-007 (Order R 93-11), § 284-13-220, filed 9/1/93, effective 10/2/93.]

**WAC 284-13-280 Real estate appraisals.** (1) Except as provided in subsection (2) of this section, for purposes of RCW 48.13.120(1) and 48.13.140, an insurer may rely on an appraisal that is less than one year old.

(2) An insurer may not rely on an appraisal if the insurer knows or should know that the appraisal is not reliable. An appraisal may be "not reliable" because it was incorrect when done, because conditions affecting the property have changed, or for other reasons.

[Statutory Authority: RCW 48.02.060. 93-19-010 (Order R 93-14), § 284-13-280, filed 9/1/93, effective 10/2/93.]

**CREDIT FOR REINSURANCE**

**WAC 284-13-500 Purpose.** The purpose of this regulation is to set forth rules and procedural requirements which the commissioner deems necessary to carry out the provisions of RCW 48.12.160. The actions and information required by this regulation are hereby declared to be necessary and appropriate in the public interest and for the protection of the ceding insurers in this state.

[Statutory Authority: RCW 48.02.060 and 48.12.160. 93-19-002 (Order R 93-6), § 284-13-500, filed 9/1/93, effective 10/2/93.]

**WAC 284-13-505 Actual reinsurance.** Ceding insurers, have at times, entered into reinsurance agreements primarily as financing arrangements which have the principle purpose of producing increased surplus for the ceding insurer, typically on a temporary basis, but which provide little or no indemnification of insurance risks by the reinsurer. Credit for reinsurance shall not be allowed in any accounting or financial statement of the ceding insurer in respect to any so-called reinsurance contract unless, in such contract, the reinsurer undertakes to indemnify the ceding insurer, not only in form but in fact, against all or a part of the loss or liability arising out of the original insurance. This section shall only apply to those reinsurance contracts entered into after December 31, 1996.

[Statutory Authority: RCW 48.02.060, 48.12.160 and 1996 c 297 § 2. 97-05-012 (Matter No. R 96-10), § 284-13-505, filed 2/10/97, effective 3/13/97.]

**WAC 284-13-510 Credit for reinsurance—Reinsurer holding certificate of authority in this state.** Pursuant to RCW 48.12.160, the commissioner shall allow credit for reinsurance ceded by a domestic insurer to assuming insurers that held a certificate of authority to transact that kind of insurance in this state as of the date of the ceding insurer's statutory financial statement.

[Statutory Authority: RCW 48.02.060 and 48.12.160. 93-19-002 (Order R 93-6), § 284-13-510, filed 9/1/93, effective 10/2/93.]

**WAC 284-13-515 Qualified United States financial institution.** A qualified United States financial institution means an institution that:

- (1) Is organized or, in the case of a U.S. office of a foreign banking organization, licensed under the laws of the United States or any state thereof;
- (2) Is regulated, supervised, and examined by U.S. federal or state authorities having regulatory authority over banks and trust companies;
- (3) Has been designated by the Securities Valuation Office of the National Association of Insurance Commissioners as meeting its credit standards for issuing or confirming letters of credit; and
- (4) Is not affiliated with the assuming company.

[Statutory Authority: RCW 48.02.060, 48.12.160 and 1996 c 297 § 2. 97-05-012 (Matter No. R 96-10), § 284-13-515, filed 2/10/97, effective 3/13/97.]

**WAC 284-13-520 Credit for reinsurance—Certain reinsurers maintaining trust funds.** (1) Pursuant to RCW 48.12.160 (1)(a), the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer described in subsection (2) of this section which, as of the date of the ceding insurer's statutory financial statement, maintains a trust fund in an amount prescribed below in a qualified United States financial institution as provided in WAC 284-13-515, for the payment of the valid claims of its United States policyholders and ceding insurers, their assigns and successors in interest. The assuming insurer shall report annually to the commissioner substantially the same information as that required to be reported on the NAIC annual statement form by licensed insurers, to enable the commissioner to determine the sufficiency of the trust fund.

(2) The trust fund for a group of insurers that includes incorporated and unincorporated underwriters shall consist of:

(a) For reinsurance ceded under reinsurance agreements with an inception, amendment or renewal date on or after August 1, 1995, funds in trust in an amount not less than the group's several liabilities attributable to business ceded by United States domiciled insurers to any member of the group;

(b) For reinsurance ceded under reinsurance agreements with an inception date on or before July 31, 1995, and not amended or renewed after that date, notwithstanding the other provisions of this regulation, funds in trust in an amount not less than the group's several insurance and reinsurance liabilities attributable to business written in the United States; and

(c) In addition, the group shall maintain a trustee surplus of which one hundred million dollars shall be held jointly and exclusively for the benefit of the United States ceding insurers of any member of the group for all years of account. The group shall make available to the commissioner annual certifications by the group's domiciliary regulator and its independent public accountants of the solvency of each underwriter member of the group.

(3) The credit allowed for reinsurance shall not be greater than the amount of funds held in trust.

(4) The trust established shall comply with WAC 284-13-535.

[Statutory Authority: RCW 48.02.060, 48.12.160 and 1996 c 297 § 2. 97-05-012 (Matter No. R 96-10), § 284-13-520, filed 2/10/97, effective 3/13/97.

(12/2/09)

Statutory Authority: RCW 48.02.060 and 48.12.160. 93-19-002 (Order R 93-6), § 284-13-520, filed 9/1/93, effective 10/2/93.]

**WAC 284-13-530 Credit for reinsurance—Certain alien reinsurers maintaining trust funds.** (1) Under RCW 48.12.160 (1)(b), the commissioner shall allow credit for reinsurance ceded by a domestic insurer to a single assuming alien insurer which, as of the date of the ceding insurer's statutory financial statement, maintains a trust fund in an amount not less than the assuming alien insurer's liabilities attributable to reinsurance ceded by United States domiciled insurers plus maintain a trustee surplus of not less than twenty million dollars, and the assuming alien insurer maintaining the trust fund has received a registration from the commissioner. The assuming alien insurer shall report on or before February 28 to the commissioner substantially the same information as that required to be reported on the NAIC annual statement form by licensed insurers, to enable the commissioner to determine the sufficiency of the trust fund. To be registered the assuming alien insurer must:

(a) File a properly executed Form AR-1 under WAC 284-13-595 as evidence of its submission to this state's jurisdiction and to this state's authority to examine its books and records under chapter 48.03 RCW.

(b) File with the commissioner a certified copy of a letter or a certificate of authority or of compliance issued by the assuming alien insurer's alien domiciliary jurisdiction and the domiciliary jurisdiction of its United States reinsurance trust.

(c) File with the commissioner within sixty days after its financial statements are due to be filed with its domiciliary regulator, a copy of the assuming alien insurer's annual financial report converted to United States dollars, and a copy of its most recent audited financial statement converted to United States dollars.

(d) File annually with the commissioner on or before February 28, a statement of actuarial opinion in conformance with the NAIC's annual statement and instructions attesting to the adequacy of the reserves for United States liabilities which are backed by the trust fund. Unless the commissioner notifies the assuming alien insurer otherwise, the opinion may be given by an actuary of the assuming alien insurer, who is duly qualified to provide actuarial opinions in the domiciliary jurisdiction of the assuming alien insurer.

(e) File and maintain with the commissioner a list of the assuming alien insurer's United States reinsurance intermediaries.

(f) File and maintain with the commissioner copies of service and management agreements, including binding authorities, entered into by the assuming alien insurer.

(g) File annually with the commissioner a holding company registration statement containing the information required by RCW 48.31B.025 (2)(a) through (e) in the form proscribed in WAC 284-18-920.

(h) File annually with the commissioner the assuming alien insurer's account and report which reports the overall business of the assuming alien insurer in United States dollars.

(i) File other information, financial or otherwise, which the commissioner reasonably requests.

(2) If the commissioner determines that the assuming alien insurer has failed to meet or maintain any of these qual-

ifications, the commissioner may, consistent with chapters 48.04 and 34.05 RCW, revoke the registration of the assuming insurer maintaining the trust fund. No credit shall be allowed a domestic ceding insurer with respect to reinsurance ceded after December 31, 1997, if the assuming alien insurer's registration under this section has been denied or revoked by the commissioner.

(3) The required amount of the trust shall be based upon the gross United States liabilities, including incurred but not reported claims (IBNR), of the assuming alien insurer reduced only for those liabilities for which specific collateralization has been provided to individual ceding companies, with such adjustments, if any, as the commissioner may from time to time consider appropriate.

(4) The credit allowed for reinsurance shall not be greater than the amount of funds held in trust.

(5) The trust established shall comply with WAC 284-13-535.

[Statutory Authority: RCW 48.02.060, 48.12.160 and 1996 c 297 § 2. 97-05-012 (Matter No. R 96-10), § 284-13-530, filed 2/10/97, effective 3/13/97.]

**WAC 284-13-535 Trust fund requirements.** The trust under RCW 48.12.160 (1)(a), (b) or (c)(i) shall be established in a form filed with and approved by the commissioner and complying with that statute and this section. The trust instrument shall provide that:

(1) Contested claims shall be valid and enforceable out of funds in trust to the extent remaining unsatisfied thirty days after entry of the final order of any court of competent jurisdiction in the United States.

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

(3) The trust shall be subject to examination as determined by the commissioner.

(4) The trust shall remain in effect for as long as the assuming insurer, or any member or former member of a group of insurers, shall have outstanding obligations under reinsurance agreements subject to the trust.

(5) No later than February 28 of each year the trustees of the trust shall report to the commissioner in writing setting forth the balance in the trust and listing the trust's investments at the preceding year end, and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the next following December 31.

(6) Furnish to the commissioner a statement of all assets in the trust account upon its inception and at intervals no less frequent than the end of each calendar quarter.

(7) At least sixty days, but not more than one hundred twenty days, prior to termination of the trust, written notification of termination shall be delivered by the trustee to the commissioner.

(8) Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by RCW 48.12.160, WAC 284-13-520 and 284-13-530 or if the grantor(s) of the trust has been declared insolvent or placed in receivership, rehabilitation, liquidation or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory over-

sight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight over the trust or other designated receiver all of the assets of the trust fund. The assets shall be applied in accordance with the laws of the state in which the trust is domiciled that are applicable to the liquidation of insurance companies. If the commissioner with regulatory oversight determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the United States ceding insurers of the grantor(s) of the trust, the assets or part thereof shall be returned by the commissioner with regulatory oversight to the trustee for distribution in accordance with the trust agreement.

(9) No amendment to the trust shall be effective unless:

(a) It has been reviewed and approved in advance by either the commissioner of the state where the trust is domiciled or the commissioner of another state who, pursuant to the terms of the trust instrument, has accepted responsibility for regulatory oversight of the trust; and

(b) It has been filed with the commissioner and it has not been disapproved within thirty days of its receipt by the commissioner.

(10) The form of the trust and any amendments to the trust shall also be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled.

[Statutory Authority: RCW 48.02.060, 48.12.160 and 1996 c 297 § 2. 97-05-012 (Matter No. R 96-10), § 284-13-535, filed 2/10/97, effective 3/13/97.]

**WAC 284-13-540 Credit for reinsurance ceded to an assuming insurer that does not have a certificate of authority.** Pursuant to RCW 48.12.160 (1)(c), the commissioner shall allow a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer in an amount not exceeding the liabilities carried by the ceding insurer. Such reduction shall not be greater than the amount of funds or other assets that are of the types and amounts that are authorized under chapter 48.13 RCW, held subject to withdrawal by and under the control of the ceding insurer, including funds or other such assets 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 must be held in a qualified United States financial institution as defined in WAC 284-13-515 subject to withdrawal solely by, and under the exclusive control of, the ceding insurer. This security may be in the form of:

(1) Deposits or funds that are assets of the types and amounts that are authorized under chapter 48.13 RCW; or

(2) Clean, irrevocable, unconditional, and "evergreen" letters of credit issued or confirmed by a qualified United States institution, as defined in WAC 284-13-515, effective no later than December 31 of the year for which filing is being made, and in the possession of the ceding company on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance (or confirmation) shall, notwithstanding the issuing institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension,

renewal, modification, or amendment, whichever first occurs.

An admitted asset or a reduction from liability for reinsurance ceded to an unauthorized assuming insurer pursuant to this section shall be allowed only when the requirements of WAC 284-13-560 are met.

[Statutory Authority: RCW 48.02.060, 48.12.160 and 1996 c 297 § 2. 97-05-012 (Matter No. R 96-10), § 284-13-540, filed 2/10/97, effective 3/13/97. Statutory Authority: RCW 48.02.060 and 48.12.160. 93-19-002 (Order R 93-6), § 284-13-540, filed 9/1/93, effective 10/2/93.]

**WAC 284-13-550 Trust agreements qualified under WAC 284-13-540.** (1) As used in this section:

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

(b) "Grantor" means the entity that has established a trust for the sole benefit of the beneficiary. When established in conjunction with a reinsurance agreement, the grantor is the assuming alien insurer not holding a certificate of authority for that kind of business.

(c) "Obligations," as used in subsection (2)(k) of this section, means:

(i) Reinsured losses and allocated loss expenses paid by the ceding company, but not recovered from the assuming insurer;

(ii) Reserves for reinsured losses reported and outstanding;

(iii) Reserves for reinsured losses incurred but not reported; and

(iv) Reserves for allocated reinsured loss expenses and unearned premiums.

(2) Required conditions.

(a) The trust agreement shall be entered into between the beneficiary, the grantor, and a trustee which shall be a qualified United States financial institution as defined in WAC 284-13-515.

(b) The trust agreement shall create a trust account into which assets shall be deposited.

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

(d) The trust agreement shall provide that:

(i) The beneficiary shall have the right to withdraw assets from the trust account at any time, without notice to the grantor, subject only to written notice from the beneficiary to the trustee;

(ii) No other statement or document is required to be presented in order to withdraw assets, except that the beneficiary may be required to acknowledge receipt of withdrawn assets;

(iii) It is not subject to any conditions or qualifications outside of the trust agreement; and

(iv) It shall not contain references to any other agreements or documents except as provided for under (k) of this subsection.

(e) The trust agreement shall be established for the sole benefit of the beneficiary.

(f) The trust agreement shall require the trustee to:

(i) Receive assets and hold all assets in a safe place;

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

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

(iv) Notify the grantor and the beneficiary within ten days, of any deposits to or withdrawals from the trust account;

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

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

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

(h) The trust agreement shall be made subject to and governed by the laws of the state in which the trust is established.

(i) The trust agreement shall prohibit invasion of the trust corpus for the purpose of paying compensation to, or reimbursing the expenses of, the trustee.

(j) The trust agreement shall provide that the trustee shall be liable for its own negligence, willful misconduct, or lack of good faith.

(k) Notwithstanding other provisions of this regulation, when a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities, and disability, where it is customary practice to provide a trust agreement for a specific purpose, such a trust agreement may, notwithstanding any other conditions in this regulation, provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, for the following purposes:

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

(ii) To make payment to the assuming insurer of any amounts held in the trust account that exceed one hundred two percent of the actual amount required to fund the assuming insurer's obligations under the specific reinsurance agreement; or

(iii) Where the ceding insurer has received notification of termination of the trust account and where the assuming insurer's entire obligations under the specific reinsurance

agreement remain unliquidated and undischarged ten days prior to the termination date, to withdraw amounts equal to the obligations and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution as defined in WAC 284-13-515 apart from its general assets, in trust for such uses and purposes specified in (k)(i) and (ii) of this subsection as may remain executory after such withdrawal and for any period after the termination date.

(l) Notwithstanding other provisions of this regulation, when a trust agreement is established in conjunction with a reinsurance agreement covering life, annuities, and disability risks, where it is customary practice to provide a trust agreement for a specific purpose, such a trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, for the following purposes:

(i) To pay or reimburse the ceding insurer for:

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

(B) The assuming insurer's share under the specific reinsurance agreement of surrenders and benefits or losses paid by the ceding insurer, under the terms and provisions of the policies reinsured under the reinsurance agreement.

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

(iii) Where the ceding insurer has received notification of termination of the trust account and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of liabilities, to the extent that the liabilities have not been funded by the assuming insurer, and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution as defined in WAC 284-13-515 apart from its general assets, in trust for such uses and purposes specified in (l)(i) and (ii) of this subsection as may remain executory after such withdrawal and for any period after the termination date.

(m) The reinsurance agreement entered into in conjunction with the trust agreement may, but need not, contain the provisions required by subsection (4)(a)(ii) of this section, so long as these required conditions are included in the trust agreement.

(n) Notwithstanding any other provision in the trust instrument, if the grantor(s) of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight or other designated receiver all of the assets of the trust fund. The assets shall be applied in accordance with the priority statutes and laws of the state in which the trust is domiciled applica-

ble to the assets of insurance companies in liquidation. If the commissioner with regulatory oversight determines that the assets of the trust fund or any part thereof are not necessary to satisfy claims of the United States ceding insurers of the grantor(s) of the trust, the assets or any part thereof shall be returned to the trustee for distribution in accordance with the trust agreement.

(3) Permitted conditions.

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

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

(c) The trustee may be given authority to invest, and accept substitutions of, any funds in the account, provided that no investment or substitution shall be made without prior approval of the beneficiary, unless the trust agreement specifies categories of investments acceptable to the beneficiary and authorizes the trustee to invest funds and to accept substitutions which the trustee determines are at least equal in market value to the assets withdrawn and that are consistent with the restrictions in subsection (4)(a)(ii) of this section.

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

(e) The trust agreement may provide that, upon termination of the trust account, all assets not previously withdrawn by the beneficiary shall, with written approval by the beneficiary, be delivered over to the grantor.

(4) Additional conditions applicable to reinsurance agreements.

(a) A reinsurance agreement, which is entered into in conjunction with a trust agreement and the establishment of a trust account, may contain provisions that:

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

(ii) Stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash (United States legal tender), certificates of deposit (issued by a United States bank and payable in United States legal tender), and investments of the types permitted by Title 48 RCW or any combination of the above, provided that such investments are issued by an institution that is not the parent, subsidiary, or affiliate of either

the grantor or the beneficiary. The reinsurance agreement may further specify the types of investments to be deposited. Where a trust agreement is entered into in conjunction with a reinsurance agreement covering risks other than life, annuities, and disability, then the trust agreement may contain the provisions described by this paragraph in lieu of including such provisions in the reinsurance agreement;

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

(iv) Require that all settlements of account between the ceding insurer and the assuming insurer be made in cash or its equivalent; and

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

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

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

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

(III) Any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.

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

(b) The reinsurance agreement may also contain provisions that:

(i) Give the assuming insurer the right to seek approval from the ceding insurer to withdraw from the trust account all or any part of the trust assets and transfer those assets to the assuming insurer, provided:

(A) The assuming insurer shall, at the time of withdrawal, replace the withdrawn assets with other qualified assets having a market value equal to the market value of the assets withdrawn so as to maintain at all times the deposit in the required amount; or

(B) After withdrawal and transfer, the market value of the trust account is no less than one hundred two percent of the required amount.

The ceding insurer shall not unreasonably or arbitrarily withhold its approval.

(ii) Provide for return of any amount withdrawn in excess of the actual amounts required for (a)(v) of this subsection, and for interest payments at a rate not in excess of the prime rate of interest on the amounts held pursuant to (a)(v) of this subsection.

(iii) Permit the award by any arbitration panel or court of competent jurisdiction of:

(A) Interest at a rate different from that provided in (b)(ii) of this subsection;

(B) Court or arbitration costs;

(C) Attorney's fees; and

(D) Any other reasonable expenses.

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

(d) Existing agreements. Notwithstanding the effective date of this regulation, any trust agreement or underlying reinsurance agreement in existence prior to December 31, 1996, will continue to be acceptable until December 30, 1997, at which time the agreements will have to be in full compliance with this regulation for the trust agreement to be acceptable.

(e) The failure of any trust agreement to specifically identify the beneficiary as defined in subsection (1)(a) of this section shall not be construed to affect any actions or rights which the commissioner may take or possess pursuant to the provisions of the laws of this state.

[Statutory Authority: RCW 48.02.060, 48.12.160 and 1996 c 297 § 2. 97-05-012 (Matter No. R 96-10), § 284-13-550, filed 2/10/97, effective 3/13/97. Statutory Authority: RCW 48.02.060 and 48.12.160. 93-19-002 (Order R 93-6), § 284-13-550, filed 9/1/93, effective 10/2/93.]

**WAC 284-13-560 Letters of credit qualified under WAC 284-13-540.** (1) The letter of credit must be clean, irrevocable, and unconditional and issued or confirmed by a qualified United States financial institution as defined in WAC 284-13-515. The letter of credit shall contain an issue date and date of expiration and shall stipulate that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds and that no other document need be presented. The letter of credit shall also indicate that it is not subject to any condition or qualifications outside of the letter of credit. In addition, the letter of credit itself shall not contain reference to any other agreements, documents, or entities, except as provided in subsection (8)(a) of this section. As used in this section, "beneficiary" means the domestic insurer for whose benefit the letter of credit has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and

is limited to the court appointed domiciliary receiver (including conservator, rehabilitator, or liquidator).

(2) The heading of the letter of credit may include a boxed section which contains the name of the applicant and other appropriate notations to provide a reference for the letter of credit. The boxed section shall be clearly marked to indicate that such information is for internal identification purposes only.

(3) The letter of credit shall contain a statement to the effect that the obligation of the qualified United States financial institution under the letter of credit is in no way contingent upon reimbursement with respect thereto.

(4) The term of the letter of credit shall be for at least one year and shall contain an "evergreen clause" which prevents the expiration of the letter of credit without due notice from the issuer. The "evergreen clause" shall provide for a period of no less than thirty days' notice prior to expiry date or non-renewal.

(5) 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 500, or any successor publication), and all drafts drawn thereunder shall be presentable at an office in the United States of a qualified United States financial institution.

(6) 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, 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 Article 19 of Publication 500, or any successor publication occur.

(7) The letter of credit shall be issued by a qualified United States financial institution authorized to issue letters of credit, pursuant to RCW 48.12.160 (1)(b)(ii).

(8) Reinsurance agreement provisions.

(a) The reinsurance agreement in conjunction with which the letter of credit is obtained may contain provisions which:

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

(ii) Stipulate that the assuming insurer and ceding insurer agree that the letter of credit provided by the assuming insurer pursuant to the provisions of the reinsurance agreement may be drawn upon at any time, notwithstanding any other provisions in the agreement, and shall be utilized by the ceding insurer or its successors in interest only for one or more of the following reasons:

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

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

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

(III) Any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.

(B) Where the letter of credit will expire without renewal or be reduced or replaced by a letter of credit for a reduced amount and where the assuming insurer's entire obligations under the specific reinsurance remain unliquidated and undischarged ten days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of the liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer and exceed the amount of any reduced or replacement letter of credit, and deposit those amounts in a separate account in the name of the ceding insurer in a qualified United States financial institution as defined in WAC 284-13-515 apart from its general assets, in trust for such purposes specified in (a)(ii)(A) of this subsection as may remain after withdrawal and for any period after the termination date.

(ii) All of the foregoing provisions of (a) of this subsection should be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer.

(b) Nothing contained in (a) of this subsection shall preclude the ceding insurer and assuming insurer from providing for:

(i) An interest payment, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to (a)(ii) of this subsection; and

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

(c) When a letter of credit is obtained in conjunction with a reinsurance agreement covering risks other than life, annuities, and disability, where it is customary practice to provide a letter of credit for a specific purpose, then the reinsurance agreement may, in lieu of (a)(ii) of this subsection, require that the parties enter into a "trust agreement" which may be incorporated into the reinsurance agreement or be a separate document.

[Statutory Authority: RCW 48.02.060, 48.12.160 and 1996 c 297 § 2. 97-05-012 (Matter No. R 96-10), § 284-13-560, filed 2/10/97, effective 3/13/97. Statutory Authority: RCW 48.02.060 and 48.12.160. 93-19-002 (Order R 93-6), § 284-13-560, filed 9/1/93, effective 10/2/93.]

**WAC 284-13-570 Other security.** A ceding insurer may take credit for unencumbered funds withheld by the ceding insurer in the United States subject to withdrawal solely by the ceding insurer and under its exclusive control. The credit shall not be greater than the funds held.

[Statutory Authority: RCW 48.02.060, 48.12.160 and 1996 c 297 § 2. 97-05-012 (Matter No. R 96-10), § 284-13-570, filed 2/10/97, effective 3/13/97. Statutory Authority: RCW 48.02.060 and 48.12.160. 93-19-002 (Order R 93-6), § 284-13-570, filed 9/1/93, effective 10/2/93.]

**WAC 284-13-580 Reinsurance contract.** The reinsurance agreement between any ceding insurer claiming credit for reinsurance and an assuming insurer that meets the requirements of this regulation or is in compliance with RCW 48.12.160 and 48.12.162 must include:

(1) A proper insolvency clause pursuant to RCW 48.12.-162 (1)(b); and

(2) A provision stating that an unauthorized assuming insurer:

(a) Has submitted to the jurisdiction of an alternative dispute resolution panel or court of competent jurisdiction within the United States;

(b) Has agreed to comply with all requirements necessary to give such court or panel jurisdiction;

(c) Has designated an agent upon whom service of process may be effected; and

(d) Has agreed to abide by the final decision of such court or panel.

[Statutory Authority: RCW 48.02.060, 48.12.154, 05-02-075 (Matter No. R 2004-06), § 284-13-580, filed 1/4/05, effective 2/4/05. Statutory Authority: RCW 48.02.060 and 48.12.160, 93-19-002 (Order R 93-6), § 284-13-580, filed 9/1/93, effective 10/2/93.]

**WAC 284-13-590 Contracts affected.** All new and renewal reinsurance transactions entered into after December 1, 1996, shall conform to the requirements of this regulation if credit is to be given to the ceding insurer for such reinsurance.

[Statutory Authority: RCW 48.02.060, 48.12.160 and 1996 c 297 § 2. 97-05-012 (Matter No. R 96-10), § 284-13-590, filed 2/10/97, effective 3/13/97. Statutory Authority: RCW 48.02.060 and 48.12.160, 93-19-002 (Order R 93-6), § 284-13-590, filed 9/1/93, effective 10/2/93.]

**WAC 284-13-595 Form AR-1.**

FORM AR-1  
CERTIFICATE OF ASSUMING ALIEN INSURER

I, \_\_\_\_\_,  
(name of officer) (title of officer)

of \_\_\_\_\_,  
(name of assuming insurer)

the assuming alien insurer under a reinsurance agreement with one or more insurers domiciled in Washington, hereby certify that

\_\_\_\_\_ ("Assuming Insurer");  
(name of assuming insurer)

1. Submits to the jurisdiction of any court of competent jurisdiction in the State of Washington 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. 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.

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

(12/2/09)

3. Submits to the authority of the Insurance Commissioner of the State of Washington to examine its books and records and agrees to bear the expense of any such examination.

4. Submits with this form a current list of insurers domiciled in the State of Washington reinsured by Assuming Insurer and undertakes to submit additions to or deletions from the list to the Insurance Commissioner at least once per calendar quarter.

Dated: \_\_\_\_\_  
(name of assuming insurer)

BY: \_\_\_\_\_  
(name of officer)

\_\_\_\_\_  
(title of officer)

[Statutory Authority: RCW 48.02.060, 48.12.160 and 1996 c 297 § 2. 97-05-012 (Matter No. R 96-10), § 284-13-595, filed 2/10/97, effective 3/13/97.]

**REINSURANCE INTERMEDIARIES**

**WAC 284-13-700 Definitions.** (1) Terms used in this regulation (WAC 284-13-700 through 284-13-760) that are defined in the Reinsurance Intermediary Act chapter 48.94 RCW ("the act") have the meaning stated there.

(2) Whether a person is an "employee" of the reinsurer for purposes of RCW 48.94.005 (7)(a) depends on the facts and is not controlled by a mere labeling of the person as an employee in an agreement.

(3) A reinsurer is "licensed in this state" for purposes of RCW 48.94.005(8) when it holds a certificate of authority to transact the relevant line of insurance.

[Statutory Authority: RCW 48.02.060, 48.94.055, and 48.94.010, 09-24-102 (Matter No. R 2009-11), § 284-13-700, filed 12/2/09, effective 1/2/10. Statutory Authority: RCW 48.02.060 and 1993 c 462 § 33. 93-19-011 (Order R 93-15), § 284-13-700, filed 9/1/93, effective 10/2/93.]

**WAC 284-13-710 Applications for license.** An application for a license as a reinsurance intermediary by a firm or association may name the members and the designated employees to be authorized to act as reinsurance intermediaries under the license. If those persons are not named on the application or a supplement to it, then the application must be accompanied by a letter or other document identifying those persons and signed by an officer of the firm or association.

[Statutory Authority: RCW 48.02.060 and 1993 c 462 § 33. 93-19-011 (Order R 93-15), § 284-13-710, filed 9/1/93, effective 10/2/93.]

**WAC 284-13-715 Changes to information contained in an application for license.** A licensed reinsurance intermediary must notify the commissioner within fifteen business days after occurrence of material changes to the information that was included in the application. For example this includes, but is not limited to, a change to:

- (1) The reinsurance intermediary's legal name;
- (2) The reinsurance intermediary's formation documents if it is a business entity;
- (3) The reinsurance intermediary's registered address;
- (4) Individuals authorized to act under the license; and
- (5) The reinsurance intermediary's designation to receive service of process.

[Statutory Authority: RCW 48.02.060, 48.94.055, and 48.94.010. 09-24-102 (Matter No. R 2009-11), § 284-13-715, filed 12/2/09, effective 1/2/10.]

**WAC 284-13-720 Financial statement of reinsurance intermediary-manager.** A reinsurer shall obtain from each reinsurance intermediary-manager, and a reinsurance intermediary-manager shall give to the reinsurer, annual statements of financial condition prepared by an independent certified public accountant. The form of the statements shall be such that the statements clearly show the results of operations, and the assets, liabilities, and equity of the reinsurance intermediary-manager. Nothing in the act or this regulation (WAC 284-13-700 through 284-13-760) prevents a reinsurer from requiring additional information, more detail, or a specified format so long as that specified format at least meets the requirements of this section.

[Statutory Authority: RCW 48.02.060, 48.94.055, and 48.94.010. 09-24-102 (Matter No. R 2009-11), § 284-13-720, filed 12/2/09, effective 1/2/10. Statutory Authority: RCW 48.02.060 and 1993 c 462 § 33. 93-19-011 (Order R 93-15), § 284-13-720, filed 9/1/93, effective 10/2/93.]

**WAC 284-13-730 Submission and approval of contracts between reinsurers and reinsurance intermediary—Managers.** Contracts filed for approval under RCW 48.94.030 must include the provisions required by that section. If those provisions are not in the order given in that section, or if any other provisions precede or separate any of those required provisions, then the submitted contract shall be accompanied by a statement showing where in the contract each required provision is.

[Statutory Authority: RCW 48.02.060, 48.94.055, and 48.94.010. 09-24-102 (Matter No. R 2009-11), § 284-13-730, filed 12/2/09, effective 1/2/10. Statutory Authority: RCW 48.02.060 and 1993 c 462 § 33. 93-19-011 (Order R 93-15), § 284-13-730, filed 9/1/93, effective 10/2/93.]

**WAC 284-13-740 Reporting of claims.** The reporting threshold under RCW 48.94.030 (9)(b)(v) is the lesser of fifty thousand dollars or an amount set by the reinsurer.

[Statutory Authority: RCW 48.02.060, 48.94.055, and 48.94.010. 09-24-102 (Matter No. R 2009-11), § 284-13-740, filed 12/2/09, effective 1/2/10. Statutory Authority: RCW 48.02.060 and 1993 c 462 § 33. 93-19-011 (Order R 93-15), § 284-13-740, filed 9/1/93, effective 10/2/93.]

**WAC 284-13-750 Reporting of discipline in another jurisdiction.** A reinsurance intermediary, or a pending applicant, must notify the commissioner within fifteen business days of a disciplinary action taken against it by another governmental jurisdiction.

[Statutory Authority: RCW 48.02.060, 48.94.055, and 48.94.010. 09-24-102 (Matter No. R 2009-11), § 284-13-750, filed 12/2/09, effective 1/2/10.]

**WAC 284-13-760 Reporting of a felony conviction.** A person holding a reinsurance intermediary license, or a pending applicant, convicted of any felony involving dishonesty or a breach of trust, or convicted of an offense under the Violent Crime Control and Law Enforcement Act of 1994 (108 Stat. 2115; 18 U.S.C. Sec. 1033) must notify the commissioner of the conviction within fifteen business days after the conviction.

[Statutory Authority: RCW 48.02.060, 48.94.055, and 48.94.010. 09-24-102 (Matter No. R 2009-11), § 284-13-760, filed 12/2/09, effective 1/2/10.]

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**WAC 284-13-850 Scope.** (1) The insurance commissioner recognizes that licensed insurers routinely enter into reinsurance agreements that yield legitimate relief to the ceding insurer from strain to surplus. It is improper, however, for an authorized insurer, in the capacity of ceding insurer, to enter into reinsurance agreements for the principal purpose of producing significant surplus aid for the ceding insurer, typically on a temporary basis, while not transferring all of the significant risks inherent in the business being reinsured. In substance or effect, the expected potential liability to the ceding insurer remains basically unchanged by the reinsurance transaction, notwithstanding certain risk elements in the reinsurance agreement, such as catastrophic mortality or extraordinary survival.

(2) This regulation (WAC 284-13-850 through 284-13-863) applies to all domestic life and disability insurers and to all other licensed life and disability insurers which are not subject to a similar regulation in their domiciliary state. This regulation also applies to the disability insurance policies issued by authorized property and casualty insurers. This regulation does not apply to assumption reinsurance, yearly renewable term reinsurance or nonproportional reinsurance (such as stop loss or catastrophe reinsurance).

[Statutory Authority: RCW 48.02.060, 48.05.250 and 48.05.400. 95-19-018 (Order 95-4), § 284-13-850, filed 9/8/95, effective 10/9/95.]

**WAC 284-13-855 Accounting requirements.** (1) No insurer subject to this regulation shall, for reinsurance ceded, reduce any liability or establish any asset in any financial statement filed with the commissioner if, by the terms of the reinsurance agreement, in substance or effect, one or more of the following conditions exist:

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

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

(c) The ceding insurer is required to reimburse the reinsurer for negative experience under the reinsurance agreement, except that neither offsetting experience refunds against current and prior years' losses under the agreement nor payment by the ceding insurer of an amount equal to the current and prior years' losses under the agreement upon voluntary termination of in force reinsurance by the ceding insurer shall be considered such a reimbursement to the reinsurer for negative experience. Voluntary termination does not

include situations where termination occurs because of unreasonable provisions which allow the reinsurer to reduce its risk under the agreement. An example of such a provision is the right of the reinsurer to increase reinsurance premiums or risk and expense charges to excessive levels forcing the ceding company to prematurely terminate the reinsurance treaty.

(d) The ceding insurer must, at specific points in time scheduled in the agreement, terminate or automatically recapture all or part of the reinsurance ceded.

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

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

Risk categories:

(i) Morbidity.

(ii) Mortality.

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

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

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

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

+ - Significant 0 - Insignificant

RISK CATEGORY

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

+ - Significant 0 - Insignificant

RISK CATEGORY

	i	ii	iii	iv	v	vi
Indeterminate Premium Permanent	0	+	+	+	+	+
Universal Life Flexible Premium	0	+	+	+	+	+
Universal Life Fixed Premium	0	+	+	+	+	+
Universal Life Fixed Premium dump-in premiums allowed	0	+	+	+	+	+

\*LTC = Long Term Care Insurance

LTD = Long Term Disability Insurance

(g)(i) The credit quality, reinvestment, or disintermediation risk is significant for the business reinsured and the ceding company does not (other than for the classes of business excepted in subsection (1)(g)(ii) of this section) either transfer the underlying assets to the reinsurer or legally segregate such assets in a trust or escrow account or otherwise establish a mechanism satisfactory to the commissioner which legally segregates, by contract or contract provision, the underlying assets.

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

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

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

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

- Where:
- I is net investment income (Exhibit 2, Line 16, Column 7)
  - CG is capital gains less capital losses (Exhibit 4, Line 10, Column 6)
  - X is the current year cash and invested assets (Page 2, Line 10A, Column 1) plus investment income due and accrued (Page 2, Line 16, Column 1) less borrowed money (Page 3, Line 22, Column 1)
  - Y is the same as X but for the prior year

(ii) Line references are for the commissioner's 1992 annual statement form.

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

(i) The ceding insurer is required to make representations or warranties not reasonably related to the business being reinsured.

(j) The ceding insurer is required to make representations or warranties about future performance of the business being reinsured.

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

(2) Notwithstanding subsection (1) of this section, an insurer subject to this regulation may, with the prior approval of the commissioner, take such reserve credit or establish such asset, including actuarial interpretations or standards adopted by the commissioner.

(3)(a) Every agreement entered into after the effective date of this regulation which involves the reinsurance of business issued prior to the effective date of the agreement, along with any subsequent amendments thereto, shall be filed by the ceding company with the commissioner within thirty days after its date of execution. Each filing shall include data detailing the financial impact of the transaction. The ceding insurer's actuary who signs the financial statement actuarial opinion with respect to valuation of reserves shall consider this regulation and any applicable actuarial standards of practice when determining the proper credit in financial statements filed with the commissioner. The actuary shall maintain adequate documentation and be prepared to describe the actuarial work performed for inclusion in the financial statements and to demonstrate that such work conforms to this regulation.

(b) Any increase in surplus net of federal income tax resulting from arrangements described in (a) of this subsection shall be identified separately on the insurer's statutory financial statement as a surplus item (aggregate write-ins for gains and losses in surplus in the capital and surplus account, page 4 of the annual statement) and recognition of the surplus increase as income shall be reflected on a net of tax basis in the "reinsurance ceded" line, page 4 of the annual statement as earnings emerge from the business reinsured.

For example: On the last day of calendar year N, company XYZ pays a \$20 million initial commission and expense allowance to company ABC for reinsuring an existing block of business. Assuming a 34% tax rate, the net increase in surplus at inception is \$13.2 million (\$20 million - \$6.8 million) which is reported on the "aggregate write-ins for gains and losses in surplus" line in the capital and surplus account. \$6.8 million (34% of \$20 million) is reported as income on the "commissions and expense allowances on reinsurance ceded" line of the summary of operations. At the end of year N+1 the business has earned \$4 million. ABC has paid \$.5 million in profit and risk charges in arrears for the year and has received a \$1 million experience refund. Company ABC's annual statement would report \$1.65 million (66% of (\$4 million - \$1 million - \$.5 million) up to a maximum of \$13.2 million) on the "commissions and expense allowances on reinsurance ceded" line of the summary of operations, and -\$1.65 million on the "aggregate write-ins for gains and losses in surplus" line of the capital and surplus account. The experience refund would be reported separately as a miscellaneous income item in the summary of operations.

[Statutory Authority: RCW 48.02.060, 48.05.250 and 48.05.400. 95-19-018 (Order 95-4), § 284-13-855, filed 9/8/95, effective 10/9/95.]

**WAC 284-13-860 Written agreements.** (1) No reinsurance agreement or amendment to any agreement may be used to reduce any liability or to establish any asset in any financial statement filed with the commissioner, unless the agreement, amendment, or a binding letter of intent has been executed by both parties no later than the "as of date" of the financial statement.

(2) In the case of a letter of intent, a reinsurance agreement or an amendment to a reinsurance agreement must be executed within a reasonable period of time, not exceeding ninety days from the execution date of the letter of intent, in order for credit to be granted for the reinsurance ceded.

(3) The reinsurance agreement shall contain provisions which provide that:

(a) The agreement shall constitute the entire agreement between the parties with respect to the business being reinsured thereunder and that there are no understandings between the parties other than as expressed in the agreement; and

(b) Any change or modification to the agreement shall be null and void unless made by amendment to the agreement and signed by the parties.

[Statutory Authority: RCW 48.02.060, 48.05.250 and 48.05.400. 95-19-018 (Order 95-4), § 284-13-860, filed 9/8/95, effective 10/9/95.]

**WAC 284-13-863 Existing agreements.** Insurers subject to this regulation shall reduce to zero by December 31, 1996, any reserve credits or assets established with respect to reinsurance agreements entered into prior to the effective date of this regulation which under the provisions of this regulation would not be entitled to recognition of the reserve credits or assets; provided however that: The reinsurance agreements are in compliance with laws or regulations in existence immediately preceding the effective date of this regulation.

[Statutory Authority: RCW 48.02.060, 48.05.250 and 48.05.400. 95-19-018 (Order 95-4), § 284-13-863, filed 9/8/95, effective 10/9/95.]