

RCW 48.12.430 Assuming insurer—Certified as reinsurer—

Eligibility requirements—Insurer obligations—Commissioner's duties.

Credit is allowed when the reinsurance is ceded to an assuming insurer that has been certified by the commissioner as a reinsurer in this state and secures its obligations in accordance with the requirements of this section.

(1) In order to be eligible for certification, the assuming insurer must meet the following requirements:

(a) The assuming insurer must be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the commissioner pursuant to subsection (3) of this section;

(b) The assuming insurer must maintain minimum capital and surplus, or its equivalent, in an amount to be determined by the commissioner by rule;

(c) The assuming insurer must maintain financial strength ratings from two or more rating agencies deemed acceptable by the commissioner by rule;

(d) The assuming insurer must agree to submit to the jurisdiction of this state, appoint the commissioner as its agent for service of process in this state, and agree to provide security for one hundred percent of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers if it resists enforcement of a final United States judgment;

(e) The assuming insurer must agree to meet applicable information filing requirements as determined by the commissioner, both with respect to an initial application for certification and on an ongoing basis; and

(f) The assuming insurer must satisfy any other requirements for certification deemed relevant by the commissioner.

(2) An association including incorporated and individual unincorporated underwriters may be a certified reinsurer. In order to be eligible for certification, in addition to satisfying the requirements of subsection (1) of this section:

(a) The association must satisfy its minimum capital and surplus requirements through the capital and surplus equivalents (net of liabilities) of the association and its members, which includes a joint central fund that may be applied to any unsatisfied obligation of the association or any of its members, in an amount determined by the commissioner to provide adequate protection;

(b) The incorporated members of the association must not be engaged in any business other than underwriting as a member of the association and must be subject to the same level of regulation and solvency control by the association's domiciliary regulator as are the unincorporated members; and

(c) Within ninety days after its financial statements are due to be filed with the association's domiciliary regulator, the association must provide to the commissioner an annual certification by the association's domiciliary regulator of the solvency of each underwriter member; or if a certification is unavailable, financial statements, prepared by independent public accountants, of each underwriter member of the association.

(3) The commissioner must create and publish a list of qualified jurisdictions, under which an assuming insurer licensed and domiciled in such a jurisdiction is eligible to be considered for certification by the commissioner as a certified reinsurer.

(a) In order to determine whether the domiciliary jurisdiction of a non-United States assuming insurer is eligible to be recognized as a qualified jurisdiction, the commissioner must evaluate the appropriateness and effectiveness of the reinsurance supervisory system of the jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits, and the extent of reciprocal recognition afforded by the non-United States jurisdiction to reinsurers licensed and domiciled in the United States. A qualified jurisdiction must agree to share information and cooperate with the commissioner with respect to all certified reinsurers domiciled within that jurisdiction. A jurisdiction may not be recognized as a qualified jurisdiction if the commissioner has determined that the jurisdiction does not adequately and promptly enforce final United States judgments and arbitration awards. Additional factors may be considered in the discretion of the commissioner.

(b) A list of qualified jurisdictions shall be published through the national association of insurance commissioners' committee process. The commissioner must consider this list in determining qualified jurisdictions. If the commissioner approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the commissioner must provide thoroughly documented justification in accordance with criteria to be developed by rule.

(c) United States jurisdictions that meet the requirement for accreditation under the national association of insurance commissioners' financial standards and accreditation program must be recognized as qualified jurisdictions.

(d) If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction, the commissioner has the discretion to suspend the reinsurer's certification indefinitely in lieu of revocation.

(4) The commissioner must assign a rating to each certified reinsurer, giving due consideration to the financial strength ratings that have been assigned by rating agencies deemed acceptable to the commissioner by rule. The commissioner must publish a list of all certified reinsurers and their ratings.

(5) A certified reinsurer must secure obligations assumed from United States ceding insurers under this section at a level consistent with its rating, as specified in rules adopted by the commissioner.

(a) In order for a domestic ceding insurer to qualify for full financial statement credit for reinsurance ceded to a certified reinsurer, the certified reinsurer must maintain security in a form acceptable to the commissioner and consistent with the provisions of RCW 48.12.460, or in a multibeneficiary trust in accordance with RCW 48.12.425, except as otherwise provided in this section.

(b) If a certified reinsurer maintains a trust to fully secure its obligations under RCW 48.12.425, and chooses to secure its obligations incurred as a certified reinsurer in the form of a multibeneficiary trust, the certified reinsurer must maintain separate trust accounts for its obligations incurred under reinsurance agreements issued or renewed as a certified reinsurer with reduced security as permitted by this section or comparable laws of other United States jurisdictions and for its obligations under RCW 48.12.425. It is a condition to the grant of certification under this section that the certified reinsurer must have bound itself, by the language of the trust and agreement with the commissioner with principal regulatory oversight of each such trust account, to fund,

upon termination of any trust account, out of the remaining surplus of the trust any deficiency of any other trust account.

(c) The minimum trusteed surplus requirements provided in RCW 48.12.425 are not applicable with respect to a multibeneficiary trust maintained by a certified reinsurer for the purpose of securing obligations incurred under this section, except that the trust must maintain a minimum trusteed surplus of ten million dollars.

(d) With respect to obligations incurred by a certified reinsurer under this section, if the security is insufficient, the commissioner must reduce the allowable credit by an amount proportionate to the deficiency, and has the discretion to impose further reductions in allowable credit upon finding that there is a material risk that the certified reinsurer's obligations will not be paid in full when due.

(e) For purposes of this section, a certified reinsurer whose certification has been terminated for any reason must be treated as a certified reinsurer required to secure one hundred percent of its obligations.

(i) As used in this section, "terminated" means revocation, suspension, voluntary surrender, and inactive status.

(ii) If the commissioner continues to assign a higher rating as permitted by this section, this subsection (5)(e) does not apply to a certified reinsurer in inactive status or to a reinsurer whose certification has been suspended.

(6) If an applicant for certification has been certified as a reinsurer in a national association of insurance commissioners accredited jurisdiction, the commissioner has the discretion to defer to that jurisdiction's certification, and has the discretion to defer to the rating assigned by that jurisdiction, and the assuming insurer must be considered to be a certified reinsurer in this state.

(7) A certified reinsurer that ceases to assume new business in this state may request to maintain its certification in inactive status in order to continue to qualify for a reduction in security for its in-force business. An inactive certified reinsurer must continue to comply with all applicable requirements of this section, and the commissioner must assign a rating that takes into account, if relevant, the reasons why the reinsurer is not assuming new business.
[2015 c 63 § 7.]