

PROPOSED RULEMAKING

INSURANCE DEPARTMENT

[31 PA. CODE CH. 90j]

Term and Universal Life Insurance Reserve Financing Standards

The Insurance Department (Department) proposes to add Chapter 90j (relating to term and universal life insurance reserve financing standards) to read as set forth in Annex A. This rulemaking is proposed under the Department's general rulemaking authority as set forth in sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P.S. §§ 66, 186, 411 and 412) and the Department's rulemaking authority under section 319.3(j) of The Insurance Company Law of 1921 (40 P.S. § 442.3(j)).

Purpose

The purpose of this proposed rulemaking is to establish uniform, National standards governing reserve financing arrangements pertaining to life insurance policies containing guaranteed nonlevel gross premiums, guaranteed nonlevel benefits and universal life insurance policies with secondary guarantees. Additionally, this proposed rulemaking is intended to ensure, with respect to each financing arrangement, funds consisting of primary security and other security are held by or on behalf of ceding insurers in the forms and amounts as set forth in Annex A.

This proposed rulemaking is developed directly from the National Association of Insurance Commissioners (NAIC) Term and Universal Life Insurance Reserve Financing Model Regulation (# 787) which is an NAIC accreditation standard. This proposed rulemaking sets forth specific standards related to the security held by insurers engaged in the ceding of reinsurance as contemplated by the enabling statute. By ensuring that the primary or other security held by or on behalf of ceding insurers is in the forms and amounts set forth in Annex A, this proposed rulemaking will address how reinsurance is ceded for reserve financing purposes. This is important because, generally, some or all of the assets used to secure a reinsurance treaty or to capitalize a reinsurer are (1) issued by the ceding insurer or its affiliates, (2) not unconditionally available to satisfy the general account obligations of the ceding insurer or (3) create a reimbursement, indemnification or other similar obligation on the part of the ceding insurer or any of its affiliates.

Explanation of Regulatory Requirements

Proposed § 90j.1 (relating to definitions) defines the words and terms in Chapter 90j.

Proposed §§ 90j.2 and 90j.3 (relating to authority; and purpose) sets forth the authority for the regulation under the Credit for Reinsurance statute and that the purpose of the chapter is to establish uniform, National standards governing reserve financing arrangements pertaining to life insurance policies.

Proposed § 90j.4 (relating to applicability) clarifies the regulation is applicable to reinsurance treaties that cede liabilities pertaining to covered policies domiciled in this Commonwealth.

Proposed § 90j.5 (relating to exemptions) describes the criteria that would qualify certain reinsurance arrangements for an exemption from the provisions of the regulation.

Proposed § 90j.6 (relating to the actuarial method) establishes the required level of primary security for each reinsurance treaty subject to this regulation shall be VM-20, applied on a treaty-by-treaty basis.

Proposed § 90j.7 (relating to requirements applicable to covered policies to obtain credit for reinsurance; opportunity for remediation) identifies the requirements for credit for reinsurance to be allowed with respect to ceded liabilities pertaining to covered policies as well as the opportunity to remedy a deficiency.

Proposed § 90j.8 (relating to prohibition against avoidance) forbids insurers from engaging in actions or transactions to avoid compliance with this chapter.

Proposed § 90j.9 (relating to effective date) establishes the chapter is effective upon publication of the final-form rulemaking in the *Pennsylvania Bulletin*.

External Comments

The Department circulated a draft copy of Annex A, which includes all of the proposed regulatory provisions, to representatives of insurance carriers who currently issue, or may potentially issue, policies that offer term and universal life insurance policies. This includes Insurance Federation of Pennsylvania, Inc., the American Council of Life Insurers, America's Health Insurance Plans and Life Insurance Company of North America. Comments received were carefully considered in developing this proposed rulemaking.

Affected Parties

This proposed rulemaking will affect foreign and domestic life insurers that hold a certificate of authority to write life insurance contracts in this Commonwealth.

Fiscal Impact

State government

There will not be any fiscal impact to the Department as a result of this proposed rulemaking.

General public

This proposed rulemaking will have no fiscal impact upon the general public.

Political subdivisions

This proposed rulemaking will have no fiscal impact upon political subdivisions.

Private sector

This proposed rulemaking will have no fiscal impact upon the private sector, except for a possible minimal impact to the regulated entities affected.

Paperwork

This proposed rulemaking would not impose additional paperwork on the Department because no additional filing is required to be made by insurers that must comply with this proposed rulemaking.

Effectiveness/Sunset Date

This proposed rulemaking will become effective immediately upon final-form publication in the *Pennsylvania*

Bulletin. The Department continues to monitor the effectiveness of regulations on a triennial basis; therefore, no sunset date has been assigned.

Contact Person

Questions or comments regarding this proposed rulemaking may be addressed in writing to Eric Carlisle, Regulatory Coordinator, Insurance Department, 1341 Strawberry Square, Harrisburg, PA 17120, within 30 days following the publication of this notice in the *Pennsylvania Bulletin*. Questions and comments may be e-mailed to ercarlisle@pa.gov or faxed to (717) 772-1969.

Regulatory Review

Under Section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on January 25, 2022, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Insurance Committee and the Senate Banking and Insurance Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) that have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking by the Department, the General Assembly and the Governor.

JESSICA K. ALTMAN,
Insurance Commissioner

Fiscal Note: 11-260. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 31. INSURANCE

PART IV. LIFE INSURANCE

CHAPTER 90j. TERM AND UNIVERSAL LIFE INSURANCE RESERVE FINANCING STANDARDS

(Editor's Note: The following chapter is proposed to be added and printed in regular type to enhance readability.)

Sec.	
90j.1.	Definitions.
90j.2.	Authority.
90j.3.	Purpose.
90j.4.	Applicability.
90j.5.	Exemptions.
90j.6.	The actuarial method.
90j.7.	Requirements applicable to covered policies to obtain credit for reinsurance; opportunity for remediation.
90j.8.	Prohibition against avoidance.
90j.9.	Effective date.

§ 90j.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Actuarial method—The methodology used to determine the required level of primary security, as described in § 90j.6 (relating to the actuarial method).

Covered policies—Subject to the exemptions described in § 90j.5 (relating to exemptions), those policies of either of the following types. These do not include policies issued prior to January 1, 2015, and ceded, as of December 31,

2014, as part of a reinsurance treaty that would not have met one of the exemptions set forth in § 90j.4 (relating to applicability) had that section then been in effect:

(i) Life insurance policies with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits, or both, except for flexible premium universal life insurance policies;

(ii) Flexible premium universal life insurance policies with provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period.

Non-covered policies—A policy that does not meet the definition of covered policies.

Other security—A security acceptable to the Commissioner other than security meeting the definition of primary security.

Primary security—The following forms of security:

(i) Cash meeting the requirements of section 319.1(b)(1) of The Insurance Company Law of 1921 (40 P.S. § 442.1(b)(1)) regarding reinsurance credits;

(ii) Securities listed by the Securities Valuation Office meeting the requirements of section 319.1 of The Insurance Company Law of 1921, but excluding any synthetic letter of credit, contingent note, credit-linked note or other similar security that operates in a manner similar to a letter of credit, and excluding any securities issued by the ceding insurer or any of its affiliates;

(iii) For security held in connection with funds-withheld and modified coinsurance reinsurance treaties, including all of the following:

(A) Commercial loans in good standing of CM3 quality and higher;

(B) Policy loans;

(C) Derivatives acquired in the normal course and used to support and hedge liabilities pertaining to the actual risks in the policies ceded under the reinsurance treaty.

RBC—Risk-based capital—As defined in section 501-A of The Insurance Department Act of 1921 (40 P.S. § 221.1-A) regarding definitions related to risk-based capital requirements.

Required level of primary security—The dollar amount determined by applying the actuarial method to the risks ceded with respect to covered policies, but not more than the total reserve ceded.

VM-20—Requirements for Principle-Based Reserves for Life Products, including all relevant definitions, from the Valuation Manual.

Valuation Manual—The valuation manual adopted by the NAIC as described in section 11B(1) of the Standard Valuation Law, with all amendments adopted by the NAIC that are effective for the financial statement date on which credit for reinsurance is claimed, and which had an operative date of January 1, 2017, under 40 Pa.C.S. § 7104 (relating to notice regarding operative date with valuation manual) with public notice published at 40 Pa.B. 5867 (September 10, 2016).

§ 90j.2. Authority.

This chapter is adopted and promulgated by the Pennsylvania Insurance Department under section 319.3(j) of The Insurance Company Law of 1921 (40 P.S. § 442.3(j)), regarding credit for reinsurance and reciprocal jurisdictions.

§ 90j.3. Purpose.

The purpose and intent of this chapter is as follows:

(1) To establish uniform, National standards governing reserve financing arrangements pertaining to life insurance policies containing guaranteed nonlevel gross premiums, guaranteed nonlevel benefits and universal life insurance policies with secondary guarantees;

(2) To ensure that, with respect to each financing arrangement, funds consisting of primary security and other security, as defined in § 90j.1 (relating to definitions), are held by or on behalf of ceding insurers in the forms and amounts required in this chapter.

§ 90j.4. Applicability.

This chapter shall apply to reinsurance treaties that cede liabilities pertaining to covered policies, as that term is defined in § 90j.1 (relating to definitions), issued by any life insurance company domiciled in this State. This chapter and Chapter 161 (relating to requirements for qualified and certified reinsurers) shall both apply to these reinsurance treaties; provided, that in the event of a direct conflict between the provisions of this chapter and Chapter 161, the provisions of this chapter shall apply, but only to the extent necessary to resolve the conflict.

§ 90j.5. Exemptions.

This chapter does not apply to the following:

(1) Reinsurance of:

(i) Policies that satisfy the criteria for exemption set forth in Chapter 84c (relating to valuation of life insurance policies); and which are issued before the later of:

(A) The effective date of this chapter.

(B) The date on which the ceding insurer begins to apply the provisions of VM-20 to establish the ceded policies' statutory reserves, but in no event later than January 1, 2020.

(ii) Portions of policies that satisfy the criteria for exemption set forth in § 84c.6(e) (relating to minimum valuation standard for policies with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits (other than universal life policies)) and which are issued before the later of:

(A) The effective date of this chapter.

(B) The date on which the ceding insurer begins to apply the provisions of VM-20 to establish the ceded policies' statutory reserves, but in no event later than January 1, 2020.

(iii) Any universal life policy that meets all of the following requirements:

(A) Secondary guarantee period, if any, is 5 years or less.

(B) Specified premium for the secondary guarantee period is not less than the net level reserve premium for the secondary guarantee period based on the Commissioners Standard Ordinary valuation tables and valuation interest rate applicable to the issue year of the policy.

(C) The initial surrender charge is not less than 100% of the first year annualized specified premium for the secondary guarantee period.

(iv) Credit life insurance.

(v) Any variable life insurance policy that provides for life insurance, the amount or duration of which varies according to the investment experience of any separate account or accounts.

(vi) Any group life insurance certificate unless the certificate provides for a stated or implied schedule of maximum gross premiums required to continue coverage in force for a period in excess of 1 year.

(2) Reinsurance ceded to an assuming insurer that meets the applicable requirements of Chapter 163 (relating to requirements for funds held as security for the payment of obligations of unlicensed, unqualified reinsurers).

(3) Reinsurance ceded to an assuming insurer that meets the applicable requirements of section 319.1(a.2)(2) of The Insurance Company Law of 1921 (40 P.S. § 442.1(a.2)(2)), which satisfies both of the following requirements:

(i) The insurer prepares statutory financial statements in compliance with the NAIC Accounting Practices and Procedures Manual, without any departures from NAIC statutory accounting practices and procedures pertaining to the admissibility or valuation of assets or liabilities that increase the assuming insurer's reported surplus and are material enough that they need to be disclosed in the financial statement of the assuming insurer under Statement of Statutory Accounting Principles No. 1.

(ii) The insurer is not in a company action level event, regulatory action level event, authorized control level event, or mandatory control level event as those terms are defined in section 501-A of The Insurance Department Act of 1921 (40 P.S. § 221.1-A), regarding definitions related to risk-based capital requirements, when its RBC is calculated in accordance with the life risk-based capital report including overview and instructions for companies, as the same may be amended by the NAIC from time to time, without deviation.

(4) Reinsurance ceded to an assuming insurer that meets the applicable requirements of section 319.1 of The Insurance Company Law of 1921, which satisfies the following requirements:

(i) The insurer is not an affiliate, as that term is defined in section 1401 of The Insurance Company Law of 1921 (40 P.S. § 991.1401) regarding definitions of terms related to Insurance Holding Companies, of either the insurer ceding the business to the assuming insurer or any insurer that directly or indirectly ceded the business to that ceding insurer.

(ii) The insurer prepares statutory financial statements in compliance with the NAIC Accounting Practices and Procedures Manual.

(iii) The insurer is licensed or accredited in at least 10 states (including its state of domicile).

(iv) The insurer is not licensed in any state as a captive, special purpose vehicle, special purpose financial captive, special purpose life reinsurance company, limited purpose subsidiary or any other similar licensing regime.

(v) The insurer is not, or would not be, below 500% of the Authorized Control Level RBC as that term is defined in section 501-A of The Insurance Company Law of 1921 when its RBC is calculated in accordance with the life risk-based capital report including overview and instructions for companies, as the same may be amended by the NAIC from time to time, without deviation, and without recognition of any departures from NAIC statutory accounting practices and procedures pertaining to the admission or valuation of assets or liabilities that increase the assuming insurer's reported surplus.

(5) Reinsurance ceded to an assuming insurer that meets the requirements of section 319.1(f)(2)(iii) of The Insurance Company Law of 1921.

(6) Reinsurance not otherwise exempt under paragraphs (1)—(5) if the Commissioner determines under all the facts and circumstances, including the work of the NAIC Financial Analysis Working Group or other group of regulators designated by the NAIC, as applicable, that all of the following apply:

(i) The risks are clearly outside of the intent and purpose of this chapter (as described in § 90j.3 (relating to purpose)).

(ii) The risks are included within the scope of this chapter only as a technicality.

(iii) The application of this chapter to those risks is not necessary to provide appropriate protection to policyholders. The Commissioner shall publicly disclose any decision made under this subsection to exempt a reinsurance treaty from this chapter, including a summary description of the treaty, as well as the general basis for the exemption.

§ 90j.6. Actuarial method.

(a) *Actuarial method.* The actuarial method to establish the required level of primary security for each reinsurance treaty subject to this chapter shall be VM-20, applied on a treaty-by-treaty basis, including all relevant definitions, from the valuation manual as then in effect, applied as follows:

(1) For covered policies described in subparagraph (i) of the definition of “covered policies” in § 90j.1 (relating to definitions), the actuarial method is the greater of the deterministic reserve or the net premium reserve (NPR) regardless of whether the criteria for exemption testing can be met, subject to the following:

(i) If the covered policies do not meet the requirements of the stochastic reserve exclusion test in the valuation manual, then the actuarial method is the greatest of the Deterministic Reserve, the Stochastic Reserve or the NPR.

(ii) If the covered policies are reinsured in a reinsurance treaty that also contains covered policies described in subparagraph (ii) of the definition of “covered policies” in § 90j.1, the ceding insurer may elect to instead use paragraph (2) as follows as the actuarial method for the entire reinsurance agreement.

(iii) The actuarial method must comply with any requirements or restrictions that the valuation manual imposes when aggregating these policy types for purposes of principle-based reserve calculations.

(2) For covered policies described in subparagraph (ii) of the definition of “covered policies” in § 90j.1, the actuarial method is the greatest of the deterministic reserve, the stochastic reserve or the NPR regardless of whether the criteria for exemption testing can be met.

(3) Except as provided in paragraph (4) as follows, the actuarial method is to be applied on a gross basis to all risks with respect to the covered policies as originally issued or assumed by the ceding insurer.

(4) If the reinsurance treaty cedes less than 100% of the risk with respect to the covered policies then the required level of primary security may be reduced by any of the following or any combination of the following:

(i) If a reinsurance treaty cedes only a quota share of some or all of the risks pertaining to the covered policies, the required level of primary security, as well as any adjustment under subparagraph (iii) as follows, may be reduced to a pro rata portion in accordance with the percentage of the risk ceded.

(ii) If the reinsurance treaty in a non-exempt arrangement cedes only the risks pertaining to a secondary guarantee, the required level of primary security may be reduced by an amount determined by applying the actuarial method on a gross basis to all risks, other than risks related to the secondary guarantee, pertaining to the covered policies, subject to the following:

(A) For covered policies for which the ceding insurer did not elect to apply the provisions of VM-20 to establish statutory reserves, the required level of primary security may be reduced by the statutory reserve retained by the ceding insurer on those covered policies.

(B) The retained reserve of those covered policies should reflect any reduction under the cession of mortality risk on a yearly renewable term basis in an exempt arrangement.

(iii) If a portion of the covered policy risk is ceded to another reinsurer on a yearly renewable term basis in an exempt arrangement, the required level of primary security may be reduced by the amount resulting from applying the actuarial method including the reinsurance section of VM-20 to the portion of the covered policy risks ceded in the exempt arrangement. For covered policies issued prior to January 1, 2017, this adjustment is not to exceed $[c_x / (2 * \text{number of reinsurance premiums per year})]$ where c_x is calculated using the same mortality table used in calculating the net premium reserve.

(iv) For any other treaty ceding a portion of risk to a different reinsurer, including but not limited to stop loss, excess of loss and other non-proportional reinsurance treaties, there will be no reduction in the required level of primary security.

(5) Any adjustments, as set forth in paragraphs (1)—(4) of this section, must meet the following criteria:

(i) The required level of primary security must be done in the sequence that accurately reflects the portion of the risk ceded through the treaty.

(ii) The ceding insurer must document the rationale and steps taken to accomplish the adjustments to the required level of primary security due to the cession of less than 100% of the risk.

(iii) The adjustments for other reinsurance will be made only with respect to reinsurance treaties entered into directly by the ceding insurer. The ceding insurer will make no adjustment as a result of a retrocession treaty entered into by the assuming insurers.

(6) In no event will the required level of primary security resulting from application of the actuarial method exceed the amount of statutory reserves ceded.

(7) If the ceding insurer cedes risks with respect to covered policies, including any riders, in more than one reinsurance treaty subject to this chapter, in no event will the aggregate required level of primary security for those reinsurance treaties be less than the required level of primary security calculated using the actuarial method as if all risks ceded in those treaties were ceded in a single treaty subject to this chapter.

(8) If a reinsurance treaty subject to this chapter cedes risk on both covered and non-covered policies, credit for the ceded reserves shall be determined according to both of the following standards:

(i) The actuarial method shall be used to determine the required level of primary security for the covered policies, and § 90j.7 (relating to requirements applicable to cov-

ered policies to obtain credit for reinsurance; opportunity for remediation) shall be used to determine the reinsurance credit for the covered policy reserves.

(ii) Credit for the non-covered policy reserves shall be granted only to the extent that security, in addition to the security held to satisfy the requirements of paragraph (8)(i), is held by or on behalf of the ceding insurer in accordance with section 319.3(c)(4)(iv) and (v) of The Insurance Company Law of 1921 (40 P.S. § 442.3(c)(4)(iv) and (v)). Any primary security used to meet the requirements of this clause may not be used to satisfy the required level of primary security for the covered policies.

(b) *Valuation used for purposes of calculations.* For the purposes of both calculating the required level of primary security under the actuarial method and determining the amount of primary security and other security, as applicable, held by or on behalf of the ceding insurer, the following shall apply:

(1) For assets, including any assets held in trust, that would be admitted under the NAIC Accounting Practices and Procedures Manual if they were held by the ceding insurer, the valuations are to be determined according to statutory accounting procedures as if the assets were held in the ceding insurer's general account and without taking into consideration the effect of any prescribed or permitted practices;

(2) For all other assets, the valuations are to be those that were assigned to the assets for the purpose of determining the amount of reserve credit taken, subject to the following:

(i) The asset spread tables and asset default cost tables required by VM-20 shall be included in the actuarial method if adopted by the NAIC's Life Actuarial (A) Task Force no later than the month of December preceding the valuation date for which the required level of primary security is being calculated.

(ii) The tables of asset spreads and asset default costs shall be incorporated into the actuarial method in the manner specified in VM-20.

§ 90j.7. Requirements applicable to covered policies to obtain credit for reinsurance; opportunity for remediation.

(a) *Requirements.* Subject to the exemptions described in § 90j.5 (relating to exemptions) and the provisions of subsection (b), credit for reinsurance shall be allowed with respect to ceded liabilities pertaining to covered policies under section 319.1(b) of The Insurance Company Law of 1921 (40 P.S. § 442.1(b)) only if, in addition to all other requirements imposed by law or regulation, all of the following requirements are met on a treaty-by-treaty basis:

(1) The ceding insurer's statutory policy reserves with respect to the covered policies are established in full and in accordance with the applicable requirements of 40 Pa.C.S. §§ 7101—7151 (relating to reserve liabilities) and its related regulations and actuarial guidelines. Credit claimed for any reinsurance treaty subject to this chapter may not exceed the proportionate share of those reserves ceded under the contract.

(2) The ceding insurer determines the required level of primary security with respect to each reinsurance treaty subject to this chapter and provides support for its calculation in a manner acceptable to the Commissioner.

(3) Funds consisting of primary security, in an amount at least equal to the required level of primary security, are held by or on behalf of the ceding insurer, as security

under the reinsurance treaty within the meaning of section 319.1 of The Insurance Company Law of 1921, on a funds withheld, trust or modified coinsurance basis.

(4) Funds consisting of other security, in an amount at least equal to any portion of the statutory reserves as to which primary security is not held previously under paragraph (3), are held by or on behalf of the ceding insurer as security under the reinsurance treaty within the meaning of section 319.1 of The Insurance Company Law of 1921.

(5) Any trust used to satisfy the requirements of this section shall comply with all of the conditions and qualifications of Chapter 163 (relating to requirements for funds held as security for the payment of obligations of unlicensed, unqualified reinsurers), subject to the following:

(i) Funds consisting of primary security or other security held in trust, shall for the purposes identified in § 90j.6(b) (relating to the actuarial method), be valued according to the valuation rules set forth in § 90j.6(b), as applicable.

(ii) There may not be any affiliate investment limitations with respect to any security held in trust if the security is not needed to satisfy the requirements of paragraph (3).

(iii) The reinsurance treaty must prohibit withdrawals or substitutions of trust assets that would leave the fair market value of the primary security within the trust, when aggregated with Primary Security outside the trust that is held by or on behalf of the ceding insurer in the manner required by paragraph (3), below 102% of the level required by paragraph (3) at the time of the withdrawal or substitution.

(iv) The determination of reserve credit under Chapter 163 (relating to requirements for funds held as security for the payment of obligations of unlicensed, unqualified reinsurers) shall be determined according to the valuation rules set forth in § 90j.6(b), as applicable.

(6) The reinsurance treaty has been approved by the Commissioner.

(b) *Requirements at inception date and on an on-going basis; remediation.*

(1) The requirements of subsection (a) must be satisfied as of the date that risks under covered policies are ceded (if the date is on or after the effective date of this chapter) and on an ongoing basis thereafter, subject to the following:

(i) Under no circumstances shall a ceding insurer take or consent to any action or series of actions that would result in a deficiency under subsection (a)(3) or (4) with respect to any reinsurance treaty under which covered policies have been ceded, and

(ii) In the event that a ceding insurer becomes aware at any time that a deficiency exists, it shall use its best efforts to arrange for the deficiency to be eliminated as expeditiously as possible.

(2) Prior to the due date of each quarterly or annual statement, each life insurance company that has ceded reinsurance within the scope of § 90j.4 (relating to applicability) shall perform an analysis, on a treaty-by-treaty basis, to determine, as to each reinsurance treaty under which covered policies have been ceded, whether, as of the end of the immediately preceding calendar quarter, the requirements of subsection (a)(3) and (4) were satisfied.

(i) The ceding insurer shall establish a liability equal to the excess of the credit for reinsurance taken over the amount of primary security actually held under paragraph (3) as follows, unless:

(A) The requirements of subsection (a)(3) and (4) were fully satisfied as of the valuation date as to the reinsurance treaty;

(B) Any deficiency has been eliminated before the due date of the quarterly or annual statement to which the valuation date relates through the addition of primary security or other security, or both, in the amount and in the form as would have caused the requirements of subsection (a)(3) and (4) to be fully satisfied as of the valuation date.

(3) Nothing in paragraph (2) shall be construed to allow a ceding company to maintain any deficiency under subsection (a)(3) or (4) for any period of time longer than is reasonably necessary to eliminate it.

§ 90j.8. Prohibition against avoidance.

No insurer that has covered policies subject to this chapter as set forth in § 90j.4 (relating to applicability) shall take any action or series of actions, or enter into any transaction or arrangement, or series of transactions or arrangements, if the purpose of the action, transaction or arrangement or series, is to avoid the requirements of this chapter, or to circumvent the purpose and intent of this chapter as set forth in § 90j.3 (relating to purpose).

§ 90j.9. Effective date.

This chapter will be effective _____ (*Editor’s Note:* The blank refers to the date of the final-form publication) and shall pertain to the credit for reinsurance taken for all covered policies.

[Pa.B. Doc. No. 22-195. Filed for public inspection February 4, 2022, 9:00 a.m.]

**STATE BOARD OF
OCCUPATIONAL THERAPY
EDUCATION AND LICENSURE**

**[49 PA. CODE CH. 42]
Licensure by Endorsement**

The State Board of Occupational Therapy Education and Licensure (Board) proposes to amend § 42.1 (relating to definitions) and add §§ 42.9 and 42.10 (relating to licensure by endorsement; and provisional endorsement license) to read as set forth in Annex A.

Effective Date

The amendments will be effective upon publication of the final-form rulemaking in the *Pennsylvania Bulletin*.

Statutory Authority

The provisions of 63 Pa.C.S. § 3111 (relating to licensure by endorsement) require licensing boards and commissions to issue a license, certificate, registration or permit to an applicant to allow practice in this Commonwealth, provided the applicant meets the following criteria: holds a current license, certificate, registration or permit from another state, territory or country whose licensing requirements are substantially equivalent to or exceed the requirements in this Commonwealth; demonstrates competency; has not committed any act that

constitutes grounds for refusal, suspension or revocation of a license, certificate, registration or permit to practice that profession or occupation in this Commonwealth, unless the board or commission determines the conduct is not an impediment to granting the license, certificate, registration or permit; is in good standing and has not been disciplined by the jurisdiction that issued the license, certificate, registration or permit, unless the board or commission determines the conduct is not an impediment to granting the license, certificate, registration or permit; and the applicant pays fees, as established by regulation. Additionally, 63 Pa.C.S. § 3111 authorizes boards and commissions to issue a provisional license, certificate, registration, or permit while an applicant is satisfying remaining requirements for licensure by endorsement, for which the Board must set by regulation the terms of expiration.

Finally, section 5(b) of the Occupational Therapy Practice Act (63 P.S. § 1505(b)) provides that the Board may adopt rules and regulations consistent with the law as necessary for the performance of its duties and the proper administration of the act.

The act of July 1, 2020 (P.L. 575, No. 53) added 63 Pa.C.S. § 3111 as part of the consolidation of the act of July 2, 1993 (P.L. 345, No. 48) (Act 48) into 63 Pa.C.S. Chapter 31 (relating to powers and duties). The text of 63 Pa.C.S. § 3111 was originally added to Act 48 by the act of July 1, 2019 (P.L. 292, No. 41).

Background and Need for the Amendments

This proposed rulemaking is needed to effectuate 63 Pa.C.S. § 3111, which requires the Board to issue a license to applicants who meet the requirements for licensure by endorsement, as set forth in 63 Pa.C.S. § 3111. Under 63 Pa.C.S. § 3111(a)(1), the Board must determine whether the other jurisdiction’s standards for licensure are substantially equivalent to or exceed those established by the Board. Additionally, 63 Pa.C.S. § 3111(a)(2) requires the Board to determine the methods of competency, including completion of continuing education or experience in the profession or occupation for at least 2 of the 5 years immediately preceding the filing of the application. Under 63 Pa.C.S. § 3111(b)(2), the Board must establish, by regulation, the expiration of a provisional endorsement license. This proposed rulemaking sets forth the criteria for eligibility for licensure by endorsement, including the specific methods required for an applicant to demonstrate competency as well as requirements for granting a provisional endorsement license.

Description of the Proposed Amendments

The Board proposes to amend § 42.1 by adding a definition for the term “jurisdiction” consistent with 63 Pa.C.S. § 3111.

Proposed § 42.9 requires an applicant to provide proof that the applicant meets eight criteria required for licensure by endorsement. The first criterion, as set forth in proposed subsection (a)(1), requires an applicant to provide proof of a current license, certification, registration or permit in good standing to practice as an occupational therapist or occupational therapy assistant in another jurisdiction whose standards are substantially equivalent to or exceed standards under section 8 of the act (63 P.S. § 1508), §§ 42.11 and 42.13(a) (relating to licensure examination; and application for licensure). Proposed subsection (a)(1) further requires an applicant to submit a copy of the current applicable law, regulation or other rule governing licensure, certification, registration or permit requirements and scope of practice in the

jurisdiction that issued the license, certificate, registration or permit. This proposed rulemaking would also require that the copy of the applicable law, regulation or other rule include the enactment date. Additionally, because 63 Pa.C.S. § 3111 is applicable to territories and other countries that use languages other than English, where the applicable law, regulation or other rule is in a language other than English, the Board would require, at the applicant's expense, translation of the applicable law, regulation or other rule by a professional translation service.

Proposed subsection (a)(2) requires demonstration of competency. Under this provision, an applicant must provide proof of competency by demonstrating experience in the practice of occupational therapy. To demonstrate competency by experience, an applicant must demonstrate active engagement in the practice of occupational therapy as an occupational therapist or occupational therapy assistant for at least 2 of the 5 years immediately preceding the filing of the application in the jurisdiction that issued the license, certificate, registration or permit.

Proposed subsection (a)(3) and (4) incorporate the statutory prohibitions in 63 Pa.C.S. § 3111 pertaining to conduct that would constitute grounds for refusal, suspension or revocation of a license, certificate, registration or permit to practice the profession or occupation, and prior discipline by the jurisdiction that issued the license.

Proposed subsection (a)(5) provides for payment of an application fee, as required under 63 Pa.C.S. § 3111(a)(5). The applicable fee for licensure by endorsement under 63 Pa.C.S. § 3111 is the application for license fee as set forth under § 41.17 (relating to fees) of the Board's current fee schedule at \$30.

Proposed subsection (a)(6) requires that applicants meet the professional liability requirements under section 8 of the act and § 42.13(b).

Next, proposed subsection (a)(7) requires applicants to apply for licensure in accordance with the act and Chapter 42 in the manner and format prescribed by the Board.

Finally, proposed subsection (a)(8) requires completion of 3 hours of training in child abuse recognition and reporting, which is mandated continuing education under 23 Pa.C.S. § 6383(b)(3)(i) (relating to education and training) of the Child Protective Services Law (CPSL).

In proposed § 42.9(b), the Board may require a personal interview or additional information to assist the Board in determining eligibility and competency. When a personal interview is necessary, the applicant may request the interview to be conducted by video teleconference for good cause shown.

Consistent with 63 Pa.C.S. § 3111(a)(3) and (4), proposed § 42.9(c) authorizes the Board, in its discretion, to determine that an act prohibited under section 16(a) of the act (63 P.S. § 1516(a)) or disciplinary action by a jurisdiction are not impediments to the granting of a license, certification, registration or a permit by endorsement under 63 Pa.C.S. § 3111.

Consistent with 63 Pa.C.S. § 3111(b), proposed § 42.10(a) provides that the Board, in its discretion, may issue a provisional endorsement license while an applicant is satisfying remaining requirements under 63 Pa.C.S. § 3111 and proposed § 42.9. Proposed § 42.10(b) sets the expiration of a provisional endorsement license at 1 year, unless the Board determines that an expiration date of less than 1 year is appropriate. Additionally, upon a written request, the Board may extend the term of the

license upon a showing of good cause. Proposed § 42.10(c) sets forth reasons for which a provisional endorsement license will be terminated by the Board, including when the Board denies or grants a license, or the provisional endorsement licensee fails to comply with the terms of a provisional endorsement license. Finally, proposed § 42.10(d) clarifies that while an individual may reapply for a license by endorsement under proposed § 42.9, the Board will not issue a subsequent provisional endorsement license to an applicant who previously held a provisional endorsement license that expired or was terminated.

Fiscal Impact and Paperwork Requirements

This proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The costs to the Board related to processing applications for licensure by endorsement will be recouped through fees paid by applicants. Applicants who apply for licensure by endorsement will be impacted by the \$30 application for licensure fee in § 41.17. Applicants must complete child abuse recognition and reporting training, as required by 23 Pa.C.S. § 6383(b)(3)(i) of the CPSL. There are free in-person and online child abuse recognition and reporting training options available; therefore, the Board does not anticipate a negative fiscal impact for this statutorily mandated training.

Sunset Date

The Board continuously monitors the cost effectiveness of the Board's regulations. Therefore, no sunset date has been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on January 26, 2022, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Professional Licensure Committee (HPLC) and the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC). A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking by the Board, the General Assembly and the Governor.

Public Comment

Interested persons are invited to submit written comments, recommendations or objections regarding this proposed rulemaking to the Board Counsel, P.O. Box 69523, Harrisburg, PA 17106-9523 or by e-mail at RA-STRegulatoryCounsel@pa.gov within 30 days of publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference 16A-6713 (Licensure by Endorsement), when submitting comments.

KERRI HAMPLE, OTD, OTR/L,
Chairperson

Fiscal Note: 16A-6713. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 42. STATE BOARD OF OCCUPATIONAL THERAPY EDUCATION AND LICENSURE

GENERAL PROVISIONS

§ 42.1. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Equivalent program—A masters or certificate program in occupational therapy approved by the Board.

Jurisdiction—A state, territory or country.

Licensee—An individual who has been licensed under the act as an occupational therapist or an occupational therapy assistant.

* * * * *

(*Editor's Note:* The following sections are proposed to be added and are printed in regular type to enhance readability.)

LICENSURE BY ENDORSEMENT

§ 42.9. **Licensure by endorsement.**

(a) *Requirements for issuance.* To be issued a license by endorsement under 63 Pa.C.S. § 3111 (relating to licensure by endorsement), an applicant must satisfy all of the following conditions:

(1) Have a current license or certification in good standing to practice as an occupational therapist or an occupational therapy assistant in another jurisdiction whose standards are substantially equivalent to or exceed those established under section 8 of the act (63 P.S. § 1508) and §§ 42.11 and 42.13(a) (relating to licensure examination; and application for licensure).

(i) An applicant must submit a copy of the current applicable law, regulation or other rule governing licensure or certification requirements and scope of practice in the jurisdiction that issued the license, certificate, registration or permit.

(ii) If the applicable law, regulation or other rule is in a language other than English, at the applicant's expense, the applicable law, regulation or other rule shall be translated by a professional translation service and verified to be complete and accurate.

(iii) The copy of the applicable law, regulation or other rule must include the enactment date.

(2) Demonstrate competency by the following:

(i) Experience in the practice of occupational therapy by demonstrating, at a minimum, that the applicant has actively engaged in the licensed practice as an occupational therapist or occupational therapy assistant in the jurisdiction that issued the license, certificate, registration or permit for at least 2 of the 5 years immediately preceding the filing of the application with the Board.

(3) Have not committed any act that constitutes grounds for refusal, suspension or revocation of a license, certification, registration or permit to practice as an occupational therapist or occupational therapy assistant under section 16(a) of the act (63 P.S. § 1516(a)) and § 42.13.

(4) Have not been disciplined by the jurisdiction that issued the license, certificate, registration or permit.

(5) Have paid the application for licensure fee as required by § 41.17 (relating to fees).

(6) Satisfy the professional liability requirements as required under section 8 of the act and § 42.13(b).

(7) Have applied for licensure in accordance with this chapter in the manner and format prescribed by the Board.

(8) Complete 3 hours of training in child abuse recognition and reporting from a provider approved by the Department of Human Services as required under 23 Pa.C.S. § 6383(b)(3)(i) (relating to education and training).

(b) *Interview and additional information.* An applicant may be required to appear before the Board for a personal interview and may be required to submit additional information, including supporting documentation relating to competency and experience. The applicant may request an interview by video teleconference for good cause shown.

(c) *Prohibited acts.* Notwithstanding subsection (a)(3) and (4), the Board may, in its discretion, determine that an act prohibited under section 16(a) of the act or disciplinary action by a jurisdiction is not an impediment to licensure under 63 Pa.C.S. § 3111.

§ 42.10. **Provisional Endorsement License.**

(a) *Provisional endorsement license.* The Board may, in its discretion, issue a provisional endorsement license to an applicant while the applicant is satisfying remaining requirements for licensure by endorsement under 63 Pa.C.S. § 3111 (relating to licensure by endorsement) and § 42.9 (relating to licensure by endorsement).

(b) *Expiration of a provisional endorsement license.*

(1) An individual holding a provisional endorsement license may practice for up to 1 year after issuance of the provisional endorsement license. The Board, in its discretion, may determine that an expiration date of less than 1 year is appropriate.

(2) Upon a written request and a showing of good cause, the Board may grant an extension of no longer than 1 year from the expiration date of the provisional endorsement license.

(c) *Termination of a provisional endorsement license.* A provisional endorsement license terminates if any of the following occurs:

(1) When the Board completes its assessment of the applicant and either denies or grants the license.

(2) When the holder of the provisional license fails to comply with the terms of the provisional endorsement license.

(d) *Reapplication.* An individual may reapply for licensure by endorsement under § 42.9 after expiration or termination of a provisional endorsement license; however, the individual may not be issued a subsequent provisional endorsement license.

[Pa.B. Doc. No. 22-196. Filed for public inspection February 4, 2022, 9:00 a.m.]