

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

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**Authority**

The provisions of this Chapter 90j added under sections 206, 506, 1501 and 1502 of The Administrative Code of 1929 (71 P.S. §§ 66, 186, 411 and 412); and section 319.3(j) of The Insurance Company Law of 1921 (40 P.S. § 442.3(j)).

**Source**

The provisions of this Chapter 90j added August 5, 2022, effective August 6, 2022, 52 Pa.B. 4396.

**§ 90j.1. Definitions.**

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

*Covered policies*—(1) Subject to the exemptions described in § 90j.5 (relating to exemptions), policies of either of the following types:

- (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.

(2) The term does 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.5 had that section then been in effect.

*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(b)(2) of The Insurance Company Law of 1921 regarding reinsurance credits, 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*—The minimum level of capital required for an insurer to support its operations and write coverage as set forth in Article V-A of The Insurance Department Act of 1921 (40 P.S. §§ 221.1-A—221.15-A).

*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 of valuation manual) with public notice published at 46 Pa.B. 5867 (September 10, 2016).

#### Cross References

This section cited in 31 Pa. Code § 90j.3 (relating to purpose); 31 Pa. Code § 90j.4 (relating to applicability); and 31 Pa. Code § 90j.6 (relating to actuarial method).

### § 90j.2. Authority.

This chapter is adopted and promulgated by the 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 non-

level 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.

#### Cross References

This section cited in 31 Pa. Code § 90j.5 (relating to exemptions); and 31 Pa. Code § 90j.8 (relating to prohibition against avoidance).

### § 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. 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.

#### Cross References

This section cited in 31 Pa. Code § 90j.7 (relating to requirements applicable to covered policies to obtain credit for reinsurance; opportunity for remediation); and 31 Pa. Code § 90j.8 (relating to prohibition against avoidance).

### § 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) A 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 (CSO) 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) A 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) A 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 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(a.2) 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 ten 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 Department Act 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.

#### Cross References

This section cited in 31 Pa. Code § 90j.1 (relating to definitions); and 31 Pa. Code § 90j.7 (relating to requirements applicable to covered policies to obtain credit for reinsurance; opportunity for remediation).

#### § 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 paragraph (1)(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 paragraph (1)(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 paragraph (1)(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), 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), 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) Adjustments, as set forth in paragraph (4), 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 covered 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 subparagraph (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)). A primary security used to

meet the requirements of this subparagraph 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.

#### Cross References

This section cited in 31 Pa. Code § 90j.1 (relating to definitions); and 31 Pa. Code § 90j.7 (relating to requirements applicable to covered policies to obtain credit for reinsurance; opportunity for remediation).

### **§ 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 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) A 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 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 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 all of 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.

(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. The following apply:

(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) A 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) may be construed to allow a ceding company to maintain a deficiency under subsection (a)(3) or (4) for any period of time longer than is reasonably necessary to eliminate it.

#### **Cross References**

This section cited in 31 Pa. Code § 90j.6 (relating to actuarial method).

### **§ 90j.8. Prohibition against avoidance.**

An insurer that has covered policies subject to this chapter as set forth in § 90j.4 (relating to applicability), may not 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 thereof, 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 shall take effect August 6, 2022, and shall pertain to the credit for reinsurance taken for all covered policies.

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