

**Readopt with amendment Ins 308, effective 1-3-13 (Document #10196), to read as follows:**

## PART Ins 308 LIFE AND HEALTH REINSURANCE AGREEMENTS

Statutory Authority: RSA 400-A:15, I; **RSA 405:51**; RSA 405:52[~~a~~]

Ins 308.01 Preamble.

(a) The New Hampshire insurance department recognizes that licensed insurers routinely enter into reinsurance agreements. *These [that] agreements can* yield legitimate relief to the ceding insurer [~~from strain to surplus~~]. *A “ceding insurer” is an insurance company that passes a part or all of its risks from its insurance policy portfolio to another insurer (reinsurer).*

(b) However, it is improper for a licensed insurer, in the capacity of a ceding insurer, to enter into reinsurance agreements for the principal purpose of producing significant surplus [~~and~~] 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 *contained* in the reinsurance agreement, such as catastrophic mortality or extraordinary survival. The terms of such agreements referred to herein and described in Ins 308.05 violate:

- (1) RSA 400-A:36 and RSA 405:47 relating to financial statements which do not properly reflect the financial condition of the ceding insurer;
- (2) RSA 405:47 relating to reinsurance reserve credits, thus resulting in a ceding insurer improperly reducing liabilities or establishing assets for reinsurance ceded; and
- (3) RSA 400-A:36, RSA 405:45, RSA 405:47 and Ins 1500 relating to creating a situation that may be hazardous to policyholders and the people of this state.

Ins 308.02 Purpose. The purpose of this rule is to establish requirements for life, accident and health insurers that cede insurance *to reinsurers* to assure that their financial statements properly reflect their financial condition thereby protecting policyholders and the public from possible future hazardous financial conditions.

Ins 308.03 Scope. This rule shall apply to all domestic life and accident and health insurers and to all other licensed life and accident and health insurers that are not subject to a substantially similar regulation in their domiciliary state. This rule shall also similarly apply to licensed property and casualty insurers with respect to their accident and health business. This rule shall not apply to assumption reinsurance, yearly renewable term reinsurance or certain nonproportional reinsurance such as stop loss or catastrophe reinsurance.

Ins 308.04 Accounting Requirements.

(a) No *ceding* insurer subject to this rule shall [~~for reinsurance ceded,~~] reduce any liability or establish any asset in any financial statement *whether or not* filed with the insurance department if, by the terms of the reinsurance agreement, in substance or effect, any of the following conditions exist:

- (1) 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). Those expenses include commissions,

premium taxes and direct expenses including, but not limited to, billing, valuation, claims and maintenance expected by the ~~[company]~~ **ceding insurer** at the time the business is reinsured;

(2) 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.

(3) The ceding insurer is required to reimburse the reinsurer for negative experience under the reinsurance agreement, ~~[, except that neither]~~ **Negative experience shall not include (1)** offsetting experience refunds against current and prior years' losses under the agreement ~~[nor]~~ **or (2)** 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 that 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]~~ **insurer** to prematurely terminate the reinsurance treaty;

(4) The ceding insurer shall, at specific points in time scheduled in the agreement **or otherwise**, terminate or automatically recapture all or part of the reinsurance ceded;

(5) 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 **other than from income**. For example, it is improper for a ceding ~~[company]~~ **insurer** to pay reinsurance premiums, or other fees or charges to a reinsurer that are greater than the direct premiums collected by the ceding ~~[company]~~ **insurer**;

(6) 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 products or type of business, the risks that are considered to be significant. For products not specifically included, the risks determined to be significant shall be consistent with this table.

Table 308.1 Risk Categories

Risk categories:

- a. Morbidity;
- b. Mortality;
- c. 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;

- d. 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;

e. Reinvestment (C3)

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

f. 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

	a	b	c	d	e	f
Health Insurance – other than LTC/LTD*	+	0	+	0	0	0
Health Insurance – 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	+	+	+	+	+
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

(7) Assets:

a. The credit quality, reinvestment, or disintermediation risk is significant for the business reinsured and the ceding [company] *insurer* does not (other than for the classes of business excepted in b. below) 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 that legally segregates, by contract or contract provision, the underlying assets.

b. Notwithstanding the requirements of paragraph a. above, the assets supporting the reserves for the following classes of business and any classes of business that do not have a significant credit quality, reinvestment or disintermediation risk may be held by the ceding [~~company~~] **insurer** without segregation of such assets:

1. Health Insurance – LTC/LTD
2. Traditional Non-Par Permanent
3. Traditional Par Permanent
4. Adjustable Premium Permanent
5. Indeterminate Premium Permanent
6. Universal Life Fixed Premium (no dump-in premiums allowed)

c. The associated formula for determining the reserve interest rate adjustment shall use a formula that reflects the ceding [~~company's~~] **insurer'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 the net investment income (Exhibit 2, Line 16, Column 7)

CG is the 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

(8) Settlements are made less frequently than quarterly or payments due from the reinsurer are not made in cash within 90 days of the settlement date.

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

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

(11) 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 required and, in substance or effect, the expected potential liability to the ceding insurer remains basically unchanged.

(b) Notwithstanding (a) above, a[~~n~~] **ceding** insurer subject to this rule may, with the prior approval of the commissioner, take such reserve credit or establish such asset as the commissioner may deem consistent with RSA 405:46, including actuarial interpretations or standards adopted by the department.

(c) Agreements.

(1) Agreements entered into after the effective date of this rule that involve the reinsurance of business [~~issued prior to the effective date of the agreements,~~] along with any subsequent amendments thereto, shall be filed by the ceding [~~company~~] **insurer** with the commissioner within 30 days from 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 rule and any applicable actuarial standards of practice when determining the proper credit in financial statements filed with this department. The actuary should maintain adequate documentation and be prepared upon request to describe the actuarial work performed for inclusion in the financial statements and to demonstrate that such work conforms to this rule.

(2) Any increase in surplus net of federal income tax resulting from arrangements described in (c)(1) 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.

[F]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) that 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 allowance 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.[F]

#### Ins 308.05 Written Agreements.

(a) 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 department, unless the agreement, amendment or a binding letter of intent has been duly executed by both parties no later than the "as of date" of the financial statement.

(b) In the case of a letter of intent, a reinsurance agreement or an amendment to a reinsurance agreement shall be executed within a reasonable period of time, not exceeding 90 days from the execution date of the letter of intent, in order for credit to be granted for the reinsurance ceded.

(c) The reinsurance agreement shall contain provisions that provide that:

(1) 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

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

Ins 308.06 Existing Agreements. Insurers subject to this rule shall reduce to zero by December 31, 1998 any reserve credits or assets established with respect to reinsurance agreements entered into prior to the effective date of this rule that, under the provisions of this rule would not be entitled to recognition of the reserve credits or assets; provided, however, that the reinsurance agreements shall have been in compliance with laws or rules in existence immediately preceding the effective date of this rule.

***Ins 308.07 Waiver or Suspension of Rules.***

***(a) The commissioner, upon the commissioner’s own initiative or upon request by an insurer, shall waive any requirement of this chapter if such waiver does not contradict the objective or intent of the rule and:***

***(1) Applying the rule provision would cause confusion or would be misleading to consumers;***

***(2) The rule provision is in whole or in part inapplicable to the given circumstances;***

***(3) There are specific circumstances unique to the situation such that strict compliance with the rule would be onerous without promoting the objective or intent of the rule provision; or***

***(4) Any other similar extenuating circumstances exist such that application of an alternative standard or procedure better promotes the objective or intent of the rule provision.***

***(b) No requirement prescribed by statute shall be waived unless expressly authorized by law.***

***(c) Any person or entity seeking a waiver shall make a request in writing.***

***(d) A request for a waiver shall specify the basis for the waiver and proposed alternative, if any.***

**Appendix A- Statutes Implemented**

<b>Rule</b>	<b>Specific State Statute that the Rule Implements</b>
Ins 308.01	RSA 400-A:15, I[-]; RSA 400-A:36; RSA 405:45; RSA 405:46; RSA 405:47; RSA 405:48; RSA 405:49; RSA 405:50; RSA 405:51; RSA 405:52
Ins 308.02	RSA 400-A:15, I[-]; RSA 400-A:36; RSA 405:45; RSA 405:46; RSA 405:47; RSA 405:48; RSA 405:49; RSA 405:50; RSA 405:51; RSA 405:52
Ins 308.03	RSA 400-A:15, I[-]; RSA 400-A:36; RSA 405:45; RSA 405:46; RSA 405:47; RSA 405:48; RSA 405:49; RSA 405:50; RSA 405:51; RSA 405:52
Ins 308.04	RSA 400-A:15, I[-]; RSA 400-A:36; RSA 405:45; RSA 405:46; RSA 405:47; RSA 405:48; RSA 405:49; RSA 405:50; RSA 405:51; RSA 405:52
Ins 308.05	RSA 400-A:15, I[-]; RSA 400-A:36; RSA 405:45; RSA 405:46; RSA 405:47; RSA 405:48; RSA 405:49; RSA 405:50; RSA 405:51; RSA 405:52
Ins 308.06	RSA 400-A:15, I[-]; RSA 400-A:36; RSA 405:45; RSA 405:46; RSA 405:47; RSA 405:48; RSA 405:49; RSA 405:50; RSA 405:51; RSA 405:52
<b><i>Ins 308.07</i></b>	<b><i>RSA 400-A:15, I</i></b>