

APRIL 2017

CHAPTER 45-03-07.1

45-03-07.1-04.1. Credit for reinsurance - Certified reinsurers.

1. Pursuant to subsection 5 of North Dakota Century Code Section 26.1-31.2-01, the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that has been certified as a reinsurer in this state at all times for which statutory financial statement credit for reinsurance is claimed under this section. The credit allowed shall be based upon the security held by or on behalf of the ceding insurer in accordance with a rating assigned to the certified reinsurer by the commissioner. The security shall be in a form consistent with the provisions of subsection 5 of North Dakota Century Code section 26.1-31.2-01 and section 26.1-31.2-02 and North Dakota Administrative Code section 45-03-07.1-07, 45-03-07.1-08, or 45-03-07.1-09. The amount of security required in order for full credit to be allowed shall correspond with the following requirements:

a. Ratings Security Required

Secure - 1	0%
Secure - 2	0% 10%
Secure - 3	20%
Secure - 4	50%
Secure - 5	75%
Vulnerable - 6	100%

- b. Affiliated reinsurance transactions shall receive the same opportunity for reduced security requirements as all other reinsurance transactions.
- c. The commissioner shall require the certified reinsurer to post one hundred percent, for the benefit of the ceding insurer or its estate, security upon the entry of an order of rehabilitation, liquidation, or conservation against the ceding insurer.
- d. In order to facilitate the prompt payment of claims, a certified reinsurer shall not be required to post security for catastrophe recoverables for a period of one year from the date of the first instance of a liability reserve entry by the ceding company as a result of a loss from a catastrophic occurrence as recognized by the commissioner. The one year deferral period is contingent upon the certified reinsurer continuing to pay claims in a timely manner. Reinsurance recoverables for only the following lines of business as

reported on the national association of insurance commissioners annual financial statement related specifically to the catastrophic occurrence will be included in the deferral:

- (1) Line 1: Fire.
 - (2) Line 2: Allied lines.
 - (3) Line 3: Farmowners multiple peril.
 - (4) Line 4: Homeowners multiple peril.
 - (5) Line 5: Commercial multiple peril.
 - (6) Line 9: Inland marine.
 - (7) Line 12: Earthquake.
 - (8) Line 21: Auto physical damage.
- e. Credit for reinsurance under this section shall apply only to reinsurance contracts entered into or renewed on or after the effective date of the certification of the assuming insurer. Any reinsurance contract entered into prior to the effective date of the certification of the assuming insurer that is subsequently amended after the effective date of the certification of the assuming insurer, or a new reinsurance contract, covering any risk for which collateral was provided previously, shall only be subject to this section with respect to losses incurred and reserves reported from and after the effective date of the amendment or new contract.
- f. Nothing in this section shall prohibit the parties to a reinsurance agreement from agreeing to provisions establishing security requirements that exceed the minimum security requirements established for certified reinsurers under this section.

2. Certification procedure.

- a. The commissioner shall post notice on the insurance department's website promptly upon receipt of any application for certification, including instructions on how members of the public may respond to the application. The commissioner may not take final action on the application until at least thirty days after posting the notice required by this subdivision.
- b. The commissioner shall issue written notice to an assuming insurer that has made application and been approved as a certified reinsurer. Included in the notice shall be the rating assigned the certified reinsurer in accordance with subsection 1. The commissioner shall publish a list of all certified reinsurers and their ratings.
- c. In order to be eligible for certification, the assuming insurer shall meet the following requirements:
 - (1) The assuming insurer must be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the commissioner pursuant to subsection 3.
 - (2) The assuming insurer must maintain capital and surplus, or its equivalent, of no less than two hundred fifty million dollars calculated in accordance with paragraph 8 of subdivision d. This requirement may also be satisfied by an association including incorporated and individual unincorporated underwriters having minimum capital

and surplus equivalents, net of liabilities, of at least two hundred fifty million dollars and a central fund containing a balance of at least two hundred fifty million dollars.

- (3) The assuming insurer must maintain financial strength ratings from two or more rating agencies deemed acceptable by the commissioner. These ratings shall be based on interactive communication between the rating agency and the assuming insurer and shall not be based solely on publicly available information. These financial strength ratings will be one factor used by the commissioner in determining the rating that is assigned to the assuming insurer. Acceptable rating agencies include the following:
 - (a) Standard & Poor's;
 - (b) Moody's Investors Service;
 - (c) Fitch Ratings;
 - (d) A.M. Best Company; or
 - (e) Any other nationally recognized statistical rating organization.
 - (4) The certified reinsurer must comply with any other requirements reasonably imposed by the commissioner.
- d. Each certified reinsurer shall be rated on a legal entity basis, with due consideration being given to the group rating where appropriate, except that an association including incorporated and individual unincorporated underwriters that has been approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating. Factors that may be considered as part of the evaluation process include the following:
- (1) The certified reinsurer's financial strength rating from an acceptable rating agency. The maximum rating that a certified reinsurer may be assigned will correspond to its financial strength rating as outlined in the table below. The commissioner shall use the lowest financial strength rating received from an approved rating agency in establishing the maximum rating of a certified reinsurer. A failure to obtain or maintain at least two financial strength ratings from acceptable rating agencies will result in loss of eligibility for certification.

Ratings	Best	S&P	Moody's	Fitch
Secure - 1	A++	AAA	Aaa	AAA
Secure - 2	A+	AA+, AA, AA-	Aa1, Aa2, Aa3	AA+, AA, AA-
Secure - 3	A	A+, A	A1, A2	A+, A
Secure - 4	A-	A-	A3	A-
Secure - 5	B++, B+	BBB+, BBB, BBB-	Baa1, Baa2, Baa3	BBB+, BBB, BBB-
Vulnerable - 6	B, B-, C++, C+, C, C-, D, E, F	BB+, BB, BB-, B+, B, B-, CCC, CC, C, D, R	Ba1, Ba2, Ba3, B1, B2, B3, Caa, Ca, C	BB+, BB, BB-, B+, B, B-, CCC CCC+, CC, CCC-, DD

- (2) The business practices of the certified reinsurer in dealing with its ceding insurers, including its record of compliance with reinsurance contractual terms and obligations;

- (3) For certified reinsurers domiciled in the United States, a review of the most recent applicable national association of insurance commissioners annual statement blank, either schedule F for property and casualty reinsurers, or schedule S for life and health reinsurers;
- (4) For certified reinsurers not domiciled in the United States, a review annually of form CR-F for property and casualty reinsurers, or form CR-S for life and health reinsurers, attached as exhibits to this chapter;
- (5) The reputation of the certified reinsurer for prompt payment of claims under reinsurance agreements, based on an analysis of ceding insurers' schedule F reporting of overdue reinsurance recoverables, including the proportion of obligations that are more than ninety days past due or are in dispute. with specific attention given to obligations payable to companies that are in administrative supervision or receivership;
- (6) Regulatory actions against the certified reinsurer;
- (7) The report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in paragraph 8;
- (8) For certified reinsurers not domiciled in the United States. audited financial statements. regulatory filings, and actuarial opinion as filed with the non-United States jurisdiction supervisor. Acceptable audited financial statements are those performed using:
 - (a) United States generally accepted accounting principles;
 - (b) International financial reporting standards if an audited footnote reconciling equity and net income to United States generally accepted accounting principles is included; or
 - (c) With the permission of the commissioner, audited international financial reporting standards statements with a reconciliation to United States generally accepted accounting principles certified by an officer of the company.

Upon the initial application for certification, the commissioner will consider audited financial statements for the last three years filed with its non-United States jurisdiction supervisor;

- (9) The liquidation priority of obligations to a ceding insurer in the certified reinsurer's domiciliary jurisdiction in the context of an insolvency proceeding;
 - (10) A certified reinsurer's participation in any solvent scheme of arrangement, or similar procedure, which involves United States ceding insurers. The commissioner shall receive prior notice from a certified reinsurer that proposes participation by the certified reinsurer in a solvent scheme of arrangement; and
 - (11) Any other information deemed relevant by the commissioner.
- e. Based on the analysis conducted under paragraph 5 of subdivision d of a certified reinsurer's reputation for prompt payment of claims, the commissioner may make appropriate adjustments in the security the certified reinsurer is required to post to protect its liabilities to United States ceding insurers, provided that the commissioner shall, at a minimum, increase the security the certified reinsurer is required to post by one rating level under paragraph 1 of subdivision d if the commissioner finds that:

- (1) More than fifteen percent of the certified reinsurer's ceding insurance clients have overdue reinsurance recoverables on paid losses of ninety days or more which are not in dispute and which exceed one hundred thousand dollars for each cedent; or
 - (2) The aggregate amount of reinsurance recoverables on paid losses which are not in dispute that are overdue by ninety days or more exceeds fifty million dollars.
- f. The assuming insurer must submit a properly executed form CR-1, attached as an exhibit to this chapter, as evidence of its submission to the jurisdiction of this state, appointment of the commissioner as an agent for service of process in this state, and agreement to provide security for one hundred percent of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers if it resists enforcement of a final United States judgment. The commissioner shall not certify any assuming insurer that is domiciled in a jurisdiction that the commissioner has determined does not adequately and promptly enforce final United States judgments or arbitration awards.
- g. The certified reinsurer must agree to meet applicable information filing requirements as determined by the commissioner, both with respect to an initial application for certification and on an ongoing basis. All information submitted by certified reinsurers which are not otherwise public information subject to disclosure shall be exempted from disclosure under North Dakota Century Code section 44-04-18 and shall be withheld from public disclosure. The applicable information filing requirements are, as follows:
 - (1) Notification within ten days of any regulatory actions taken against the certified reinsurer, any change in the provisions of its domiciliary license or any change in rating by an approved rating agency, including a statement describing the changes and the reasons therefor;
 - (2) Annually, form CR-F or CR-S, as applicable;
 - (3) Annually, the report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in paragraph 4;
 - (4) Annually, audited financial statements, regulatory filings, and actuarial opinion as filed with the certified reinsurer's supervisor. Acceptable audited financial statements are those performed using:
 - (a) United States generally accepted accounting principles;
 - (b) International financial reporting standards if an audited footnote reconciling equity and net income to United States generally accepted accounting principles is included; or
 - (c) With the permission of the commissioner, audited international financial reporting standards statements with a reconciliation to United States generally accepted accounting principles certified by an officer of the company.

Upon the initial certification, audited financial statements for the last three years filed with the certified reinsurer's supervisor;

- (5) At least annually, an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from United States domestic ceding insurers;
- (6) A certification from the certified reinsurer's domestic regulator that the certified reinsurer is in good standing and maintains capital in excess of the jurisdiction's highest regulatory action level; and

(7) Any other information that the commissioner may reasonably require.

h. Change in rating or revocation of certification.

- (1) In the case of a downgrade by a rating agency or other disqualifying circumstance, the commissioner shall upon written notice assign a new rating to the certified reinsurer in accordance with the requirements of paragraph 1 of subdivision d.
- (2) The commissioner shall have the authority to suspend, revoke, or otherwise modify a certified reinsurer's certification at any time if the certified reinsurer fails to meet its obligations or security requirements under this section, or if other financial or operating results of the certified reinsurer, or documented significant delays in payment by the certified reinsurer, lead the commissioner to reconsider the certified reinsurer's ability or willingness to meet its contractual obligations.
- (3) If the rating of a certified reinsurer is upgraded by the commissioner, the certified reinsurer may meet the security requirements applicable to its new rating on a prospective basis, but the commissioner shall require the certified reinsurer to post security under the previously applicable security requirements as to all contracts in force on or before the effective date of the upgraded rating. If the rating of a certified reinsurer is downgraded by the commissioner, the commissioner shall require the certified reinsurer to meet the security requirements applicable to its new rating for all business it has assumed as a certified reinsurer.
- (4) Upon revocation of the certification of a certified reinsurer by the commissioner, the assuming insurer shall be required to post security in accordance with section 45-03-07.1-06 in order for the ceding insurer to continue to take credit for reinsurance ceded to the assuming insurer. If funds continue to be held in trust in accordance with section 45-03-07.1-04, the commissioner may allow additional credit equal to the ceding insurer's pro rata share of the funds, discounted to reflect the risk of uncollectibility and anticipated expenses of trust administration. Notwithstanding the change of a certified reinsurer's rating or revocation of its certification, a domestic insurer that has ceded reinsurance to that certified reinsurer may not be denied credit for reinsurance for a period of three months for all reinsurance ceded to that certified reinsurer, unless the reinsurance is found by the commissioner to be at high risk of uncollectibility.

3. Qualified jurisdictions.

- a. If, upon conducting an evaluation under this section with respect to the reinsurance supervisory system of any non-United States assuming insurer, the commissioner determines that the jurisdiction qualifies to be recognized as a qualified jurisdiction, the commissioner shall publish notice and evidence of the recognition in an appropriate manner. The commissioner may establish a procedure to withdraw recognition of those jurisdictions that are no longer qualified.
- b. In order to determine whether the domiciliary jurisdiction of a non-United States assuming insurer is eligible to be recognized as a qualified jurisdiction, the commissioner shall evaluate the reinsurance supervisory system of the non-United States jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits, and the extent of reciprocal recognition afforded by the non-United States jurisdiction to reinsurers licensed and domiciled in the United States. The commissioner shall determine the appropriate approach for evaluating the qualifications of jurisdictions, and create and publish a list of jurisdictions whose reinsurers may be approved by the commissioner as eligible for certification. A qualified jurisdiction must agree to share information and cooperate with the commissioner with respect to all certified reinsurers domiciled within that jurisdiction.

Additional factors to be considered in determining whether to recognize a qualified jurisdiction, in the discretion of the commissioner, include the following:

- (1) The framework under which the assuming insurer is regulated.
 - (2) The structure and authority of the domiciliary regulator with regard to solvency regulation requirements and financial surveillance.
 - (3) The substance of financial and operating standards for assuming insurers in the domiciliary jurisdiction.
 - (4) The form and substance of financial reports required to be filed or made publicly available by reinsurers in the domiciliary jurisdiction and the accounting principles used.
 - (5) The domiciliary regulator's willingness to cooperate with United States regulators in general and the commissioner in particular.
 - (6) The history of performance by assuming insurers in the domiciliary jurisdiction.
 - (7) Any documented evidence of substantial problems with the enforcement of final United States judgments in the domiciliary jurisdiction. A jurisdiction will not be considered to be a qualified jurisdiction if the commissioner has determined that it does not adequately and promptly enforce final United States judgments or arbitration awards.
 - (8) Any relevant international standards or guidance with respect to mutual recognition of reinsurance supervision adopted by the international association of insurance supervisors or successor organization.
 - (9) Any other matters deemed relevant by the commissioner.
- c. A list of qualified jurisdictions shall be published through the national association of insurance commissioners committee process. The commissioner shall consider this list in determining qualified jurisdictions. If the commissioner approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the commissioner shall provide thoroughly documented justification with respect to the criteria provided under paragraphs 1 through 9 of subdivision b.
 - d. United States jurisdictions that meet the requirements for accreditation under the national association of insurance commissioners financial standards and accreditation program shall be recognized as qualified jurisdictions.
4. Recognition of certification issued by a national association of insurance commissioners accredited jurisdiction.
- a. If an applicant for certification has been certified as a reinsurer in a national association of insurance commissioners accredited jurisdiction, the commissioner has the discretion to defer to that jurisdiction's certification, and to defer to the rating assigned by that jurisdiction, if the assuming insurer submits a properly executed form CR-1 and the additional information as the commissioner requires. The assuming insurer shall be considered to be a certified reinsurer in this state.
 - b. Any change in the certified reinsurer's status or rating in the other jurisdiction shall apply automatically in this state as of the date it takes effect in the other jurisdiction. The certified reinsurer shall notify the commissioner of any change in its status or rating within ten days after receiving notice of the change.

- c. The commissioner may withdraw recognition of the other jurisdiction's rating at any time and assign a new rating in accordance with paragraph 1 of subdivision g of subsection 2.
 - d. The commissioner may withdraw recognition of the other jurisdiction's certification at any time, with written notice to the certified reinsurer. Unless the commissioner suspends or revokes the certified reinsurer's certification in accordance with paragraph 2 of subdivision g of subsection 2, the certified reinsurer's certification shall remain in good standing in this state for a period of three months, which shall be extended if additional time is necessary to consider the assuming insurer's application for certification in this state.
- 5. **Mandatory funding clause.** In addition to the clauses required under section 45-03-07.1-10, reinsurance contracts entered into or renewed under this section shall include a proper funding clause, which requires the certified reinsurer to provide and maintain security in an amount sufficient to avoid the imposition of any financial statement penalty on the ceding insurer under this section for reinsurance ceded to the certified reinsurer.
 - 6. The commissioner shall comply with all reporting and notification requirements that may be established by the national association of insurance commissioners with respect to certified reinsurers and qualified jurisdictions.

History: Effective January 1, 2016; amended effective April 1, 2017.

General Authority: NDCC 26.1-31.2-04

Law Implemented: NDCC 26.1-31.2

45-03-07.1-08. Letters of credit qualified under section 45-03-07.1-06.

- 1. The letter of credit must be clean, irrevocable, unconditional, and issued or confirmed by a qualified United States financial institution as defined in subsection 1 of North Dakota Century Code section 26.1-31.2-03. The letter of credit must contain an issue date and expiration date and stipulate that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds and that no other document need be presented. The letter of credit must also indicate that it is not subject to any condition or qualifications outside of the letter of credit. In addition, the letter of credit itself may not contain reference to any other agreements, documents, or entities, except as provided in subdivision a of subsection 9. As used in this section, "beneficiary" means the domestic insurer for whose benefit the letter of credit has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court-appointed domiciliary receiver, including conservator, rehabilitator, or liquidator.
- 2. The heading of the letter of credit may include a boxed section containing the name of the applicant and other appropriate notations to provide a reference for the letter of credit. The boxed section must be clearly marked to indicate that the information is for internal identification purposes only.
- 3. The letter of credit must contain a statement to the effect that the obligation of the qualified United States financial institution under the letter of credit is in no way contingent upon reimbursement with respect thereto.
- 4. The term of the letter of credit must be for at least one year and must contain an "evergreen clause" that prevents the expiration of the letter of credit without due notice from the issuer. The "evergreen clause" must provide for a period of no less than thirty days' notice prior to the expiration date or nonrenewal.

5. The letter of credit must state whether it is subject to and governed by the laws of this state or the uniform customs and practice for documentary credits of the international chamber of commerce, publication 600 (UCP 600) or international standby practices of the international chamber of commerce publication 590 (ISP98), and all drafts drawn thereunder must be presentable at an office in the United States of a qualified United States financial institution.
6. If the letter of credit is made subject to the uniform customs and practice for documentary credits of the international chamber of commerce, publication ~~500~~600 (UCP 600) or international standby practices of the international chamber of commerce publication 590 (ISP98), or any successor publication, then the letter of credit must specifically address and provide for an extension of time to draw against the letter of credit in the event that one or more of the occurrences specified in article ~~17~~36 of publication ~~500~~600 or any other successor publication occur.
7. If the letter of credit is issued by a financial institution authorized to issue letters of credit, other than a qualified United States financial institution as described in subsection 1, then the following additional requirements must be met:
 - a. The issuing financial institution shall formally designate the confirming qualified United States financial institution as its agent for the receipt and payment of the drafts; and
 - b. The "evergreen clause" must provide for thirty days' notice prior to the expiration date for nonrenewal.
8. Reinsurance agreement provisions.
 - a. The reinsurance agreement in conjunction with which the letter of credit is obtained may contain provisions that:
 - (1) Require the assuming insurer to provide letters of credit to the ceding insurer and specify what they are to cover.
 - (2) Stipulate that the assuming insurer and ceding insurer agree that the letter of credit provided by the assuming insurer pursuant to the provisions of the reinsurance agreement may be drawn upon at any time, notwithstanding any other provisions in the agreement, and shall be utilized by the ceding insurer or its successors in interest only for one or more of the following reasons:
 - (a) To pay or reimburse the ceding insurer for:
 - [1] The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurers, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of the policies;
 - [2] The assuming insurer's share, under the specific reinsurance agreement, of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurers, under the terms and provisions of the policies reinsured under the reinsurance agreement; and
 - [3] Any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.
 - (b) If the letter of credit will expire without renewal or be reduced or replaced by a letter of credit for a reduced amount and if the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten days prior to the termination date, to withdraw amounts

equal to the assuming insurer's share of the liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer and exceed the amount of any reduced or replacement letter of credit, and deposit those amounts in a separate account in the name of the ceding insurer in a qualified United States financial institution apart from its general assets, in trust for the uses and purposes specified in paragraph 2 of subdivision a as may remain after withdrawal and for any period after the termination date.

- (3) All of the provisions of this subdivision must be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer.
- b. Nothing contained in subdivision a precludes the ceding insurer and assuming insurer from providing for:
- (1) An interest payment, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to paragraph 2 of subdivision a; or
 - (2) The return of any amounts drawn down on the letters of credit in excess of the actual amounts required for the above or any amounts that are subsequently determined not to be due.

History: Effective October 1, 1995; amended effective December 1, 2001; October 1, 2002; January 1, 2016; [April 1, 2017](#).

General Authority: NDCC 26.1-31.2-04

Law Implemented: NDCC 26.1-31.2