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## PERMANENT ADMINISTRATIVE ORDER

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CHAPTER 836  
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES  
INSURANCE REGULATION

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#### RULES:

836-012-0200, 836-012-0210, 836-012-0220, 836-012-0230, 836-012-0240, 836-012-0250, 836-012-0260, 836-012-0270

ADOPT: 836-012-0200

NOTICE FILED DATE: 10/27/2022

RULE SUMMARY: Provides a reference to the relevant statute through which the rules can be adopted.

CHANGES TO RULE:

#### 836-012-0200

##### Authority

This regulation is adopted and promulgated by the director of the Department of Consumer and Business Services pursuant to ORS 731.244.

Statutory/Other Authority: ORS 731.244, ORS 731.508 - 731.511, 731.514

Statutes/Other Implemented: ORS 731.508 - 731.511, 731.514

ADOPT: 836-012-0210

NOTICE FILED DATE: 10/27/2022

RULE SUMMARY: Adds definitions for the following terms: "actuarial method," covered policies," "non-covered policies," "required level of primary security," primary security," "other security," "valuation manual," "director," and "NAIC."

CHANGES TO RULE:

836-012-0210

Definitions

As used in OAR 836-012-0200 to 836-012-0270:

- (1) "Actuarial Method" means the methodology used to determine the Required Level of Primary Security, as described in OAR 836-012-0250.
- (2) "Covered Policies" means the following policies (unless such policies were 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 OAR 836-012-0240 had that section then been in effect):
  - (a) Life insurance policies with guaranteed nonlevel gross premiums and/or guaranteed nonlevel benefits (other than flexible premium universal life insurance policies); and
  - (b) 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.
- (3) "Non-Covered Policies" means any policy that is not a Covered Policy.
- (4) "Required Level of Primary Security" means 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.
- (5) "Primary Security" means the following forms of security:
  - (a) Cash;
  - (b) Securities meeting the requirements of OAR 836-012-0060 (1)(b), 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; and
  - (c) For security held in connection with funds-withheld and modified coinsurance reinsurance treaties:
    - (A) Commercial loans in good standing of CM3 quality and higher;
    - (B) Policy Loans; and
    - (C) Derivatives acquired in the normal course and used to support and hedge liabilities pertaining to the actual risks in the policies ceded pursuant to the reinsurance treaty.
- (6) "Other Security" means any security acceptable to the director other than security meeting the definition of Primary Security.
- (7) "Valuation Manual" means the valuation manual described in OAR 836-031-0605.
- (8) "Director" means the director of the Department of Consumer and Business Services.
- (9) "NAIC" means the National Association of Insurance Commissioners.
- (10) "This rule" means OAR 836-012-0200 to 836-012-0270.

Statutory/Other Authority: ORS 731.244, ORS 731.508 - 731.511, 731.514

Statutes/Other Implemented: ORS 731.508 - 731.511, 731.514

ADOPT: 836-012-0220

NOTICE FILED DATE: 10/27/2022

RULE SUMMARY: Describes the purpose and intent of the rules.

CHANGES TO RULE:

836-012-0220

Purpose and Intent

The purpose and intent of this rule 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; and to ensure that, with respect to each such financing arrangement, funds consisting of Primary Security and Other Security, are held by or on behalf of ceding insurers in the forms and amounts required herein. In general, reinsurance ceded for reserve financing purposes has one or more of the following characteristics: some or all of the assets used to secure the reinsurance treaty or to capitalize the reinsurer (1) are issued by the ceding insurer or its affiliates; or (2) are 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 (other than a payment obligation under a derivative contract acquired in the normal course and used to support and hedge liabilities pertaining to the actual risks in the policies ceded pursuant to the reinsurance treaty).

Statutory/Other Authority: ORS 731.244, ORS 731.508 - 731.511, 731.514

Statutes/Other Implemented: ORS 731.508 - 731.511, 731.514

ADOPT: 836-012-0230

NOTICE FILED DATE: 10/27/2022

RULE SUMMARY: Clarifies that the rules apply to reinsurance treaties that cede liabilities pertaining to covered policies issued by any life insurance company domiciled in Oregon.

CHANGES TO RULE:

836-012-0230

Applicability

This rule applies to reinsurance treaties that cede liabilities pertaining to Covered Policies issued by any life insurance company domiciled in this state. This rule and OAR 836-012-0046 shall both apply to such reinsurance treaties; provided, that in the event of a direct conflict between the provisions of this rule and OAR 836-012-0046, the provisions of this rule shall apply, but only to the extent of the conflict.

Statutory/Other Authority: ORS 731.244, ORS 731.508 - 731.511, 731.514

Statutes/Other Implemented: ORS 731.508 - 731.511, 731.514

ADOPT: 836-012-0240

NOTICE FILED DATE: 10/27/2022

RULE SUMMARY: Describes situations in which the rules do not apply.

CHANGES TO RULE:

836-012-0240

Exemptions from OAR 836-012-0200 to 836-012-0270

OAR 836-012-0200 to 836-012-0270 do not apply to the following:

(1) Reinsurance of:

(a) Policies that satisfy the criteria for exemption set forth OAR 836-031-0770 (7); and which are issued before the later of:

(A) January 1, 2023, and

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

(b) Portions of policies that satisfy the criteria for exemption set forth in OAR 836-031-0770 (5) and which are issued before the later of:

(A) January 1, 2023, and

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

(c) 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 (CSO) valuation tables and valuation interest rate applicable to the issue year of the policy; and

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

(d) Credit life insurance;

(e) 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; or

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

(2) Reinsurance ceded to an assuming insurer that meets the applicable requirements of OAR 836-012-0041; or

(3) Reinsurance ceded to an assuming insurer that meets the applicable requirements of OAR 836-012-0031, and that, in addition:

(a) 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 pursuant to Statement of Statutory Accounting Principles No. 1; and

(b) 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 OAR 836-011-0320 to 836-011-0350) when its risk-based capital is calculated in accordance with the life risk-based capital report including overview and instructions for companies, without deviation; or

(4) Reinsurance ceded to an assuming insurer that meets the applicable requirements of OAR 836-012-0031, and that, in addition:

(a) Is not an affiliate, as that term is defined in ORS 732.548 (1), of:

(A) The insurer ceding the business to the assuming insurer; or

(B) Any insurer that directly or indirectly ceded the business to that ceding insurer;

(b) Prepares statutory financial statements in compliance with the NAIC Accounting Practices and Procedures Manual;

(c) Is both:

(A) Licensed or accredited in at least 10 states (including its state of domicile), and

(B) 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; and

(d) Is not, or would not be, below 500 percent of the Authorized Control Level RBC (as that term is defined in OAR 836-011-0305) when its risk-based capital is calculated in accordance with the life risk-based capital report including overview and instructions for companies 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; or

(5) Reinsurance ceded to an assuming insurer that meets the following requirements:

(a) The conditions set forth in ORS 731.520 (1); or

(b) Is certified in this state as described in ORS 731.510 (4) and ORS 731.511; or

(c) Maintains at least \$250,000,000 in capital and surplus when determined in accordance with the NAIC Accounting Practices and Procedures Manual, including all amendments adopted by the NAIC, excluding the impact of any permitted or prescribed practices; and is

(A) Licensed in at least 26 states; or

(B) Licensed in at least 10 states, and licensed or accredited in a total of at least 35 states;

(6) Reinsurance not otherwise exempt under OAR 836-012-0240 (1) to 836-012-0240 (5) if the director determines under all the facts and circumstances that all of the following apply:

(a) The risks are clearly outside of the intent and purpose of this rule (as described in OAR 836-012-0220);

(b) The risks are included within the scope of this rule only as a technicality; and

(c) The application of this rule to those risks is not necessary to provide appropriate protection to policyholders.

The director shall publicly disclose any decision made pursuant to OAR 836-012-0240 (6) to exempt a reinsurance treaty from this rule, as well as the general basis therefor (including a summary description of the treaty).

Statutory/Other Authority: ORS 731.244, ORS 731.508 - 731.511, 731.514

Statutes/Other Implemented: ORS 731.508 - 731.511, 731.514

RULE SUMMARY: Specifies the actuarial method to establish the required level of primary security for each reinsurance treaty subject to the rules.

CHANGES TO RULE:

836-012-0250

The Actuarial Method

(1) The Actuarial Method to establish 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, including all relevant definitions, from the Valuation Manual applied as follows:¶

(a) For Covered Policies described in OAR 836-012-0210 (2)(a), the Actuarial Method is the greater of the deterministic reserve or the net premium reserve (as those terms are defined in the Valuation Manual) regardless of whether the criteria for exemption testing can be met. However, 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 net premium reserve. In addition, if such Covered Policies are reinsured in a reinsurance treaty that also contains Covered Policies described in OAR 836-012-0210 (2)(b), the ceding insurer may elect to instead use OAR 836-012-0250 (1)(b) below as the Actuarial Method for the entire reinsurance agreement. Whether OAR 836-012-0250 (1)(a) or OAR 836-012-0250 (1)(b) is used, 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.¶

(b) For Covered Policies described in OAR 836-012-0210 (2)(b), the Actuarial Method is the greatest of the deterministic reserve, the stochastic reserve, or the net premium reserve (as those terms are defined in the Valuation Manual) regardless of whether the criteria for exemption testing can be met.¶

(c) Except as provided in OAR 836-012-0250 (1)(d), 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.¶

(d) If the reinsurance treaty cedes less than 100 percent of the risk with respect to the Covered Policies then the Required Level of Primary Security may be reduced as follows:¶

(A) 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 OAR 836-012-0250 (1)(d)(C), may be reduced to a pro rata portion in accordance with the percentage of the risk ceded;¶

(B) 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, except that 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, where the retained reserve of those Covered Policies should be reflective of any reduction pursuant to the cession of mortality risk on a yearly renewable term basis in an exempt arrangement;¶

(C) 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 by applying the Actuarial Method including the reinsurance section of VM-20 to the portion of the Covered Policy risks ceded in the exempt arrangement, except that for Covered Policies issued prior to January 1, 2017, this adjustment is not to exceed  $[C_x \text{ divided by } (2 \text{ multiplied by the number of reinsurance premiums per year})]$  where  $C_x$  is calculated using the same mortality table used in calculating the net premium reserve; and¶

(D) 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. It is possible for any combination of OAR 836-012-0250 (1)(d)(A), (B), (C), and (D) to apply. Such adjustments to the Required Level of Primary Security will be done in the sequence that accurately reflects the portion of the risk ceded via the treaty. The ceding insurer should 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 percent of the risk. 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.¶

(e) In no event will the Required Level of Primary Security resulting from application of the Actuarial Method exceed the amount of statutory reserves ceded.¶

(f) If the ceding insurer cedes risks with respect to Covered Policies, including any riders, in more than one

reinsurance treaty subject to this rule, 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 rule:¶

(g) If a reinsurance treaty subject to this rule cedes risk on both Covered and Non-Covered Policies, credit for the ceded reserves shall be determined as follows:¶

(A) The Actuarial Method shall be used to determine the Required Level of Primary Security for the Covered Policies, and OAR 836-012-0260 shall be used to determine the reinsurance credit for the Covered Policy reserves; and¶

(B) 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 OAR 836-012-0250 (1)(g)(A), is held by or on behalf of the ceding insurer in accordance with OAR 836-012-0031 and OAR 836-012-0060. Any 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.¶

(2) For the purposes of both calculating the Required Level of Primary Security pursuant to 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: ¶

(a) For assets, including any such 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 such assets were held in the ceding insurer's general account and without taking into consideration the effect of any prescribed or permitted practices; and ¶

(b) 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.

Statutory/Other Authority: ORS 731.244, ORS 731.508 - 731.511, 731.514

Statutes/Other Implemented: ORS 731.508 - 731.511, 731.514



ADOPT: 836-012-0260

NOTICE FILED DATE: 10/27/2022

RULE SUMMARY: Outlines the requirements for covered policies to obtain credit for reinsurance at the inception date and on an on-going basis as well as steps for remediation.

CHANGES TO RULE:

### 836-012-0260

#### Requirements Applicable to Covered Policies to Obtain Credit for Reinsurance; Opportunity for Remediation

(1) Subject to the exemptions described in OAR 836-012-0240 and the provisions of OAR 836-012-0260 (2), credit for reinsurance shall be allowed with respect to ceded liabilities pertaining to Covered Policies pursuant to OAR 836-012-0031 if, and only if, in addition to all other requirements imposed by law or regulation, the following requirements are met on a treaty-by treaty basis: ¶

(a) 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 ORS 733.302 and related regulations and actuarial guidelines, and credit claimed for any reinsurance treaty subject to this rule does not exceed the proportionate share of those reserves ceded under the contract; and ¶

(b) The ceding insurer determines the Required Level of Primary Security with respect to each reinsurance treaty subject to this rule and provides support for its calculation as determined to be acceptable to the director; and ¶

(c) 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 OAR 836-012-0060, on a funds withheld, trust, or modified coinsurance basis; and ¶

(d) 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 pursuant to OAR 836-012-0260 (1)(c), are held by or on behalf of the ceding insurer as security under the reinsurance treaty within the meaning of OAR 836-012-0060; and ¶

(e) Any trust used to satisfy the requirements of OAR 836-012-0260 shall comply with all of the conditions and qualifications of OAR 836-012-0070, except that: ¶

(A) Funds consisting of Primary Security or Other Security held in trust shall for the purposes identified in OAR 836-012-0250 (2), be valued according to the valuation rules set forth in OAR 836-012-0250 (2) as applicable; and ¶

(B) There are no affiliate investment limitations with respect to any security held in such trust if such security is not needed to satisfy the requirements of OAR 836-012-0260 (1)(c); and ¶

(C) 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 OAR 836-012-0260 (1)(c)) below 102 percent of the level required by OAR 836-012-0260 (1)(c) at the time of the withdrawal or substitution; and ¶

(D) The determination of reserve credit under OAR 836-012-0070 (4)(c) shall be determined according to the valuation rules set forth in OAR 836-012-0250 (2), as applicable; and ¶

(f) The reinsurance treaty has been approved by the director. ¶

#### (2) Requirements at Inception Date and on an On-going Basis; Remediation ¶

(a) The requirements of OAR 836-012-0260 (1) must be satisfied as of the date that risks under Covered Policies are ceded (if such date is on or after January 1, 2023) and on an ongoing basis thereafter. Under no circumstances shall a ceding insurer take or consent to any action or series of actions that would result in a deficiency under OAR 836-012-0260 (1)(c) or OAR 836-012-0260 (1)(d) with respect to any reinsurance treaty under which Covered Policies have been ceded, and in the event that a ceding insurer becomes aware at any time that such a deficiency exists, it shall use its best efforts to arrange for the deficiency to be eliminated as expeditiously as possible. ¶

(b) Prior to the due date of each Annual Statement, each life insurance company that has ceded reinsurance within the scope of this rule 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 valuation date) the requirements of OAR 836-012-0260 (1)(c) and OAR 836-012-0260 (1)(d) were satisfied. 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 pursuant to OAR 836-012-0260 (1)(c), unless either: ¶

(A) The requirements of OAR 836-012-0260 (1)(c) and OAR 836-012-0260 (1)(d) were fully satisfied as of the valuation date as to such reinsurance treaty; or ¶

(B) Any deficiency has been eliminated before the due date of the Annual Statement to which the valuation date relates through the addition of Primary Security and/or Other Security, as the case may be, in such amount and in such form as would have caused the requirements of OAR 836-012-0260 (1)(c) and OAR 836-012-0260 (1)(d) to be fully satisfied as of the valuation date. ¶

(c) Nothing in OAR 836-012-0260 (2)(b) shall be construed to allow a ceding company to maintain any deficiency under OAR 836-012-0260 (1)(c) and OAR 836-012-0260 (1)(d) for any period of time longer than is reasonably necessary to eliminate it.

Statutory/Other Authority: ORS 731.244, ORS 731.508 - 731.511, 731.514

Statutes/Other Implemented: ORS 731.508 - 731.511, 731.514

ADOPT: 836-012-0270

NOTICE FILED DATE: 10/27/2022

RULE SUMMARY: Requires insurers to comply with and not avoid the requirements of the rule.

CHANGES TO RULE:

836-012-0270

Prohibition against Avoidance

No insurer that has Covered Policies as to which this rule applies 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 such action, transaction or arrangement or series thereof is to avoid the requirements of this rule, or to circumvent its purpose and intent, as set forth in OAR 836-012-0220.

Statutory/Other Authority: ORS 731.244, ORS 731.508 - 731.511, 731.514

Statutes/Other Implemented: ORS 731.508 - 731.511, 731.514