

SUBCHAPTER 11C - ANALYSIS AND EXAMINATIONS

SECTION .0100 - GENERAL PROVISIONS

11 NCAC 11C .0101 GENERAL PROVISIONS

History Note: Authority G.S. 58-9;
Eff. February 1, 1976;
Readopted Eff. February 28, 1978;
Repealed Eff. July 1, 1988.

11 NCAC 11C .0102 FORM OF REPORT ON EXAMINATION 11 NCAC 11C .0103 REPRODUCTION OF REPORTS ON EXAMINATION

History Note: Authority G.S. 58-2-40; 58-2-131; 58-2-140; 58-65-105;
Eff. February 1, 1976;
Readopted Eff. February 28, 1978;
Amended Eff. April 1, 1993;
Expired Eff. January 1, 2016 pursuant to G.S. 150B-21.3A.

11 NCAC 11C .0104 RECORD OF BUSINESS TO BE KEPT BY COMPANY

Every insurance company licensed to transact business in the State of North Carolina must make and keep a full and correct record of the business done by it including, the policy number, date of issue, term, amount insured, premiums, full name and complete address of policyholder and other pertinent information as may be required by the Commissioner of Insurance.

History Note: Authority G.S. 58-2-40; 58-2-185;
Eff. February 1, 1976;
Readopted Eff. February 28, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 20, 2015.

11 NCAC 11C .0105 RETENTION OF RECORDS OF DOMESTIC INSURANCE COMPANIES

- (a) All records of domestic insurance companies shall be maintained by the company for the years for which a statutory examination has not yet been completed. All books of original entry and corporate records shall be retained by the company or its successor for a period of 25 years after the company ceases to exist.
- (b) Any claim file wherein a minor is involved shall be maintained until that minor has attained the age of majority for third-party liability coverage. All tax and tax related questions or litigation shall be resolved or finally adjudicated before the destruction of any records related thereto.
- (c) All records that are required to be maintained by this Rule shall be either original or duplicate records, as defined in this Rule.
- (d) For the purpose of this Rule, an "original record" is the writing or recording itself or any counterpart intended to have the same effect by a person executing or issuing it. An "original" of a photograph includes the negative or any print therefrom. If data are, in the normal and ordinary course of business, stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an "original record".
- (e) For the purpose of this Rule, a "duplicate record" is a counterpart produced by the same impression as the original record, or from the same matrix, or by mechanical or electronic re-recording or by chemical reproduction, or by equivalent techniques, such as imaging or image processing, that accurately reproduce the original record.
- (f) If only duplicate records are maintained, the following requirements must be met:
- (1) The data must be easily accessible to the Department in readable form; and readable, reproduced copies must be obtainable;
 - (2) Before the destruction of any original records, the company in possession of the original records shall:
 - (A) Verify that the records stored consist of all information contained in the original records and that the original records can be reconstructed therefrom in a form acceptable to the Department; and

- (B) Implement disaster preparedness or disaster recovery procedures that include provisions for the maintenance of duplicate records at another location; and
- (3) Adequate controls must be established with respect to the transfer and maintenance of data.
- (g) Every foreign insurer licensed in North Carolina shall be in substantial compliance with this Rule.

History Note: Authority G.S. 58-2-40(1); 58-2-50; 58-2-131; 58-2-132; 58-2-133; 58-2-145; 58-2-155; 58-19-35; 58-20-30; 58-22-20(6); 58-23-25; 58-24-135; 58-27-10; 58-39-70; 58-48-65; 58-49-55; 58-62-66; 58-63-20; 58-64-55; 58-65-105; 58-67-100;
Eff. February 1, 1976;
Readopted Eff. February 28, 1978;
Amended Eff. September 1, 1993; March 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 20, 2015.

11 NCAC 11C .0106 UNEARNED PREMIUM RESERVE: IN FORCE PREMIUMS

History Note: Authority G.S. 58-35;
Eff. February 1, 1976;
Readopted Eff. February 28, 1978;
Repealed Eff. March 1, 1993.

11 NCAC 11C .0107 REINSURANCE: WHEN PERMITTED

History Note: Authority G.S. 58-59.3;
Eff. February 1, 1976;
Readopted Eff. February 28, 1978;
Repealed Eff. April 1, 1993.

11 NCAC 11C .0108 DIVIDENDS TO POLICYHOLDERS: DEPARTMENT INTERPRETATION **11 NCAC 11C .0109 DIVIDENDS TO STOCKHOLDERS: DEPARTMENT INTERPRETATION**

History Note: Authority G.S. 58-2-40; 58-7-130; 58-8-25;
Eff. February 1, 1976;
Readopted Eff. February 28, 1978;
Amended Eff. April 1, 1993;
Repealed Eff. August 1, 1998.

11 NCAC 11C .0110 INVESTMENT IN GOLD OR GOLD FUTURES BY INSURANCE COMPANIES

History Note: Authority G.S. 58-9(1); 58-79; 58-79.1;
Eff. February 1, 1976;
Repealed Eff. March 1, 2004.

11 NCAC 11C .0111 INVESTMENT IN THE INTERNATIONAL BANK FOR RECONST AND DEV

History Note: Authority G.S. 58-9(1); 58-79; 58-79.1;
Eff. February 1, 1976;
Readopted Eff. February 28, 1978;
Repealed Eff. April 1, 1993.

11 NCAC 11C .0112 MODEL CUSTODIAL AGREEMENT

History Note: Authority G.S. 58-79; 58-79.1;
Eff. February 1, 1976;
Readopted Eff. February 28, 1978;

Repealed Eff. April 1, 1996.

11 NCAC 11C .0113 MODEL CUSTODIAL AND FISCAL AGENCY AGREEMENT

*History Note: Authority G.S. 58-79; 58-79.1;
Eff. February 1, 1976;
Readopted Eff. February 28, 1978;
Repealed Eff. February 1, 1996.*

11 NCAC 11C .0114 CERTIFICATES OF CONTRIBUTION

Every domestic insurance company may, upon petition to the Commissioner and upon receipt of his approval thereof, issue certificates of contribution of surplus for the reasons and purposes set forth in the petition to the Commissioner.

Approval of the issuance of certificates of contributions may be granted only upon the following conditions and will be effective only as to transactions performed in conformity therewith:

- (1) No certificate evidencing the contribution under authorization hereof shall be issued except substantially in the form and text as may be approved by the Commissioner.
- (2) No commission, selling or other expense is to be paid or incurred in respect to any transaction authorized, except that regular salaried employees of the petitioner may perform any and all acts necessary, convenient or advisable in connection with the transactions authorized, fees may be paid for legal counsel, accounting and related services, and petitioner may incur and pay other normal expense incurred in connection with the issuance of the certificates of contribution.
- (3) No advertisement, prospectus, or other writing relating to the certificates of contribution, except regular business correspondence relating to specific problems peculiar to the parties thereto, shall be issued, circulated or published until after the same has been filed with and authorized in writing by the Commissioner.
- (4) At any time upon the request of the Commissioner and in any event within 30 days from and after the issuance of any certificate of contribution and after the completion of the transactions authorized, petitioner shall make and file with said commissioner its verified report setting forth the transactions accomplished pursuant to the authority granted, and setting forth the date of issuance of the certificate of contribution, the proceeds derived therefrom and the disposition of such proceeds, and petitioner shall attach to such report a conformed copy of the contribution certificates issued pursuant to said authorization.
- (5) In any financial statement required by law to be filed by petitioner with the Commissioner, or which may be published or distributed by petitioner, the principal sum of and accrued interest of these and any other outstanding certificates of contribution, which has not become a liability in accordance with the terms thereof and is not reported in such financial statement as a liability, shall be reported according to the instructions for completing the appropriate NAIC financial statement blank. Such amount shall be reported on the appropriate line on page 3 of the financial statement as "certificates of contribution". Other descriptions, such as "debentures", "surplus notes", "guaranty fund", or "guaranteed certificates", are deemed misleading and are not permitted.
- (6) The Commissioner may, from time to time, for cause amend, continue or alter his approval or temporarily suspend the rights of the petitioner hereunder or may revoke this authority.
- (7) Unless revoked, suspended, or amended or continued upon due petition therefor filed before the expiration date hereof the authority granted hereunder is valid for a period of five years and such authority shall automatically terminate on the close of business on the last day of the month in which this authority was originally granted.

Certificates of contribution issued hereunder are not to be construed as guaranty fund certificates as specifically provided for under G.S. 58-12-1 and 58-8-20.

*History Note: Authority G.S. 58-2-40; 58-7-163;
Eff. February 1, 1976;
Readopted Eff. February 28, 1978;
Amended Eff. April 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 20, 2015.*

11 NCAC 11C .0115 VALUATION OF BONDS AND OTHER EVIDENCES OF DEBT
11 NCAC 11C .0116 AMORTIZED VALUES OF BONDS OR OTHER EVIDENCES OF DEBT

History Note: Authority G.S. 58-80;
Eff. February 1, 1976;
Readopted Eff. February 28, 1978;
Repealed Eff. April 1, 1993.

11 NCAC 11C .0117 CONFLICT OF INTEREST STATEMENTS MUST BE EXECUTED ANNUALLY
Conflict of interest statements shall be executed annually by the officers, directors, trustees, attorneys-in-fact, and administrative personnel of every domestic insurer subject to G.S. 58, Articles 1 through 67.
Any conflicts of interest disclosed thereon shall be presented to the board of directors or trustees of the company for a determination of its acceptability or the remedial disposition thereof.

History Note: Authority G.S. 58-2-40;
Eff. February 1, 1976;
Readopted Eff. February 28, 1978;
Amended Eff. April 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 20, 2015.

11 NCAC 11C .0118 COLLECTION PROCEDURES FOR EXAMINATION EXPENSE

History Note: Authority G.S. 58-2-40; 58-2-133(c);
Eff. February 1, 1976;
Readopted Eff. February 28, 1978;
Amended Eff. April 1, 1993; January 14, 1980;
Repealed Eff. February 1, 1996.

11 NCAC 11C .0119 MORTGAGE LOANS TO BE SOLD WITHOUT RECOURSE

First mortgage loans on unencumbered fee simple real estate, whether permanent term loans or construction loans, may not be sold to a third party unless the evidence of debt and the mortgage or deed of trust is physically endorsed to reflect that said mortgage loan is being sold without recourse to the insurer.

History Note: Authority G.S. 58-2-40(1); 58-7-85; 58-7-90;
Eff. February 1, 1976;
Readopted Eff. February 28, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 20, 2015.

11 NCAC 11C .0120 VALUATION OF INVESTMENTS: VALUATIONS OF SECURITIES MANUAL

History Note: Authority G.S. 58-9; 58-79; 58-79.1;
Eff. February 1, 1976;
Readopted Eff. February 28, 1978;
Repealed Eff. April 1, 1994.

11 NCAC 11C .0121 STOCK OPTIONS: GENERAL

History Note: Authority G.S. 58-79; 58-79.1;
Eff. February 28, 1978;
Repealed Eff. April 1, 1993.

11 NCAC 11C .0122 SALE OF EXCHANGE: TRADED CALL OPTIONS

History Note: Authority G.S. 58-79; 58-79.1;
Eff. February 28, 1978;
Repealed Eff. March 1, 2004.

11 NCAC 11C .0123 PURCHASE OF EXCHANGE: TRADED CALL OPTIONS

History Note: Authority G.S. 58-79; 58-79.1;
Eff. February 28, 1978;
Repealed Eff. April 1, 1993.

11 NCAC 11C .0124 ACCOUNTING PROCEDURES
11 NCAC 11C .0125 VALUATION
11 NCAC 11C .0126 PROHIBITION AGAINST SPECULATING IN OPTIONS

History Note: Authority G.S. 58-79; 58-79.1;
Eff. February 28, 1978;
Repealed Eff. March 1, 2004.

11 NCAC 11C .0127 SEVERABILITY
11 NCAC 11C .0128 DEFINITIONS

History Note: Authority G.S. 58-79; 58-79.1;
Eff. February 28, 1978;
Repealed Eff. April 1, 1993.

11 NCAC 11C .0129 FORM OF REPORTS OF EXAMINATION: FOREIGN COMPANIES

The reports on examination prepared by the domiciliary insurance department of a foreign company as a result of a triennial examination, special examination or any other type of examination of a foreign insurance company licensed to do business in North Carolina shall be certified.

History Note: Authority G.S. 58-2-40; 58-2-132;
Eff. February 28, 1978;
Amended Eff. April 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 20, 2015.

11 NCAC 11C .0130 CREDIT FOR REINSURANCE

History Note: Filed as a Temporary Adoption Eff. September 12, 1991, for a period of 180 days to expire on March 10, 1992;
Authority G.S. 58-2-40(1); 58-7-1;
Expired March 10, 1992.

11 NCAC 11C .0131 VALUATION OF DEBT SECURITIES

History Note: Authority G.S. 58-2-40; 58-7-190;
Temporary Adoption Eff. January 1, 1992 for a period of 180 days to expire on June 29, 1992;
Eff. May 1, 1992;
Repealed Eff. March 1, 2004.

11 NCAC 11C .0132 ACCOUNTING FOR SALVAGE AND SUBROGATION

History Note: Authority G.S. 58-2-40; 58-7-162;
Eff. April 1, 1993;

Amended Eff. February 1, 1996;
Expired Eff. January 1, 2016 pursuant to G.S. 150B-21.3A.

11 NCAC 11C .0133 ACCOUNTING FOR LIFE AND HEALTH REINSURANCE AGREEMENTS

History Note: Authority G.S. 58-2-40; 58-7-31;
Temporary Adoption Eff. January 21, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. April 1, 1994;
Expired Eff. January 1, 2016 pursuant to G.S. 150B-21.3A.

SECTION .0200 - INVESTMENTS

11 NCAC 11C .0201 GENERAL NATURE

History Note: Authority G.S. 58-9;
Eff. February 1, 1976;
Readopted Eff. February 28, 1978;
Repealed Eff. July 1, 1988.

11 NCAC 11C .0202 INVENTORY OF CAPITAL SURPLUS AND RESERVE INVESTMENTS
11 NCAC 11C .0203 FOREIGN FIRE: CASUALTY AND MISC COMPANIES: COMPLIANCE
11 NCAC 11C .0204 INVESTMENTS IN ELECTRONIC DATA PROCESSING EQUIPMENT

History Note: Authority G.S. 58-9(1); 58-79.1; 58-79(d)(1);
Eff. February 1, 1976;
Readopted Eff. February 28, 1978;
Repealed Eff. April 1, 1993.

11 NCAC 11C .0205 ACCOUNTING FOR SALVAGE AND SUBROGATION

History Note: Authority G.S. 58-16; 58-9;
Eff. February 28, 1978;
Repealed Eff. April 1, 1993.

11 NCAC 11C .0206 ACCOUNTING FOR PREMIUM OVER 90 DAYS PAST DUE

History Note: Authority G.S. 58-2-40; 58-7-162(5);
Eff. April 1, 1993;
Repealed Eff. March 1, 2004.

SECTION .0300 - HEALTH MAINTENANCE ORGANIZATIONS

11 NCAC 11C .0301 GENERAL NATURE

History Note: Authority G.S. 58-9;
Eff. February 1, 1976;
Readopted Eff. February 28, 1978;
Repealed Eff. July 1, 1988.

11 NCAC 11C .0302 INVENTORY OF RESERVE: CAPITAL AND SURPLUS INVESTMENTS
11 NCAC 11C .0303 EXPLANATION OF BASKET CLAUSE N.C.G.S. 58-79(A)(14)
11 NCAC 11C .0304 INVENTORY OF BASKET CLAUSE INVESTMENT
11 NCAC 11C .0305 CALCULATION OF LIMITATIONS ON BASKET CLAUSE INVESTMENTS
11 NCAC 11C .0306 LIMITATIONS UNDER BASKET CLAUSE TO PREVIOUS INVESTMENTS

History Note: Authority G.S. 58-79; 58-79(a)(14);
Eff. February 1, 1976;
Readopted Eff. February 28, 1978;
Repealed Eff. April 1, 1993.

11 NCAC 11C .0307 FINANCIAL CERTIFICATION: HMO

After the applicant has performed, or caused to be performed, a feasibility study on the proposed operations of the HMO and has developed a specific plan of operation, this information shall be submitted to the applicant's staff actuary, a recognized actuarial consultant, or a recognized health care consultant for completion of an actuarial projection of the anticipated operational results for a three-year period based on the initial working capital of the applicant, any additional sources of funds to be provided, the proposed rate schedules, the expected number of enrollees during the period, and the applicant's plan of operation. This projection shall include the following:

- (1) Certification that the amount of money actually available for working capital is sufficient to carry all acquisition costs and operating expenses for at least the three-year period and that the applicant is financially responsible and may reasonably be expected to meet its obligations to enrollees and prospective enrollees on a continuing basis;
- (2) Certification that the rates to be charged by the applicant for prepaid health services are neither excessive, inadequate nor unfairly discriminatory;
- (3) Determination of an adequate reinsurance program to amply protect the applicant against large claims arising in cases of major health care needs of enrollees, if the financial condition of the applicant requires such a program; and
- (4) Consideration be given in the three year projection to the possible effects of adverse selection and over-utilization of services by enrollees of the applicant.

History Note: Authority G.S. 58-2-40; 58-67-10;
Eff. April 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 20, 2015.

11 NCAC 11C .0308 FOREIGN HMO: SUCCESSFUL OPERATION

History Note: Authority G.S. 58-2-40; 58-67-10;
Eff. April 1, 1993;
Amended Eff. April 1, 1994;
Repealed Eff. February 1, 2010.

11 NCAC 11C .0309 ADMITTED ASSETS: HMO

History Note: Authority G.S. 58-2-40; 58-2-40(1); 58-67-20; 58-67-110(b);
Eff. April 1, 1993;
Repealed Eff. March 1, 2004.

11 NCAC 11C .0310 REINSURANCE AGREEMENTS: HMO

Reinsurance Agreements entered into in accordance with G.S. 58-67-110(e) shall be issued by insurance carriers licensed to do business in North Carolina.

History Note: Authority G.S. 58-2-40; 58-67-110(e);
Eff. April 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 20, 2015.

11 NCAC 11C .0311 EXPANSION OF SERVICE AREA: HMO

(a) Applications for expansion of service area shall provide current data stated in G.S. 58-67-10(c)(1) along with a feasibility study and market survey of the proposed area as stated in 11 NCAC 11C .0307.

(b) Applications for expansion of service area must demonstrate at least a minimum of one year of net operational gains by the applicant in the current approved service area.

(c) The requirement of Paragraph (b) may be waived by the Commissioner if additional capital as determined by the Commissioner is placed in the HMO, or if a guaranty agreement approved in writing by the Commissioner, to pay for any loss to enrollees claiming reimbursement due to the insolvency of the HMO is made. In order to qualify, the guaranteeing organization shall:

- (1) submit to the jurisdiction of this State for actions arising under the guarantee;
- (2) submit certified, audited annual financial statements to the Commissioner; and
- (3) appoint the Commissioner to receive service of process in this State.

History Note: Authority G.S. 58-2-40; 58-67-10;
Eff. April 1, 1993;
Amended Eff. April 1, 1994;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 20, 2015.

11 NCAC 11C .0312 FINANCIAL STATEMENTS: HMO

History Note: Authority G.S. 58-2-40; 58-67-55;
Eff. April 1, 1993;
Expired Eff. January 1, 2016 pursuant to G.S. 150B-21.3A.

11 NCAC 11C .0313 NET EARNED INCOME DEFINITION: HMO

History Note: Authority G.S. 58-2-40; 58-67-5(i);
Eff. February 1, 1996;
Expired Eff. January 1, 2016 pursuant to G.S. 150B-21.3A.

SECTION .0400 - MORTGAGE GUARANTY INSURANCE

11 NCAC 11C .0401 GENERAL NATURE

11 NCAC 11C .0402 MORTGAGE GUARANTY INSURANCE: PURPOSE

History Note: Authority G.S. 58-9; 58-9(1);
Eff. February 1, 1976;
Readopted Eff. February 28, 1978;
Repealed Eff. July 1, 1988.

11 NCAC 11C .0403 ACCOUNTING FOR MORTGAGE GUARANTY INSURANCE

History Note: Authority G.S. 58-2-40; 58-2-165;
Eff. February 1, 1976;
Readopted Eff. February 28, 1978;
Amended Eff. April 1, 1993;
Repealed Eff. June 1, 2007.

11 NCAC 11C .0404 CONTINGENCY RESERVE: MORTGAGE GUARANTY INSURANCE

History Note: Authority G.S. 58-2-40(1);
Eff. February 1, 1976;
Readopted Eff. February 28, 1978;
Repealed Eff. June 1, 2007.

11 NCAC 11C .0405 POLICY FORMS: MORTGAGE GUARANTY INSURANCE

All policy forms and endorsements of mortgage guaranty insurance companies shall be filed with and be subject to approval of the Commissioner of Insurance.

History Note: Authority G.S. 58-2-40(1);
Eff. February 1, 1976;
Readopted Eff. February 28, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 20, 2015.

11 NCAC 11C .0406 APPRAISAL REVIEW FEES ARE PART OF PREMIUM CHARGE

Appraisal review fees, as charged by mortgage guaranty insurance companies, are considered to be a part of the premium charge for all purposes, including unearned premium reserve, and are to be included as part of the gross premiums as defined in North Carolina General Statute 105-228.5.

History Note: Authority G.S. 58-2-40(1);
Eff. February 1, 1976;
Readopted Eff. February 28, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 20, 2015.

11 NCAC 11C .0407 REPORT OF POLICYHOLDERS POSITION – MORTGAGE GUARANTY INSURERS

Each mortgage guaranty insurance company doing business in this State shall file with the Commissioner a Mortgage Guaranty Insurers Report of Policyholders Position form, which is available at www.ncdoi.com.

History Note: Authority G.S. 58-2-40; 58-10-120; 58-10-125;
Eff. July 1, 2004;
Amended Eff. June 1, 2007;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 20, 2015.

SECTION .0500 - REINSURANCE

11 NCAC 11C .0501 ACCREDITED REINSURER - APPLICATION

(a) Each insurance company desiring a status of accredited reinsurer in this jurisdiction must file an Application for Accredited Reinsurer in the form as prescribed by the Commissioner, or Form AR-1, Certificate of Assuming Insurer, as adopted by the NAIC, and must satisfy the requirements of G.S. 58-7-21(b)(2).

(b) Each applicant must reflect verifiable policyholders' surplus of at least twenty million dollars (\$20,000,000) in its most recent annual financial statement that presents the applicant's assets, liabilities, policyholders' surplus, income, and expenses in substantial compliance with appropriate NAIC Annual Statement Instructions, G.S. 58, and this Title. However, an insurance company may be considered for accredited reinsurer status with policyholders' surplus of less than twenty million dollars (\$20,000,000) if the application includes proper support that adequate protection to ceding insurers will be provided by the lesser amount of policyholders' surplus.

History Note: Authority G.S. 58-2-40; 58-7-21(b)(2);
Eff. April 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 20, 2015.

11 NCAC 11C .0502 ACCREDITED REINSURER - FILING REQUIREMENTS

(a) Each initial application for accredited reinsurer shall be accompanied by the following financial and general information so that verification of the applicant's qualifications may be accomplished:

- (1) Annual statements for the preceding two years in the form required under G.S. 58-2-165;

- (2) A certified copy of the applicant's latest Report on Examination;
 - (3) A copy of the applicant's CPA report for the most recent year;
 - (4) Actuarial certification of the applicant's loss reserves and loss adjustment expense reserves for the most recent year; and
 - (5) A certificate of compliance from the home state verifying that the applicant is licensed in at least one state.
- (b) Each insurance company accepted as an accredited reinsurer must file on or before March 1 of each year the following information for review and determination of continued acceptability for such status:
- (1) An Application for Accredited Reinsurer for the next fiscal year beginning July 1;
 - (2) The applicant's annual statement for the preceding year ended December 31 in the form required under G.S. 58-2-165;
 - (3) The applicant's CPA report for the preceding year ended December 31;
 - (4) Certification of the applicant's loss reserves and loss adjustment expense reserves in such form as required by the NAIC Annual Statement Instructions except as amended by the Commissioner by rule or directive for the preceding year ended December 31; and
 - (5) A current certificate of compliance.

History Note: Authority G.S. 58-2-40; 58-7-21(b)(2);
 Eff. April 1, 1993;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 20, 2015.

11 NCAC 11C .0503 ACCREDITED REINSURER - REVOCATION OF ACCREDITATION

The Commissioner may revoke the accreditation of a reinsurer if its policyholders' surplus falls below twenty million dollars (\$20,000,000) or its continued status as an accredited reinsurer is deemed to present a condition that is hazardous to the insurance public of North Carolina.

History Note: Authority G.S. 58-2-40; 58-7-21(b)(2);
 Eff. April 1, 1993;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 20, 2015.

11 NCAC 11C .0504 TRUST AGREEMENTS QUALIFIED UNDER G.S. 58-7-26

- (a) As used in this Rule:
- (1) "Beneficiary" means the entity for whose sole benefit the trust has been established and any successor of the beneficiary by operation of law. If a court of law appoints a receiver as successor in interest to the named beneficiary, then the named beneficiary is the court -appointed domiciliary conservator, rehabilitator, or liquidator.
 - (2) "Financial institution" means a qualified United States financial institution as defined in G.S. 58-7-26(c).
 - (3) "Grantor" means the entity that has established a trust for the sole benefit of the beneficiary. When established in conjunction with a reinsurance agreement, the grantor is the unlicensed, unaccredited assuming insurer.
 - (4) "Obligations" means:
 - (A) Reinsured losses and allocated loss expenses paid by the ceding company, but not recovered from the assuming insurer;
 - (B) Reserves for reinsured losses reported and outstanding;
 - (C) Reserves for reinsured losses incurred but not reported; and
 - (D) Reserves for allocated reinsured loss expenses and unearned premiums.
- (b) Required conditions for trust agreements pursuant to G.S. 58-7-26.
- (1) The trust agreement shall be entered into between the beneficiary, the grantor, and a trustee, which trustee shall be a qualified financial institution.
 - (2) The trust agreement shall create a trust account into which assets shall be deposited.

- (3) All assets in the trust account shall be held by the trustee at the trustee's office in the United States.
- (4) The trust agreement shall provide that:
 - (A) The beneficiary may withdraw assets from the trust account at any time, without notice to the grantor, subject only to written notice from the beneficiary to the trustee;
 - (B) No other statement or document is required to be presented in order to withdraw assets, except that the beneficiary may be required to acknowledge receipt of withdrawn assets;
 - (C) It is not subject to any conditions or qualifications outside of the trust agreement; and
 - (D) It shall not contain references to any other agreements or documents except as provided for under Subparagraph (11) of this Paragraph.
- (5) The trust agreement shall be established for the sole benefit of the beneficiary.
- (6) The trust agreement shall require the trustee to:
 - (A) Receive assets and hold all assets in a safe place;
 - (B) Determine that all assets are in such form that the beneficiary, or the trustee upon direction by the beneficiary, may whenever necessary negotiate any such assets, without consent or signature from the grantor or any other person;
 - (C) Furnish to the grantor and the beneficiary a statement of all assets in the trust account upon its inception and at intervals no less frequent than the end of each calendar quarter;
 - (D) Notify the grantor and the beneficiary within 10 days after the making of any deposits to or withdrawals from the trust account;
 - (E) Upon written demand of the beneficiary, immediately take all steps to transfer all right, title, and interest in the assets held in the trust account to the beneficiary and deliver physical custody of the assets to the beneficiary; and
 - (F) Allow no substitutions or withdrawals of assets from the trust account, except on written instructions from the beneficiary; except that the trustee may, without the consent of, but with notice to, the beneficiary and upon the call or maturity of any trust asset, withdraw the asset upon the condition that the proceeds are paid into the trust account.
- (7) The trust agreement shall provide that at least 30 days, but not more 45 days, before termination of the trust account, that written notification of termination shall be delivered by the trustee to the beneficiary.
- (8) The trust agreement shall be made subject to and governed by the laws of the state in which the trust is established.
- (9) The trust agreement shall prohibit invasion of the trust corpus for the purpose of paying compensation to, or reimbursing the expense of, the trustee.
- (10) The trust agreement shall provide that the trustee shall be liable for its own negligence, willful misconduct or lack of good faith.
- (11) When a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities, or accident and health, where it is customary practice to provide a trust agreement for a specific purpose, such a trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, for the following purposes:
 - (A) To pay or reimburse the ceding insurer for the assuming insurer=s share under the specific reinsurance agreement regarding any losses and allocated loss expenses paid by the ceding insurer, but not recovered from the assuming insurer, or for unearned premiums due to the ceding insurer if not otherwise paid by the assuming insurer;
 - (B) To make payment to the assuming insurer of any amounts held in the trust account that exceed 102 percent of the actual amount required to fund the assuming insurer=s obligations under the specific reinsurance agreement; or
 - (C) Where the ceding insurer has received notification of termination of the trust account and where the assuming insurer=s entire obligations under the specific reinsurance agreement remain unliquidated and undischarged 10 days before termination date, to withdraw amounts equal to the obligations and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution as defined in G.S. 58-7-

26(c) apart from its general assets, in trust for such uses and purposes specified in Parts (b)(11)(A) and (B) of this Rule as may remain executory after such withdrawal and for any period after the termination date.

- (12) The reinsurance agreement entered into in conjunction with the trust agreement may, but need not, contain the provisions required by Part (d)(1)(B) of this Rule, as long as these required conditions are included in the trust agreement.

(c) Permitted conditions for trust agreements.

- (1) The trust agreement may provide that the trustee may resign upon delivery of a written notice of resignation, effective not less than 90 days after receipt by the beneficiary and grantor of the notice; and that the trustee may be removed by the grantor by delivery to the trustee and the beneficiary of a written notice of removal, effective not less than 90 days after receipt by the trustee and the beneficiary of the notice; provided that no such resignation or removal shall be effective until a successor trustee has been duly appointed and approved by the beneficiary and the grantor and all assets in the trust have been duly transferred to the new trustee.
- (2) The grantor may have the unqualified right to vote any shares of stock in the trust account and to receive from time to time payments of any dividends or interest upon any shares of stock or obligations included in the trust account. Any such interest or dividends shall be either forwarded promptly upon receipt to the grantor or deposited in a separate account established in the grantor's name.
- (3) The trustee may be given authority to invest, and accept substitutions of, any funds in the account; provided that no investment or substitution shall be made without prior approval of the beneficiary, unless the trust agreement specifies categories of investments acceptable to the beneficiary and authorizes the trustee to invest funds and to accept substitutions which the trustee determines are at least equal in market value to the assets withdrawn and that are consistent with the restrictions in Part (d)(1)(B) of this Rule.
- (4) The trust agreement may provide that the beneficiary may at any time designate a party to which all or part of the trust assets are to be transferred. Such transfer may be conditioned upon the trustee receiving, prior to or simultaneously, other specified assets.
- (5) The trust agreement may provide that, upon termination of the trust account, all assets not previously withdrawn by the beneficiary shall, with written approval by the beneficiary, be delivered over to the grantor.

(d) Additional conditions applicable to reinsurance agreements.

- (1) A reinsurance agreement that is entered into in conjunction with a trust agreement and the establishment of a trust account, may contain provisions that:
 - (A) Require the assuming insurer to enter into a trust agreement and to establish a trust account for the benefit of the ceding insurer, and specifying what the agreement is to cover;
 - (B) Stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash (United States legal tender), certificates of deposit (issued by a United States bank and payable in United States legal tender), or investments of the types permitted by G.S. 58, Article 7 or any combination of the above; provided that such investments are issued by an entity that is not the parent, subsidiary, or affiliate of either the grantor or the beneficiary. The reinsurance agreement may further specify the types of investments to be deposited. Where a trust agreement is entered into in conjunction with a reinsurance agreement covering risks other than life, annuities, and accident and health, the trust agreement may contain the provisions required by this paragraph in lieu of including such provisions in the reinsurance agreement;
 - (C) Require the assuming insurer, prior to depositing assets with the trustee, to execute assignments or endorsements in blank; or to transfer legal title to the trustee of all shares, obligations, or any other assets requiring assignments, in order that the ceding insurer, or the trustee upon the direction of the ceding insurer, may whenever necessary negotiate these assets without consent or signature from the assuming insurer or any other entity;

- (D) Require that all settlements of account between the ceding insurer and the assuming insurer be made in cash or its equivalent; and
- (E) Stipulate that the assuming insurer and the ceding insurer agree that the assets in the trust account, established pursuant to the provisions of the reinsurance agreement, may be withdrawn by the ceding insurer at any time, notwithstanding any other provisions in the reinsurance agreement; and shall be utilized and applied by the ceding insurer or its successors in interest by operation of law, including any liquidator, rehabilitator, receiver, or conservator of such company, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for the following purposes:
 - (i) To reimburse the ceding insurer for the assuming insurer's share of premiums returned to the owners of policies reinsured under the reinsurance agreement because of cancellations of such policies;
 - (ii) To reimburse the ceding insurer for the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer pursuant to the provisions of the policies reinsured under the reinsurance agreement;
 - (iii) To fund an account with the ceding insurer in an amount at least equal to the deduction, for reinsurance ceded, from the ceding insurer liabilities for policies ceded under the agreement. The account shall include, but not be limited to, amounts for policy reserves, claims and losses incurred (including losses incurred but not reported), loss adjustment expenses, and unearned premium reserves; and
 - (iv) To pay any other amounts the ceding insurer claims are due under the reinsurance agreement.

(2) The reinsurance agreement may also contain provisions that:

- (A) Give the assuming insurer the right to seek approval from the ceding insurer to withdraw from the trust account all or any part of the trust assets and transfer those assets to the assuming insurer, provided:
 - (i) The assuming insurer shall, at the time of withdrawal, replace the withdrawn assets with other qualified assets having a market value equal to the market value of the assets withdrawn so as to maintain at all times the deposit in the required amount, or
 - (ii) After withdrawal and transfer, the market value of the trust account is no less than 102 percent of the required amount.

The ceding insurer shall not unreasonably or arbitrarily withhold its approval.

- (B) Provide for:
 - (i) The return of any amount withdrawn in excess of the actual amounts required for Subparts (d)(1)(E)(i), (ii) and (iii), or in the case of Subpart (d)(1)(E)(iv) of this Rule, any amounts that are subsequently determined not to be due; and
 - (ii) Interest payments, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to Subpart (d)(1)(E)(iii) of this Rule.
- (C) Permit the award by any arbitration panel or court of competent jurisdiction of:
 - (i) Interest at a rate different from that provided in Subpart (d)(2)(B)(ii) of this Rule,
 - (ii) Court of arbitration costs,
 - (iii) Attorney's fees, and
 - (iv) Any other reasonable expenses.

(3) Financial reporting. A trust agreement may be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with the Department in compliance with the provisions of this Rule when established on or before the date of filing of the financial statement of the ceding insurer. Further, the reduction for the existence of an acceptable trust account may be up to the current fair market value of acceptable assets available to be withdrawn from the trust account at that time, but such reduction shall be no greater than the specific obligations under the reinsurance agreement that the trust account was established to secure.

- (4) Existing agreements. Notwithstanding the effective date of this Rule, any trust agreement in existence before January 1, 1996, will continue to be acceptable until June 30, 1996, at which time the agreements will have to be in full compliance with this Rule for the trust agreement to be acceptable.
- (5) The failure of any trust agreement to specifically identify the beneficiary as defined in Paragraph (a) of this Rule shall not be construed to affect any actions or rights that the Commissioner may take or possess pursuant to the provisions of the laws of this State.

*History Note: Authority G.S. 58-2-40; 58-7-21; 58-7-26;
Eff. February 1, 1996;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 20, 2015.*

11 NCAC 11C .0505 LETTERS OF CREDIT

(a) As used in this Rule:

- (1) "Beneficiary" means the entity 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 receiver as successor in interest to the named beneficiary, then the named beneficiary is the court-appointed domiciliary conservator, rehabilitator, or liquidator.
- (2) "Financial Institution" means a qualified United States financial institution as defined in G.S. 58-7-26(b).

(b) In order to qualify under G.S. 58-7-26(a)(3), a letter of credit must be clean, irrevocable, unconditional and issued or confirmed by a qualified United States financial institution as defined in G.S. 58-7-26(b). The letter of credit shall contain an issue date and date of expiration and shall 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 shall indicate that it is not subject to any condition or qualifications outside of the letter of credit. The letter of credit itself shall not contain reference to any other agreements, documents, or entities, except as provided in Subparagraph (i)(1) of this Rule.

(c) The heading of the letter of credit may include a boxed section that contains the name of the applicant and other appropriate notations to provide a reference for the letter of credit. The boxed section shall be clearly marked to indicate that such information is for internal identification purposes only.

(d) The letter of credit shall 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.

(e) The term of the letter of credit shall be for at least one year and shall contain an "evergreen clause" which prevents the expiration of the letter of credit without due notice from the issuer. The "evergreen clause" shall provide for a period of not less than thirty 30 days' notice before the expiration or non-renewal date.

(f) The letter of credit shall 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 400), and all drafts drawn thereunder shall be presentable at an office in the United States of a qualified United States financial institution.

(g) If the letter of credit is made subject to the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 400); then the letter of credit shall specifically address and make provision 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 19 of Publication 400 occur.

(h) The letter of credit shall be issued or confirmed by a qualified United States financial institution authorized to issue letters of credit, pursuant to G.S. 58-7-26(b).

(i) Reinsurance agreement provisions:

- (1) The reinsurance agreement in conjunction with which the letter of credit is obtained may contain provisions that:
 - (A) Require the assuming insurer to provide letters of credit to the ceding insurer and specify what they are to cover.
 - (B) 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:

- (i) To reimburse the ceding insurer for the assuming insurer's share of premiums returned to the owners of policies reinsured under the reinsurance agreement on account of cancellations of such policies;
 - (ii) To reimburse the ceding insurer for the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer under the terms and provisions of the policies reinsured under the reinsurance agreement;
 - (iii) To fund an account with the ceding insurer in an amount at least equal to the deduction, for reinsurance ceded, from the ceding insurer's liabilities for policies ceded under the agreement (such amount shall include, but not be limited to, amounts for policy reserves, claims and losses incurred and unearned premium reserves); and
 - (iv) To pay any other amounts the ceding insurer claims are due under the reinsurance agreement.
- (C) All of the provisions of Subparagraph (1) of this Paragraph shall be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer.
- (2) Nothing contained in Subparagraph (1) of this Paragraph shall preclude the ceding insurer and assuming insurer from providing for:
- (A) An interest payment, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to Subparagraph (1)(B)(iii) of this Paragraph; or
 - (B) The return of any amounts drawn down on the letters of credit in excess of the actual amounts required for the above or, in the case of Subpart (1)(B)(iv) of this Paragraph, any amounts that are subsequently determined not to be due.
- (3) When a letter of credit is obtained in conjunction with a reinsurance agreement covering risks other than life, annuities, and accident and health, where it is customary practice to provide a letter of credit for a specific purpose, then the reinsurance agreement may, in lieu of Part (1)(B) of this Paragraph, require that the parties enter into a "Trust Agreement", which may be incorporated into the reinsurance agreement or be a separate document.
- (j) A letter of credit may not be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements filed with the Department unless an acceptable letter of credit with the filing ceding insurer as beneficiary has been issued on or before the date of filing of the financial statement. The reduction for the letter of credit may be up to the amount available under the letter of credit but no greater than the specified obligation under the reinsurance agreement that the letter of credit was intended to secure.

History Note: Authority G.S. 58-2-40; 58-7-26;
Eff. February 1, 1996;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 20, 2015.

SECTION .0600 - PREMIUMS IN THE COURSE OF COLLECTION

11 NCAC 11C .0601 DEFINITIONS

The definitions contained in G.S. 58-19-5 are incorporated into this Section by reference.

History Note: Authority G.S. 58-2-40; 58-7-162;
Eff. April 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 20, 2015.

11 NCAC 11C .0602 APPLICABILITY

G.S. 58-7-162(6) applies when a person solely or in combination with the person's affiliates owes, in any two of three consecutive months, an insurer an amount that exceeds five percent of the insurer's total premiums in course of collection.

*History Note: Authority G.S. 58-2-40; 58-7-162;
Eff. April 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 20, 2015.*

11 NCAC 11C .0603 COMPLIANCE-TRUST ACCOUNT

- (a) When G.S. 58-7-162(6) applies under 11 NCAC 11C .0602, the premiums collected by the person or the person and its affiliates and not remitted to the insurer may be held in a trust account with a bank so that those premiums will qualify as allowable or admitted assets.
- (b) The trust account shall be an account held in the trust department of a bank and evidenced by a written trust agreement that is in substantial compliance with the Department's Model Trust Agreement.
- (c) The trustee bank shall be a national bank or a state chartered bank that is a member of the Federal Deposit Insurance Corporation and be independent from control of either the person, the person's affiliates, or the insurer.
- (d) The trust account must be established within 60 days after the end of the month in which the insurer becomes subject to G.S. 58-7-162(6) under 11 NCAC 11C .0602. The trust agreement must be submitted to and approved by the Commissioner before becoming effective, and within that 60-day period.
- (e) The person and its affiliates must maintain separate trust accounts, evidenced by written trust agreements, for each insurer subject to G.S. 58-7-162(6).
- (f) Once a trust account is established, it shall be maintained:
 - (1) for as long as the person or its affiliates produce business for the insurer, regardless of whether the person or its affiliates continue to owe the insurer at least five percent of the insurer's total premiums in course of collection; or
 - (2) until the insurer requests and receives authority from the Commissioner to cease using the trust account for the person or its affiliates. Such request shall not be made before 12 months after establishing the trust account.

*History Note: Authority G.S. 58-2-40; 58-7-162;
Eff. April 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 20, 2015.*

11 NCAC 11C .0604 COMPLIANCE: LETTER OF CREDIT

- (a) When G.S. 58-7-162(6) applies under 11 NCAC 11C .0602, the premiums collected by the person or the person and its affiliates and not remitted to the insurer may be secured by an unexpired, clean, irrevocable letter of credit, payable to the insurer, so that those premiums will qualify as allowable or admitted assets.
- (b) The amount of the letter of credit shall at all times equal or exceed 125 percent of the liability of the person or the person and its affiliates to the insurer for the premiums collected.
- (c) The letter of credit must be issued within 30 days after the end of the month in which the insurer becomes subject to G.S. 58-7-162(6) under 11 NCAC 11C .0602. A certified copy of the executed letter of credit shall be provided to the Commissioner.
- (d) The letter of credit shall be issued by a banking institution whose financial condition has been determined by either the Commissioner or the Securities Valuation Office of the NAIC to be acceptable to issue such a letter of credit.

*History Note: Authority G.S. 58-2-40; 58-7-162;
Eff. April 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 20, 2015.*

11 NCAC 11C .0605 COMPLIANCE: FINANCIAL GUARANTY BOND

- (a) When G.S. 58-7-162(6) applies under 11 NCAC 11C .0602, the premiums collected by the person or the person and its affiliates and not remitted to the insurer may be secured by a financial guaranty bond acceptable to the Department, payable to the insurer, so that those premiums will qualify as allowable or admitted assets.
- (b) The amount of the financial guaranty bond shall at all times equal or exceed 125 percent of the liability of the person or the person and its affiliates to the insurer for the premiums collected.

(c) The financial guaranty bond must be issued within 30 days after the end of the month in which the insurer becomes subject to G.S. 58-7-162(6) under 11 NCAC 11C .0602. A certified copy of the executed financial guaranty bond shall be provided to the Commissioner.

*History Note: Authority G.S. 58-2-40; 58-7-162;
Eff. April 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 20, 2015.*