20:06:12:07. Guidelines for examination reports. The insurer's examination report must be prepared in accordance with standards adopted by the National Association of Insurance Commissioners in the Financial Condition Examiners Handbook, ~~2021~~ 2022 edition.

Source: 21 SDR 144, effective February 19, 1995; 23 SDR 43, effective October 1, 1996; 23 SDR 202, effective June 1, 1997; 25 SDR 13, effective August 9, 1998; 26 SDR 26, effective September 1, 1999; 27 SDR 54, effective December 4, 2000; 29 SDR 84, effective December 15, 2002; 31 SDR 21, effective August 23, 2004; 33 SDR 59, effective October 5, 2006; 34 SDR 271, effective May 6, 2008; 35 SDR 165, effective December 22, 2008; 36 SDR 209, effective July 1, 2010; 37 SDR 241, effective July 1, 2011; 38 SDR 219, effective June 25, 2012; 39 SDR 219, effective June 26, 2013; 41 SDR 41, effective September 17, 2014; 42 SDR 52, effective October 13, 2015; 42 SDR 177, effective June 28, 2016; 43 SDR 181, effective July 7, 2017; 45 SDR 10, effective August 2, 2018; 46 SDR 26, effective September 4, 2019; 46 SDR 147, effective July 2, 2020; 47 SDR 137, effective June 28, 2021.

General Authority: SDCL 58-3-11, 58-3-26.

Law Implemented: SDCL 58-3-11.

Reference: Financial Condition Examiners Handbook, ~~2021~~ 2022 edition, National Association of Insurance Commissioners. Copies may be obtained from the NAIC, 1100 Walnut Street, Ste. 1500, Kansas City, MO 64106-2197, (816) 783-8300; http://www.naic.org. Cost: ~~$310~~ $326.

20:06:19:04. Accounting standards for transactions in exchange-traded call and put options. An insurance company that buys or sells exchange-traded call and put options must record the details of the transactions in a manner consistent with NAIC rules and procedures

contained in the ~~2020~~ 2021 edition of the **Annual Statement Instructions - Life, Accident, and Health,** the ~~2020~~ 2021 edition of the **Annual Statement Instructions - Property and Casualty,** the ~~2021~~ 2022 edition of the **Financial Condition Examiners Handbook**, the ~~2021~~ 2022 edition of the **Accounting Practices and Procedures Manual**, and the ~~2020~~ 2021 edition of the **Purposes and Procedures Manual of the NAIC Investment Analysis Office**.

Source: 13 SDR 75, effective December 21, 1986; 22 SDR 110, effective March 1, 1996; 23 SDR 43, effective October 1, 1996; 25 SDR 13, effective August 9, 1998; 26 SDR 26, effective September 1, 1999; 27 SDR 54, effective December 4, 2000; 27 SDR 111, effective May 7, 2001; 30 SDR 39, effective September 28, 2003; 33 SDR 59, effective October 5, 2006; 34 SDR 271, effective May 6, 2008; 35 SDR 165, effective December 22, 2008; 36 SDR 209, effective July 1, 2010; 37 SDR 241, effective July 1, 2011; 38 SDR 219, effective June 25, 2012; 39 SDR 219, effective June 26, 2013; 41 SDR 41, effective September 17, 2014; 42 SDR 52, effective October 13, 2015; 42 SDR 177, effective June 28, 2016; 43 SDR 181, effective July 7, 2017; 45 SDR 10, effective August 2, 2018; 46 SDR 26, effective September 4, 2019; 46 SDR 147, effective July 2, 2020; 47 SDR 137, effective June 28, 2021.

General Authority: SDCL 58-27-7.

Law Implemented: SDCL 58-6-75.

References:

1. **Annual Statement Instructions - Life, Accident and Health**, ~~2020~~ 2021 edition, National Association of Insurance Commissioners. Cost: ~~$250~~ $166.

2. **Annual Statement Instructions - Property and Casualty**, ~~2020~~ 2021 edition, National Association of Insurance Commissioners. Cost: ~~$250~~ $166.

3. **Accounting Practices and Procedures Manual**, ~~2021~~ 2022 edition, National Association of Insurance Commissioners. Cost: ~~Hard Copy, $550~~ $525.

4. **Financial Condition Examiners Handbook**, ~~2021~~ 2022 edition, National Association of Insurance Commissioners. Cost: ~~$310~~ $326.

5. **Purposes and Procedures Manual of the NAIC Investment Analysis Office**, ~~2020~~ 2021 edition, National Association of Insurance Commissioners. Cost: ~~Subscription, $85; Digital Copy, $500; Print and Digital Copies, $600 plus freight~~ $0.

Copies of references 1 through 5 may be obtained from the National Association of Insurance Commissioners, 1100 Walnut Street, Ste. 1500, Kansas City, MO 64106-2197, (816) 783-8300; http://www.naic.org.

20:06:25:01. Annual statements. The insurer's annual statement must be filed in accordance with the standards adopted by the National Association of Insurance Commissioners in the ~~2021~~ 2022 edition of the **Accounting Practices and Procedures Manual**, and the ~~2020~~ 2021 editions of the following **Annual Statement Instructions** manuals: **Life, Accident, and Health**; **Property and Casualty**; **Health**; and **Title**.

Source: 21 SDR 144, effective February 19, 1995; 22 SDR 110, effective March 1, 1996; 23 SDR 202, effective June 1, 1997; 25 SDR 13, effective August 9, 1998; 26 SDR 26, effective September 1, 1999; 27 SDR 54, effective December 4, 2000; 27 SDR 111, effective May 7, 2001; 30 SDR 39, effective September 28, 2003; 31 SDR 21, effective August 23, 2004; 33 SDR 59, effective October 5, 2006; 34 SDR 271, effective May 6, 2008; 35 SDR 165, effective December 22, 2008; 36 SDR 209, effective July 1, 2010; 37 SDR 241, effective July 1, 2011; 38 SDR 219, effective June 25, 2012; 39 SDR 219, effective June 26, 2013; 41 SDR 41, effective

September 17, 2014; 42 SDR 52, effective October 13, 2015; 42 SDR 177, effective June 28, 2016; 43 SDR 181, effective July 7, 2017; 45 SDR 10, effective August 2, 2018; 46 SDR 26, effective September 4, 2019; 46 SDR 147, effective July 2, 2020; 47 SDR 137, effective June 28, 2021.

General Authority: SDCL 58-6-75.

Law Implemented: SDCL 58-6-75.

References:

1. **Annual Statement Instructions - Life, Accident, and Health**, ~~2020~~ 2021 edition. Cost: ~~$250~~ $166.

2. **Annual Statement Instructions - Property and Casualty**, ~~2020~~ 2021 edition. Cost: ~~$250~~ $166.

3. **Annual Statement Instructions - Health**, ~~2020~~ 2021 edition. Cost: ~~$250~~ $166.

4. **Annual Statement Instructions - Title**, ~~2020~~ 2021 edition. Cost: ~~$250~~ $166.

5. **Accounting Practices and Procedures Manual**, ~~2021~~ 2022. Cost: ~~$550~~ $525.

Copies of references 1 through 5 may be obtained from the National Association of Insurance Commissioners, 1100 Walnut Street, Ste. 1500, Kansas City, MO 64106-2197, (816) 783-8300; http://www.naic.org.

20:06:25:01.01. Accounting methods for certain surety bonds. Insurers writing surety bonds guaranteeing to lending institutions the repayment of student loans made by lending institutions may, in lieu of compliance with SSAP60 of the **Accounting Practices and Procedures Manual**, develop premium earning patterns that are representative of their claims

and expense patterns by loan and program, and compute unearned premium reserves according to those premium earning patterns. In lieu of compliance with SSAP3 of the **Accounting Practices and Procedures Manual**, changes in accounting estimates, for this method of accounting only, may be amortized over the remaining life of the student loans utilizing pro-rated current premium earning patterns. In lieu of compliance with SSAP53 of the **Accounting Practices and Procedures Manual,** such insurers may recognize written premiums when due.

Source: 27 SDR 111, effective May 7, 2001; 29 SDR 5, effective July 10, 2002; 30 SDR 39, effective September 28, 2003; 31 SDR 21, effective August 23, 2004; 33 SDR 59, effective October 5, 2006; 34 SDR 271, effective May 6, 2008; 35 SDR 165, effective December 22, 2008; 36 SDR 209, effective July 1, 2010; 37 SDR 241, effective July 1, 2011; 38 SDR 219, effective June 25, 2012; 39 SDR 219, effective June 26, 2013; 41 SDR 41, effective September 17, 2014; 42 SDR 52, effective October 13, 2015; 42 SDR 177, effective June 28, 2016; 45 SDR 10, effective August 2, 2018; 46 SDR 26, effective September 4, 2019; 46 SDR 147, effective July 2, 2020; 47 SDR 137, effective June 28, 2021.

General Authority: SDCL 58-6-75.

Law Implemented: SDCL 58-6-75.

Reference: Accounting Practices and Procedures Manual, ~~2021~~ 2022 edition. Copies may be obtained from the National Association of Insurance Commissioners, 1100 Walnut Street, Ste. 1500, Kansas City, MO 64106-2197, (816) 783-8300; http://www.naic.org. Cost: ~~$550~~ $525.

20:06:25:01.02. Accounting methods for bail bonds. Insurers writing bail bonds may, in lieu of compliance with SSAP 53 of the **Accounting Practices and Procedures Manual**,

report bail bond written premiums less agent commissions and may recognize total premiums as earned on the effective date of the bonds. Insurers reporting premiums on this method must file a supplemental Schedule T with their annual statement setting forth the gross premiums by state for premium tax purposes.

Source: 29 SDR 5, effective July 10, 2002; 30 SDR 39, effective September 28, 2003; 31 SDR 21, effective August 23, 2004; 33 SDR 59, effective October 5, 2006; 34 SDR 271, effective May 6, 2008; 35 SDR 165, effective December 22, 2008; 36 SDR 209, effective July 1, 2010; 37 SDR 241, effective July 1, 2011; 38 SDR 219, effective June 25, 2012; 39 SDR 219, effective June 26, 2013; 41 SDR 41, effective September 17, 2014; 42 SDR 52, effective October 13, 2015; 42 SDR 177, effective June 28, 2016; 45 SDR 10, effective August 2, 2018; 46 SDR 26, effective September 4, 2019; 46 SDR 147, effective July 2, 2020; 47 SDR 137, effective June 28, 2021.

General Authority: SDCL 58-6-75.

Law Implemented: SDCL 58-6-75.

Reference: Accounting Practices and Procedures Manual, ~~2021~~ 2022 edition. Copies may be obtained from the National Association of Insurance Commissioners, 1100 Walnut Street, Ste. 1500, Kansas City, MO 64106-2197, (816) 783-8300; http://www.naic.org. Cost: ~~$550~~ $525.

20:06:25:02. Actuarial opinions. Actuarial opinions shall be filed in accordance with standards adopted by the National Association of Insurance Commissioners in the manuals on **Annual Statement Instructions - Life, Accident, and Health**, ~~2020~~ 2021 edition and **Annual Statement Instructions - Property and Casualty**, ~~2020~~ 2021 edition.

Source: 21 SDR 144, effective February 19, 1995; 22 SDR 110, effective March 1, 1996; 23 SDR 202, effective June 1, 1997; 25 SDR 13, effective August 9, 1998; 26 SDR 26, effective September 1, 1999; 27 SDR 54, effective December 4, 2000; 30 SDR 39, effective September 28, 2003; 31 SDR 21, effective August 23, 2004; 33 SDR 59, effective October 5, 2006; 34 SDR 271, effective May 6, 2008; 35 SDR 165, effective December 22, 2008; 36 SDR 209, effective July 1, 2010; 37 SDR 241, effective July 1, 2011; 38 SDR 219, effective June 25, 2012; 39 SDR 219, effective June 26, 2013; 41 SDR 41, effective September 17, 2014; 42 SDR 52, effective October 13, 2015; 42 SDR 177, effective June 28, 2016; 43 SDR 181, effective July 7, 2017; 45 SDR 10, effective August 2, 2018; 46 SDR 26, effective September 4, 2019; 46 SDR 147, effective July 2, 2020; 47 SDR 137, effective June 28, 2021.

General Authority: SDCL 58-26-13.1, 58-26-46.

Law Implemented: SDCL 58-26-13.1, 58-26-46.

References:

1. **Annual Statement Instructions - Life, Accident, and Health**, ~~2020~~ 2021 edition. Cost: ~~$250~~ $166.

2. **Annual Statement Instructions - Property and Casualty**, ~~2020~~ 2021 edition. Cost: ~~$250~~ $166.

Copies of references 1 and 2 may be obtained from the National Association of Insurance Commissioners, 1100 Walnut Street, Ste. 1500, Kansas City, MO 64106-2197, (816) 783-8300; http://www.naic.org.

20:06:26:01. Standards for rating and valuation of investments. The standards of the division for purposes of rating and valuing investments are the standards set forth in the **Purposes and Procedures Manual of the NAIC Investment Analysis Office**, ~~2020~~ 2021 edition.

Source: 21 SDR 144, effective February 19, 1995; 22 SDR 110, effective March 1, 1996; 23 SDR 202, effective June 1, 1997; 25 SDR 13, effective August 9, 1998; 26 SDR 26, effective September 1, 1999; 27 SDR 54, effective December 4, 2000; 30 SDR 39, effective September 28, 2003; 31 SDR 21, effective August 23, 2004; 33 SDR 59, effective October 5, 2006; 34 SDR 271, effective May 6, 2008; 35 SDR 165, effective December 22, 2008; 36 SDR 209, effective July 1, 2010; 37 SDR 241, effective July 1, 2011; 38 SDR 219, effective June 25, 2012; 39 SDR 219, effective June 26, 2013; 41 SDR 41, effective September 17, 2014; 42 SDR 52, effective October 13, 2015; 42 SDR 177, effective June 28, 2016; 43 SDR 181, effective July 7, 2017; 45 SDR 10, effective August 2, 2018; 46 SDR 26, effective September 4, 2019; 46 SDR 147, effective July 2, 2020; 47 SDR 137, effective June 28, 2021.

General Authority: SDCL 58-27-108.

Law Implemented: SDCL 58-27-108.

Reference: Purposes and Procedures Manual of the NAIC Investment Analysis Office, ~~2020~~ 2021 edition, National Association of Insurance Commissioners. Copies may be obtained from the NAIC, 1100 Walnut Street, Ste. 1500, Kansas City, MO 64106-2197, (816) 783-8300; http://www.naic.org. Cost: ~~Subscription, $85; Digital Copy, $500; Print and Digital Copies, $600 plus freight~~ $0.

CHAPTER 20:06:30

LIFE AND HEALTH REINSURANCE

Section

20:06:30:20 Applicability.

20:06:30:01. Scope. This chapter applies to all domestic life and accident and health insurers and to all other licensed life and accident and health insurers which are not subject to a substantially similar regulation in their domiciliary state. This chapter also applies to the accident and health business of licensed property and casualty insurers. This chapter does not apply to assumption reinsurance, yearly renewable term reinsurance, or certain nonproportional reinsurance, such as stop loss or catastrophe reinsurance, except as referenced in § 20:06:30:14.

Source: 22 SDR 52, effective October 25, 1995.

General Authority: SDCL 58-14-17.

Law Implemented: SDCL 58-14-17.

20:06:30:13. Definitions. The following definitions apply to §§ 20:06:30:13 to 20:06:30:20, inclusive:

(1) "Actuarial method," the methodology used to determine the required level of primary security, as described in § 20:06:30:14;

(2) "Covered policy," subject to the exemptions described in § 20:06:30:18, a covered policy is a policy, other than a grandfathered policy, of the following policy types:

(a) Life insurance policy with guaranteed nonlevel gross premiums and/or guaranteed nonlevel benefits, except for flexible premium universal life insurance policy; or

(b) Flexible premium universal life insurance policy with provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period;

(3) "Grandfathered policy," a policy of the types described in subsections 20:06:30:13(2)(a) and 20:06:30:13(2)(b) that was:

(a) Issued prior to January 1, 2015; and

(b) Ceded, as of December 31, 2014, as part of a reinsurance treaty that would not have met one of the exemptions set forth in § 20:06:30:18 had that section then been in effect;

(4) "Non-covered policy," any policy that does not meet the definition of covered policy, including grandfathered policy;

(5) "Other security," any security acceptable to the director other than security meeting the definition of primary security;

(6) "Primary security," the following forms of security:

(a) Cash meeting the requirements of SDCL 58-14-16;

(b) Securities listed by the National Association of Insurance Commissioners Securities Valuation Office meeting the requirements of SDCL 58-14-16, 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:

(i) Commercial loans in good standing of CM3 quality and higher as defined in the Valuation Manual;

(ii) Policy loans; and

(iii) 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;

(7) "Required level of primary security," the dollar amount determined by applying the actuarial method to the risks ceded with respect to a covered policy, but not more than the total reserve ceded;

(8) "Valuation Manual," the valuation manual adopted by the director under § 20:06:59:01 and SDCL 58-26-45.1, with all amendments adopted by the National Association of Insurance Commissioners (NAIC) that are effective for the financial statement date on which credit for reinsurance is claimed; and

(9) "VM-20," the definition of "Requirements for Principle-Based Reserves for Life Products" from the Valuation Manual, including all relevant definitions.

Source:

General Authority: SDCL 58-14-17; 58-26-45.1.

Law Implemented: SDCL 58-14-17.

20:06:30:14. The actuarial method. VM-20 is the actuarial method to establish the required level of primary security for each reinsurance treaty subject to §§ 20:06:30:13 to 20:06:30:20, inclusive, applied on a treaty-by-treaty basis from the Valuation Manual as then in effect, including all relevant definitions, applied as follows:

(1) For covered policies described in subsection 20:06:30:13(2)(a), the actuarial method is the greater of the deterministic reserve or the net premium reserve (NPR) regardless of whether the criteria for exemption testing can be met. However, if the covered policy does not meet the requirements of the stochastic reserve exclusion test in the Valuation Manual, then the actuarial method is the greatest of the deterministic reserve, the stochastic reserve, or the NPR. In addition, if such covered policies are reinsured in a reinsurance treaty that also contains covered policies described in § 20:06:30:13(2)(b) above, the ceding insurer may elect to instead use

subdivision 20:06:30:14(2) as the actuarial method for the entire reinsurance agreement treaty. Whether subdivision 20:06:30:14(1) or 20:06:30:14(2) 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;

(2) For a covered policy described in subsection 20:06:30:13(2)(b), the actuarial method is the greatest of the deterministic reserve, the stochastic reserve, or the NPR regardless of whether the criteria for exemption testing can be met;

(3) Except as provided in subdivision 20:06:30:13(4), the actuarial method must be applied on a gross basis to all risks with respect to the covered policy as originally issued or assumed by the ceding insurer; and

(4) If the reinsurance treaty cedes less than one hundred percent of the risk with respect to the covered policy, 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 policy, the required level of primary security, as well as any adjustment under subsection 20:06:30:14(4)(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 policy, except that for a covered policy in 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 that covered policy, where the retained reserve of that covered policy 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 in 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 for a covered policy issued prior to January 1, 2017, this adjustment is not to exceed [cx divided by (2 times the number of reinsurance premiums per year)] where cx 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 stop loss, excess of loss and other non-proportional reinsurance treaties, there is no reduction in the required level of primary security.

It is possible for any combination of subsections 20:06:30:14(4)(a), 20:06:30:14(4)(b), 20:06:30:14(4)(c), and 20:06:30:14(4)(d) to apply. These adjustments to the required level of primary security shall 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 one hundred percent of the risk.

Source:

General Authority: SDCL 58-14-17.

Law Implemented: SDCL 58-14-17.

20:06:30:14.1 Adjustments for other reinsurance treaties. The adjustments for other reinsurance treaties may only be made with respect to reinsurance treaties entered into directly by the ceding insurer. The ceding insurer may not make no adjustment as a result of a retrocession treaty entered into by the assuming insurers.

The required level of primary security resulting from application of the actuarial method may not exceed the amount of statutory reserves ceded.

If the ceding insurer cedes risks with respect to a covered policy, including any riders, in more than one reinsurance treaty subject to §§ 20:06:30:13 to 20:06:30:20, inclusive, the aggregate required level of primary security for those reinsurance treaties may not 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 §§ 20:06:30:13 to 20:06:30:20, inclusive; and

If a reinsurance treaty subject to §§ 20:06:30:13 to 20:06:30:20, inclusive, cedes risk on both covered and non-covered policies, credit for the ceded reserves must be determined as follows:

(1) The actuarial method shall be used to determine the required level of primary security for the covered policy, and § 20:06:30:16 shall be used to determine the credit for reinsurance for the covered policy reserves; and

(2) Credit for the non-covered policy reserves shall be granted only to the extent that security, in addition to the security held to satisfy the requirements of subdivision 20:06:3014.1(1), is held by or on behalf of the ceding insurer in accordance with SDCL Ch. 58-

26. Any primary security used to meet the requirements of this subdivision may not be used to satisfy the required level of primary security for the covered policy.

Source:

General Authority: SDCL 58-14-17, 58-26-45.1.

Law Implemented: SDCL 58-14-17.

20:06:30:15. Valuation used for purposes of calculations. 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:

(1) For assets, including any assets held in trust, that would be admitted under the Accounting Practices and Procedures Manual, as adopted by the director under SDCL 58-6-75 and § 20:06:25:01, if the assets are held by the ceding insurer, the valuations are to be determined according to statutory accounting procedures as if the assets were held in the ceding insurer's general account and without taking into consideration the effect of any prescribed or permitted practices; and

(2) For all other assets, the valuations are to be those that are assigned to the assets for the purpose of determining the amount of reserve credit taken. In addition, the asset spread tables and asset default cost tables required by VM-20 shall be included in the actuarial method if adopted by the NAIC Life Actuarial (A) Task Force no later than the December thirty-first on or immediately preceding the valuation date for which the required level of primary security is being calculated and adopted by the director pursuant to SDCL 58-26-45.1 and § 20:06:59:01. The tables of asset spreads and asset default costs shall be incorporated into the actuarial method in the manner specified in VM-20.

Source:

General Authority: SDCL 58-14-17.

Law Implemented: SDCL 58-14-17.

20:06:30:16. Requirements applicable to a covered policy to obtain credit for reinsurance. Subject to the exemptions described in § 20:06:30:18 and the provisions of § 20:06:30:17, credit for reinsurance shall be allowed with respect to ceded liabilities pertaining to a covered policy pursuant to SDCL Ch. 58-26 if, in addition to all other requirements imposed by law or rule, the following requirements are met on a treaty-by-treaty basis:

(1) The ceding insurer's statutory policy reserves with respect to the covered policy are established in full and in accordance with the applicable requirements of SDCL 58-26-45 to 58-26-105, inclusive, and related rules and actuarial guidelines, and credit claimed for any reinsurance treaty subject to §§ 20:06:30:13 to 20:06:30:20, inclusive, do not exceed the proportionate share of those reserves ceded under the reinsurance treaty;

(2) The ceding insurer determines the required level of primary security with respect to each reinsurance treaty subject to §§ 20:06:30:13 to 20:06:30:20, inclusive, and provides support for its calculation as determined to be acceptable to the director;

(3) Funds consisting of primary security, in an amount at least equal to the required level of primary security, are held by or on behalf of the ceding insurer, as security under the reinsurance treaty within the meaning of SDCL 58-14-16, on a funds withheld, trust, or modified coinsurance basis;

(4) Funds consisting of other security, in an amount at least equal to any portion of the statutory reserves as to which primary security is not held pursuant to subdivision

20:06:30:16(3), are held by or on behalf of the ceding insurer as security under the reinsurance treaty within the meaning of SDCL 58-14-16;

(5) Any trust used to satisfy the requirements of this section shall comply with all of the conditions and qualifications of § 20:06:31:06, except that:

(a) Funds consisting of primary security or other security held in trust, shall for the purposes identified in § 20:06:30:15, be valued according to the valuation rules set forth in § 20:06:30:17, as applicable;

(b) There are no affiliate investment limitations with respect to any security held in the trust if that security is not needed to satisfy the requirements of subdivision 20:06:30:16(3);

(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 subdivision 20:06:30:16(3)) below one hundred two percent of the level required by subdivision 20:06:30:16(3) at the time of the withdrawal or substitution; and

(d) The determination of reserve credit in § 20:06:31:13 shall be determined according to the valuation rules set forth in § 20:06:30:15, as applicable; and

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

Source:

General Authority: SDCL 58-14-1, 58-26-45.1.

Law Implemented: SDCL 58-14-17.

20:06:30:17. Requirements at inception date and on an on-going basis--Remediation. The requirements of § 20:06:30:16 must be satisfied as of the date that risks under a covered policy is ceded, if that date is on or after the effective date of §§ 20:06:30:13 to 20:06:30:20, inclusive, 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 subdivision 20:06:30:16(3) or 20:06:30:16(4) with respect to any reinsurance treaty under which a covered policy has been ceded, and in the event that a ceding insurer becomes aware at any time that a deficiency exists, it shall use its best efforts to arrange for the deficiency to be eliminated as expeditiously as possible.

Prior to the due date of each quarterly or annual statement, each life insurance company that has ceded reinsurance within the scope of chapter § 20:06:30 shall perform an analysis, on a treaty-by-treaty basis, to determine, as to each reinsurance treaty under which covered policy has been ceded, whether as of the end of the immediately preceding calendar quarter (the valuation date) the requirements of subdivisions 20:06:30:16(3) or 20:06:30:16(4) are 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 subdivision 20:06:30:16(3), unless either:

(1) The requirements of subdivision 20:06:30:16(3) or 20:06:30:16(4) were fully satisfied as of the valuation date as to the reinsurance treaty; or

(2) Any deficiency has been eliminated before the due date of the quarterly or annual statement to which the valuation date relates through the addition of primary security and/or other security, as the case may be, in such amount and form as would have caused the requirements of subdivision 20:06:30:16(3) or 20:06:30:16(4) to be fully satisfied as of the valuation date.

Nothing in this section shall be construed to allow a ceding company to maintain any deficiency under subdivision 20:06:30:16(3) or 20:06:30:16(4) for any period of time longer than is reasonably necessary to eliminate it.

Source:

General Authority: SDCL 58-14-17.

Law Implemented: SDCL 58-14-17.

20:06:30:18. Exemptions. Sections 20:06:30:13 to 20:06:30:20, inclusive, do not apply to the reinsurance situations described in the following:

(1) Reinsurance of:

(a) A policy that satisfy the criteria for an exemption under the attained-age-based yearly renewable term life insurance policies exemption or the unitary reserves for certain yearly renewable term life insurance policies, as defined and set forth in Appendix A-830 of the Accounting Practices and Procedures Manual, as adopted under SDCL 58-6-75 and § 20:06:25:01, and which are issued before the later of:

(i) The effective date of §§ 20:06:30:13 to 20:06:30:20, inclusive; and

(ii) The date on which the ceding insurer begins to apply the provisions of VM-20 to establish the ceded policy's statutory reserves;

(b) Portions of a policy that satisfy the criteria for an exemption the yearly renewable term reinsurance exemption as defined and set forth in in Appendix A-830 of the Accounting Practices and Procedures Manual, as adopted under SDCL 58-6-75 and § 20:06:25:01, and which are issued before the later of:

(i) The effective date of §§ 20:06:30:13 to 20:06:30:20, inclusive; and

(ii) The date on which the ceding insurer begins to apply the provisions of VM-20 to establish the ceded policy's statutory reserves;

(c) Any universal life policy that meets all of the following requirements:

(i) Secondary guarantee period, if any, is five years or less;

(ii) 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 valuation tables and valuation interest rate, as listed in the NAIC Valuation Manual, adopted under SDCL 58-26-45.1, applicable to the issue year of the policy; and

(iii) The initial surrender charge is not less than one hundred 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 SDCL 58-14-11 to 58-14-15, inclusive;

(3) Reinsurance ceded to an assuming insurer that meets the applicable requirements of SDCL 58-14-8 to 58-14-10, inclusive, and that, in addition:

(a) Prepares statutory financial statements in compliance with the Accounting Practices and Procedures Manual, as adopted by the director under SDCL 58-6-75 and § 20:06:25:01, 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 §§ 20:06:36:01 to 20:06:36:28, inclusive, when its risk-based capital (RBC) is calculated in accordance with the life RBC report including overview and instructions for companies, as adopted by the director under SDCL 58-4-48 and chapter 20:06:36, as the same may be amended by the NAIC from time to time, without deviation;

(4) Reinsurance ceded to an assuming insurer that meets the applicable requirements of SDCL 58-14-8 to 58-14-10, inclusive, and that, in addition:

(a) Is not an affiliate, as that term is defined in § 20:06:36:01, of:

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

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

(b) Prepares statutory financial statements in compliance with the Accounting Practices and Procedures Manual, as adopted under SDCL 58-6-75 and § 20:06:25:01;

(c) Is both:

(i) Licensed or accredited in at least ten states, including its state of domicile; and

(ii) 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 five hundred percent of the authorized control level RBC as that term is defined in §§ 20:06:36:01 to 20:06:36:28, inclusive, when its RBC is calculated in accordance with the life RBC report including overview and instructions for companies, as adopted by the director under SDCL 58-4-48 and chapter 20:06:36, as the same may be amended by the NAIC from time to time, without deviation, and without recognition of any departures from NAIC statutory accounting practices and procedures pertaining to the admission or valuation of assets or liabilities that increase the assuming insurer's reported surplus;

(5) Reinsurance ceded to an assuming insurer that meets the requirements of SDCL 58-14-16.24 to 58-14-16.34, inclusive, or the assuming insurer is operating in accordance with provisions sustainably equivalent to SDCL 58-14-16.24 to 58-14-16.34, inclusive, in a minimum of five other states; or

(6) Reinsurance not otherwise exempt under subdivisions 20:06:30:18(1) to 20:06:30:18(5), inclusive, if the director, after consulting with the NAIC Financial Analysis Working Group (FAWG) or other group of regulators designated by the NAIC, as applicable, 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 §§ 20:06:30:13 to 20:06:30:20, inclusive;

(b) The risks are included within the scope of §§ 20:06:30:13 to 20:06:30:20, inclusive, only as a technicality; and

(c) The application of §§ 20:06:30:13 to 20:06:30:20, inclusive, to those risks is not necessary to provide appropriate protection to policyholders. The director shall publicly disclose any decision made pursuant to this subdivision to exempt a reinsurance treaty from §§ 20:06:30:13 to 20:06:30:20, inclusive, as well as the general basis therefor, including a summary description of the treaty.

Source:

General Authority: SDCL 58-14-17.

Law Implemented: SDCL 58-14-17.

20:06:30:19. Prohibition against avoidance. No insurer that has a covered policy as to which §§ 20:06:30:13 to 20:06:30:20, inclusive, 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 that action, transaction or arrangement or series thereof is to avoid the requirements of §§ 20:06:30:13 to 20:06:30:20, inclusive, or to circumvent its purpose and intent.

Source:

General Authority: SDCL 58-14-17.

Law Implemented: SDCL 58-14-17.

20:06:30:20. Applicability. In the event of a direct conflict between the provisions of §§ 20:06:30:13 to 20:06:30:20, inclusive, and the provisions in chapter 20:06:31, the provisions of §§ 20:06:30:13 to 20:06:30:20, inclusive, shall apply but only to the extent of the conflict.

Source:

General Authority: SDCL 58-14-17.

Law Implemented: SDCL 58-14-17.

20:06:36:01. Definitions. As used in this chapter:

(1) "Adjusted RBC report" means an RBC report which has been adjusted by the director in accordance with § 20:06:36:06;

(2) "Corrective order" means an order issued by the director specifying corrective actions which the director has determined are required;

(3) "Domestic insurer" means any insurance company domiciled in this state or any entity required to comply with RBC pursuant to SDCL 58-4-48;

(4) "Domestic health organization" means any health organization domiciled in this state;

(5) "Foreign insurer" means any insurance company that is licensed to do business in this state but is not domiciled in this state;

(6) "Foreign health organization" means any health organization that is licensed to do business in this state, but is not domiciled in this state;

(7) "Health Organization" means any health maintenance organization, limited health service organization, dental or vision plan, hospital, medical and dental indemnity or service corporation or other managed care organization licensed under SDCL title 58. This definition does not include an organization that is licensed as either a life or health insurer or property and casualty insurer, and that is otherwise subject to either life or property and casualty RBC requirements;

(8) "NAIC" means the National Association of Insurance Commissioners;

(9) "Life or health insurer" means any insurance company licensed under SDCL title 58 to write life or health, or a property and casualty insurer licensed to do business in this state writing only accident and health insurance;

(10) "Property and casualty insurer" means any insurance company licensed under SDCL title 58 to do business in this state, but not monoline mortgage guaranty insurers, financial guaranty insurers, and title insurers;

(11) "Negative trend" means for a life or health insurer, a negative trend in the level of risk-based capital over a period of time;

(12) "RBC" means risk-based capital;

(13) "RBC instructions" means the ~~2020~~ 2021 **NAIC RBC Forecasting and Instructions-Life**, the ~~2020~~ 2021 **NAIC RBC Forecasting and Instructions-Property/Casualty**, and the ~~2020~~ 2021 **NAIC RBC Forecasting and Instructions-Health**;

(14) "RBC plan" means a comprehensive financial plan containing the elements specified in § 20:06:36:08. If the director rejects the RBC plan and it is revised by the insurer or health organization, with or without the director's recommendation, the plan is called the "revised RBC plan";

(15) "RBC report" means the report required in §§ 20:06:36:03 through 20:06:36:06;

(16) "Total adjusted capital" means the sum of an insurer's or health organization's statutory capital and surplus as determined in accordance with the statutory accounting applicable to the annual financial statements required to be filed under SDCL 58-6-75, and any other items required by the RBC instructions.

Source: 23 SDR 228, effective July 3, 1997; 25 SDR 13, effective August 9, 1998; 26 SDR 26, effective September 1, 1999; 27 SDR 54, effective December 4, 2000; 30 SDR 39, effective September 28, 2003; 31 SDR 21, effective August 23, 2004; 33 SDR 59, effective October 5, 2006; 34 SDR 271, effective May 6, 2008; 35 SDR 165, effective December 22, 2008; 36 SDR 209, effective July 1, 2010; 37 SDR 241, effective July 1, 2011; 38 SDR 219, effective June 25, 2012; 39 SDR 219, effective June 26, 2013; 41 SDR 41, effective September 17, 2014; 41 SDR 93, effective December 3, 2014; 42 SDR 52, effective October 13, 2015; 42 SDR 177, effective June 28, 2016; 43 SDR 181, effective July 7, 2017; 45 SDR 10, effective August 2, 2018; 46 SDR 26, effective September 4, 2019; 46 SDR 147, effective July 2, 2020; 47 SDR 137, effective June 28, 2021.

General Authority: SDCL 58-4-48.

Law Implemented: SDCL 58-4-48.

References:

1. **~~2020~~ 2021 NAIC RBC Forecasting and Instructions-Life.** Cost: ~~$105~~ $110.

2. **~~2020~~ 2021 NAIC RBC Forecasting and Instructions-Property/Casualty**. Cost: ~~$105~~ $110.

3. **~~2020~~ 2021 NAIC RBC Forecasting and Instructions-Health.** Cost: ~~$105~~ $110.

Copies of references 1 through 3 may be obtained from the National Association of Insurance Commissioners, 1100 Walnut Street, Ste. 1500, Kansas City, MO 64106-2197, (816) 783-8300; http://www.naic.org.

20:06:59:01. Valuation manual--operative date. The valuation of reserve liabilities for life insurance contracts, annuity and pure endowment contracts, accident and health contracts, and deposit-type contracts must be calculated in accordance with the standards set forth in the Valuation Manual of the National Association of Insurance Commissioners, ~~2021~~ 2022 edition. The operative date for the valuation manual is January 1, ~~2021~~ 2022.

Source: 43 SDR 80, effective December 5, 2016; 45 SDR 10, effective August 2, 2018; 46 SDR 26, effective September 4, 2019; 46 SDR 147, effective July 2, 2020; 47 SDR 137, effective June 28, 2021.

General Authority: SDCL 58-26-45.1.

Law Implemented: SDCL 58-26-44.1(11), 58-26-45.1.

Reference: Valuation Manual of the National Association of Insurance Commissioners, ~~2021~~ 2022 edition, National Association of Insurance Commissioners. Copies may be obtained from the NAIC, 1100 Walnut Street, Ste. 1500, Kansas City, MO 64106-2197, (816) 783-8300; http://www.naic.org. Cost: $0.