

Date: 9/18/20

Conference Call

RISK RETENTION GROUP (E) TASK FORCE
Wednesday, September 23, 2020
2:00 ET/1:00 CT

ROLL CALL

Michael S. Pieciak, Chair	Vermont	Chlora Lindley-Myers	Missouri
Karima M. Woods, Vice Chair	District of Columbia	Matthew Rosendale	Montana
David Altmaier	Florida	Barbara D. Richardson	Nevada
Sharon P. Clark	Kentucky	Raymond G. Farmer	South Carolina
James J. Donelon	Louisiana		

NAIC Support Staff: Becky Meyer

AGENDA

1. Consider Adoption of the March 2, 2020 and 2019 Fall National Meeting Minutes —*Sandra Bigglestone (VT)* Attachment A
2. Consider Adoption of its 2021 Proposed Charges —*Sandra Bigglestone (VT)* Attachment B
3. Discuss Feedback and Use of the Best Practices, Frequently Asked Questions, and RRG Registration Form—*Sandra Bigglestone (VT)*
 - August 7, 2020 Letter from the National Risk Retention Association Attachment C
4. Receive Updates on NAIC Actions—*Sandra Bigglestone (VT)*
5. Discuss Any Other Matters—*Sandra Bigglestone (VT)*
6. Adjournment

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Draft: 3/11/20

Risk Retention Group (E) Task Force
Conference Call
March 2, 2020

The Risk Retention Group (E) Task Force met via conference call March 2, 2020. The following Task Force members participated: Michael S. Pieciak, Chair, represented by Sandra Bigglestone (VT); Karima M. Woods, Vice Chair, represented by Sean O'Donnell (DC); David Altmaier represented by Robert Ridenour (FL); Sharon P. Clark represented by Russell Coy (KY); James J. Donelon represented by Stewart Guerin (LA); Chlora Lindley-Myers represented by John Rehagen (MO); Barbara D. Richardson represented by Joel Bengo (NV); and Raymond G. Farmer represented by Michael Shull (SC).

1. Confirm Support for the Applicability of the 2019 Revisions to Model #785 and Model #786 to RRGs

Ms. Bigglestone stated that in June 2019, the NAIC adopted revisions to the *Credit for Reinsurance Model Law* (#785) and the *Credit for Reinsurance Model Regulation* (#786). The revisions incorporate relevant provisions of the “Bilateral Agreement Between the United States of America and the European Union on Prudential Measures Regarding Insurance and Reinsurance” (Covered Agreement). Due to the relationship of these new provisions to the Covered Agreement, the Reinsurance (E) Task Force and subsequently the Financial Regulation Standards and Accreditation (F) Committee worked to expeditiously adopt the revisions as an update to the accreditation standards at the 2019 Fall National Meeting with an effective date of Sept. 1, 2022. However, applicability to risk retention groups (RRGs) was not specifically addressed.

Ms. Bigglestone stated that the purpose of the model revisions is to reduce collateral requirements for a new class of reinsurers called reciprocal jurisdictions. While many RRG states already have provisions for reduced collateral through application of the “Reinsurance Guidelines for RRGs Licensed as Captive Insurers” (Guidelines) included in the *Accreditation Program Manual*, in those instances when those provisions may not be applied, the 2019 revisions to Model #785 and Model #786 may be applicable. NAIC staff did some research on current state laws applicable to RRGs and recommend that the 2019 revisions apply to RRGs. Dan Schelp (NAIC) summarized the recommendation, which would be considered by the Financial Regulation Standards and Accreditation (F) Committee (Attachment A).

James T. McIntyre (McIntyre & Lemon, PLLC) asked to confirm that the Guidelines remain in the *Accreditation Program Manual* and continue to be applicable to RRGs. Mr. Schelp confirmed that the Guidelines remain applicable and the intention was not to change the use or application of the Guidelines. The new categories created by both the 2011 and 2019 revisions to Model #785 and Model #786 may not cover all situations and reinsurance contracts. In those instances, the Guidelines are still in place for RRGs. Mr. Schelp referenced the proposed accreditation guideline (Attachment A), noting that the reference to the Guidelines remains as one of the significant elements. Robert H. Myers Jr. (National Risk Retention Association—NRRRA) emphasized the importance of continuing to allow application of the Guidelines.

Mr. Rehagen stated that it is important to adopt the 2019 revisions to Model #785 and Model #786 for all insurers, including RRGs, to reduce risk of federal preemption. Ms. Bigglestone noted that Vermont permits RRGs to follow the credit for reinsurance models or the Guidelines. Therefore, the change to the accreditation guideline does not have an impact on the current practices in place, but it will also serve to prevent federal preemption.

Mr. Rehagen made a motion, seconded by Mr. O'Donnell, to confirm the Task Force's support for the recommendation that both the 2011 revisions related to certified reinsurers and qualified jurisdictions and the 2019 revisions related to reciprocal jurisdictions be applicable to RRGs for accreditation with an effective date of Sept. 1, 2022.

Having no further business, the Risk Retention Group (E) Task Force adjourned.

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Draft Pending Adoption

Draft: 12/17/19

Risk Retention Group (E) Task Force
Austin, Texas
December 7, 2019

The Risk Retention Group (E) Task Force met in Austin, TX, Dec. 7, 2019. The following Task Force members participated: Michael S. Pieciak, Chair, represented by Christine Brown (VT); Stephen C. Taylor, Vice Chair, represented by Sean O'Donnell (DC); Nancy G. Atkins represented by Sandy Batts (KY); James J. Donelson represented by Stewart Guerin (LA); Matthew Rosendale represented by Steve Matthews (MT); Glen Mulready represented by Eli Snowbarger (OK); and Raymond G. Farmer represented by Lee Hill (SC).

1. Adopted its Oct. 7 Minutes

Mr. Hill made a motion, seconded by Mr. O'Donnell, to adopt the Task Force's Oct. 7 minutes (Attachment One). The motion passed unanimously.

2. Adopted the FAQ Document and Best Practices Document

Ms. Brown stated that over the past year, the Task Force has been working diligently to provide additional guidance to both state insurance regulators and industry regarding the registration process for risk retention groups (RRGs) in non-domestic states. The process started last year with a letter from the National Risk Retention Association (NRRA) citing concerns regarding fees and delays in the review of registration forms. The discussion that followed also raised concerns from non-domiciliary states, such as incomplete registration forms or potentially non-compliant RRGs.

As a result, a drafting group was formed to develop three documents: "Risk Retention Groups: Frequently Asked Questions" (FAQ document); "Best Practices: Risk Retention Groups" (Best Practices document); and the NAIC Uniform Risk Retention Group Registration Form (Registration Form). These documents were exposed for public comment at the Summer National Meeting, and several comment letters were received. The comment letters were discussed during the Task Force's Oct. 7 conference call where there was agreement on many of the issues, but a few outstanding items were referred back to the drafting group for additional consideration.

The drafting group provided its input, and the FAQ document, the Best Practices document and the Registration Form were exposed again. During that exposure period, three comment letters were received from the District of Columbia (comments incorporated into Attachment Two and Attachment Three), the NRRA (Attachment Four) and the Vermont Captive Insurance Association (VCIA) (Attachment Five).

Becky Meyer (NAIC) summarized the recommendations from the drafting group, as noted in the FAQ document and the Best Practices document.

Mr. O'Donnell made a motion, seconded by Mr. Hill, to adopt the FAQ document (Attachment Two) and the Best Practices document (Attachment Three), including the suggestions as noted by comment bubbles in each document. The motion passed unanimously.

3. Adopted a Referral to the Property and Casualty Insurance (C) Committee to Consider Proposed Revisions to the Registration Form

Ms. Brown stated that the Registration Form is a little different than the FAQ document and the Best Practices document because the proposal is for changes to an existing document rather than creating something new. This document is housed in the *Risk Retention and Purchasing Group Handbook* (Handbook). This Handbook is overseen by the Property and Casualty Insurance (C) Committee. Therefore, any changes to the Registration Form adopted by the Task Force will be referred to the Property and Casualty Insurance (C) Committee for consideration.

Ms. Meyer summarized the recommendations from the drafting group as noted on the Registration Form.

Mr. Snowbarger made a motion, seconded by Mr. Matthews, to adopt the referral to the Property and Casualty Insurance (C) Committee to the Registration Form, including the revisions proposed by the drafting group (Attachment Six). The motion passed unanimously.

Draft Pending Adoption

4. Discussed its Next Steps

Ms. Brown noted that it is encouraging that the items the Task Force just adopted touch on many of the concerns identified earlier in the year. However, there are still several other areas that can be worked on and the areas of highest importance for the Task Force, interested state insurance regulators and interested parties can be decided.

Skip Myers (NRRA) stated that within the coming months, the impact of these three documents and whether they are working as intended should be seen. If not, they may need to be tweaked. He also noted the importance of the role of the state of domicile to resolve any issues, if necessary. He stated that he was sure that these forms would be referred to frequently by the industry, and he mentioned taking steps in the future to include the issues in an NAIC model or as part of the Handbook, which is something that is referred to by the industry frequently.

Chrys D. Lemon (VCIA) noted that the adoption of these items are important to the industry and regulation, noting that he looks forward to ongoing discussions.

Ms. Brown stated that one of the main goals is to quantify and monitor how helpful these documents are to facilitate discussions between the states and alleviate the questions and concerns that non-domiciliary states have. One item that is not mentioned in the summary, but is important, is monitoring and training on the information developed this year, such as conducting a webinar, working with some of the states' captive insurance associations, and getting feedback from the NRRA. When the Task Force reconvenes in 2020, she suggested it may consider ways to further spread information and the concepts included in the FAQ document and the Best Practices document. When talking about next steps, the Task Force should keep with the spirit of the federal Liability Risk Retention Act (LRRRA). As Mr. Myers mentioned, she said the Task Force should also try to incorporate some of the best practices into the Handbook

Mr. Hill noted that it is difficult to put the next steps in a priority order, and he asked that NRRA and others that have raised the issues that led to these discussions review the list of concerns and be prepared to provide input to the Task Force once more information is gathered on the impact of the items adopted.

Mr. O'Donnell noted that the Task Force will need to consider how to distribute the FAQ document and the Best Practices document, as well as the revised Registration Form, to all the states and RRGs.

Having no further business, the Risk Retention Group (E) Task Force adjourned.

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2021 Proposed Charges (no changes from 2020)

RISK RETENTION GROUP (E) TASK FORCE

The mission of the Risk Retention Group (E) Task Force is to stay apprised of the work of other NAIC groups as it relates to financial solvency regulation and the NAIC Financial Regulation Standards and Accreditation Program. The Task Force may make referrals to the Financial Regulation Standards and Accreditation (F) Committee and/or other NAIC groups, as deemed appropriate.

Ongoing Support of NAIC Programs, Products or Services

1. The **Risk Retention Group (E) Task Force** will:
 - A. Monitor and evaluate the work of other NAIC committees, task forces and working groups related to risk retention groups (RRGs). Specifically, if any of these actions affect the NAIC Financial Regulation and Accreditation Standards Program, assess whether and/or how the changes should apply to RRGs and their affiliates.
 - B. Monitor and analyze federal actions, including any U.S. Government Accountability Office (GAO) reports. Consider any action necessary as a result of federal activity.
 - C. Monitor the impacts of recent tools and resources made available to domiciliary and non-domiciliary state insurance regulators pertaining to RRGs. Consider whether additional action is necessary, including educational opportunities, updating resources and further clarifications.

NAIC Support Staff: Becky Meyer

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August 7, 2020

Via Electronic Mail only

Michael S. Pieciak, Chair
NAIC Risk Retention Group Task Force
Attention: Becky Meyer, NAIC
1100 Walnut Street
Suite 1500
Kansas City, MO 64106-2197

Re: RRGTF Follow-up and Thoughts

Dear Chairman Pieciak:

With the recent adoption of the NAIC RRG Task Force's (RRGTF) Risk Retention Group **Best Practices and FAQs** by the NAIC, the NRRA wishes to provide your RRGTF with an initial post-adoption follow-up from our members as to its impact so far on multi-state non-domiciliary regulation of foreign RRGs. The purpose of this letter is to discuss those results in the context of what is going to be our request for the RRGTF's guidance and counsel as NRRA plans to address resolution of your adopted points in the ongoing registration processes.

As a prefatory comment, please accept this letter as an expression of NRRA's gratitude, as your initial success in achieving passage of the Risk Retention Group **Best practices and FAQs** has resulted in some early positive results we will discuss below.

One of the most difficult outstanding issues remains the imposition of "registration" fees being charged by non-domiciliary states which are expressly not permitted to those states in the LRRRA.

These fees are predominately related to foreign RRG registration. The imposition of fees is not within the scope of authority granted to non-domiciliary states under the LRRRA, as the NAIC has clearly recognized by its elimination of item #17 of its Uniform Risk Retention Group Registration Form, and as the NAIC has correctly noted in: **a)** item #12 of the FAQs developed by the RRGTF, **b)** the newly adopted Uniform Registration Form; **c)** the NAIC Risk Retention and Purchasing Group Handbook, and **d)** the authority of federal case law established in decisions referenced in these NAIC publications of NRRA v. Brown and ALAS RRG v Fitzgerald. (These are included in Attachments A-1 to A-4.)

Twenty-eight states impose initial foreign RRG registration fees. Nineteen states also impose foreign RRG registration "renewal" fees, and several states require the submission of registration "renewal" forms. The imposition of a registration "renewal" requirement is not supported by the LRRRA, as correctly noted by the NAIC in item #11 of the FAQs developed by the RRGTF.

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Michael S. Pieciak, Chair

Re: NRRA Follow-up Letter to the RRGTF

August 7, 2020

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Some progress has been made. South Carolina no longer requires foreign RRGs to pay its biennial license fees applicable to licensed insurers. We have RRGs reporting that some states have confirmed registrations on the same day that the new NAIC RRG FAQ and other documents were provided to the state, and one member RRG reported that Oklahoma accepted a registration filing on the new NAIC RRG registration form on the day it was adopted, making for a more streamlined registration process. So, while early indications are promising, we need to continue to revisit this process to evaluate the full effect of your efforts so far.

Attachment B, however, reflects the sizable number of states still imposing fees on *non-domiciliary* RRGs as well as those states that do not impose fees on foreign RRGs in recognition of the LRA preemptions. The biggest frustration is that most insurance departments imposing these unauthorized fees have literally refused to respond to requests by the NRRA and its members to justify the imposition of these fees given their federal LRA preemption. I will not speculate as to those departments' motives, but will observe that "legal" challenges consume resources and time that make the economics of pursuing a legal challenge impractical.

This strategy of charging an illegal registration fee *too small* to warrant a legal challenge can actually generate the imposition of other fees by certain states. A prime example of this is the Office of the New Mexico Superintendent of Insurance which has refused to respond (now) to NRRA and individual RRG objections to the imposition of its \$200 minimum "Anti-fraud" fee on non-domiciliary RRGs. (See Attachment C.)

In situations like New Mexico in which the Department continues to violate (even) its own State RRG statute(s), we recognize that many fee-imposing insurance departments may rightly or wrongly believe they are without authority to rule a fee preempted by Federal law. This is the problem that also needs to be addressed.

In summary, NRRA is seeking your guidance and counsel as we are commencing our preparation of an educational initiative to benefit our members on how to cope with this seemingly ubiquitous problem. We are also seeking to remove any barriers or restrictions faced by non-domiciliary regulators in responding to foreign RRGs' challenges to fees imposed. We firmly believe that with your help and support, such regulatory transparency is essential to the uniform application of the LRA within the state insurance regulatory community.



Michael S. Pieciak, Chair
Re: NRRA Follow-up Letter to the RRGTF
August 7, 2020
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We look forward to hearing from you and thank you again for your guidance and assistance thusfar.

Best personal regards,

A handwritten signature in blue ink, appearing to read "Joe Deems", with a stylized flourish extending to the right.

Joseph E. Deems CASBN 64012
Executive Director
National Risk Retention Association
Enclosures: various Attachments

Cc: Sandy Bigglestone, David Provost, Nancy Gray, Jon Harkavy, Skip Myers, Mike Schroeder,
Tim Herr & Heather Ross

Risk Retention Groups: Frequently Asked Questions

1. What publications are available to help understand RRGs and state's authority?

- a. NAIC Risk Retention and Purchasing Group Handbook is available from the NAIC publications webpage at https://www.naic.org/documents/prod_serv_legal_ris_bb.pdf .

The following key documents can be found as Appendices in the Handbook:

- Appendix A: Federal Liability Risk Retention Act (LRRRA)
 - Appendix B: NAIC Model Risk Retention Act (#705)
 - Appendix D: NAIC Uniform Risk Retention Group Registration Form
- b. Accreditation Program Manual
- Part A: Laws and Regulations – 18 accreditation standards that outline the laws required specifically for states that charter RRGs
 - Part B: Regulatory Practices and Procedures - RRG specific procedures for financial analysis and procedures when a disclaimer of affiliation is filed
 - Interlineations – Reinsurance guidelines for RRG's licensed as captive insurers

2. How does the LRRRA address regulation of RRGs?

- a. Under §3902 of the LRRRA, with the exception of the domiciliary state, RRGs are exempt from all state laws, rules, regulations, or orders that would make unlawful, or would regulate, directly or indirectly, the formation and operation of an RRG, except as provided in the LRRRA. Only the domiciliary state may regulate the formation and operation of an RRG.
- b. The implementation of the LRRRA was intended to allow organizations to come together in the creation of a risk-bearing, risk-sharing entity (the RRG) to offer its members, who are the beneficiaries of the insurance provided, liability coverage in an expedient and economical manner.

3. How does RRG registration in a non-domiciliary state differ from the licensing process for a traditional insurer?

- a. There are no solvency requirements imposed by the non-domiciliary state upon an RRG seeking to register in the State. Regulation as to formation and operation, including the imposition of solvency requirements, are imposed by the domestic state.
- b. RRGs are subject to a substantially similar application and licensing process imposed by the domestic state, or state of domicile. For registration to conduct business in non-domestic states, RRGs are not subject to the standard application and licensing process (NAIC UCAA Instructions or NAIC Company Licensing Handbook).
- c. The registration process is intended to be simpler than the licensing process for other types of insurers. Registration is focused on information gathering rather than decision making. Registration is not the same as admission or company licensing; it is not intended to provide non- domiciliary states with any regulatory powers over RRGs other than that provided in the LRRRA. It is not within a state's authority to use the processing of a registration to bar RRGs seeking to lawfully operate in a state, nor can a state declare a "moratorium" on the filing of

Adopted: 12/7/19

RRG registrations. Once an RRG (that is in compliance with the definition of an RRG as stated in the LRRRA) provides the NAIC Uniform Risk Retention Group Registration Form with all required information entered and attached (i.e. a “complete form”), they may begin operating in the state. Approval from the non-domestic state is not required. However, best practice is for the non-domiciliary state to notify the RRG following their initial review of the NAIC Uniform Risk Retention Group Registration Form that either the form received was complete, or that the form was missing information. The non-domiciliary state may also reach out to the domiciliary state for more information and is encouraged to do so. (see the Best Practices—Risk Retention Groups document)

- d. The LRRRA references two documents that must be provided to the non-domestic state – a plan of operation OR a feasibility study. There is also additional information such as contact information of the RRG, chartering state information, and the lines of liability insurance business that are written by the RRG seeking to register. All this information is provided in the completed NAIC Uniform Risk Retention Group Registration Form.
- e. For an RRG that is compliant with the LRRRA and the regulation of their domestic state (including authorization to register to do business in another state), the non-domestic state cannot deny the RRG’s registration. If there is uncertainty, the domestic state should be contacted.

4. What are the steps for the non-domiciliary insurance regulator to take in the registration process for an RRG?

- a. Review the NAIC Uniform Risk Retention Group Registration Form and verify the RRG has provided a complete form.
- b. Once a complete form is received, the RRG is authorized to write in the state where it registers. The following best practices may also be considered during the registration process; however, they do not impact the registration status of the RRG:
 - a. Review the information provided with the registration form for reasonableness.
 - b. Reach out to the domestic state insurance regulator for additional information or concerns. The best practices Inquiry Template can be used and modified as appropriate.
 - c. Notify the RRG once the registration form is deemed complete. They are now registered in the state.

5. What should a non-domiciliary state do if they have concerns about a complete RRG registration form received?

- a. If the RRG provided a complete form, but there are concerns about the lines of business or financial solvency, or some other matter, the non-domiciliary state should first communicate with the domestic state. If necessary, the non-domiciliary state should consider pursuing the remedies in LRRRA §3902(a)(1) also discussed in FAQ #12.

6. When can a non-domiciliary state reject an RRG registration?

- a. A non-domestic state cannot reject the registration of an RRG that submits a complete registration form. Instead the non-domestic state should communicate concerns to the domestic state or refer to the remedies in LRRRA §3902(a)(1) also discussed in FAQ #12.

Adopted: 12/7/19

7. Can an RRG registration be delayed if a financial statement filing and/or audit is not yet available at the time of application or registration?

- a. No, an RRG can register prior to filing of an annual financial statement audit and a statement of opinion on loss and loss adjustment expense reserves with its domiciliary state.
- b. Once these initial filings are made, they are available on I-Site for review.
- c. If questions arise due to lack of this information, the non-domiciliary state should reach out to the domestic state to address its concerns.

8. What items does the LRRRA require an RRG provide to the non-domiciliary state in conjunction with the registration?

- a. It is recommended that states adopt the NAIC Uniform Risk Retention Group Registration Form, which has been developed by the NAIC in order to facilitate uniformity. Such forms are included in the Risk Retention and Purchasing Group Handbook.
- b. Consistent with LRRRA, each RRG shall submit a copy of the plan of operation OR a feasibility study before it may offer insurance in the state.

Note: If the RRG is newly formed, the feasibility study provides relevant information on rates and expected losses. If the RRG is expanding the states in which it operates and has been writing business for an extended period, the feasibility study becomes less relevant and a current business plan, along with documents a non-domiciliary state can easily obtain from the NAIC's I-Site (Annual Statement(s), RBC Report(s), MD&A(s), Audited Financial Statement(s), Actuarial Certification(s)) provide pertinent information.

- c. If the plan of operation or feasibility study does not appear to be updated, a non-domiciliary state should contact the domiciliary state regulator to obtain more information, including the IPS, and may request revised documents from the RRG if original submission is found to be inaccurate or unclear.

9. What should be included in a plan of operation?

- a. The LRRRA states that an RRG's plan of operation or feasibility study includes information on liability insurance coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer.
- b. In addition, the Best Practices – Risk Retention Groups document offers a list of other suggested items for inclusion in a plan of operations or feasibility study.

10. Where can the non-domiciliary state get information about an RRG's directors and officers?

- a. Directors and officers are listed in the annual and quarterly financial statements available from the NAIC's I-Site. All changes in Directors and Officers, with accompanying biographical affidavit(s), are submitted to and reviewed by the domiciliary state. In order to eliminate the need for redundant regulatory functions and unnecessary transfer of sensitive personal identifiable information, a non-domiciliary state should rely on the domiciliary state's review,

Adopted: 12/7/19

which includes background checks on directors, officers and key management personnel of an RRG to ensure the competency, character and integrity of the insurer's management.

11. What does the LRRRA say about renewals for RRGs in non-domiciliary states?

- a. The LRRRA is silent; therefore, initial registration is sufficient unless the operation of an RRG is affected by runoff, rehabilitation or liquidation processes. RRGs file changes in business plans, financial filings, etc. on an ongoing basis with non-domiciliary states; therefore, non-domiciliary states should consider developing a process for communicating with the domiciliary state (such as the example in the Best Practices—Risk Retention Groups document) and consider an annual request for Certificate of Good Standing/Compliance from the domiciliary state.
- b. Section 3902(d)(3) of the LRRRA requires that an RRG submit to the insurance commissioner of each state in which it is doing business a copy of the annual financial statement that it files with the RRG's domiciliary state. Non-domiciliary states should be aware that in many states where RRGs are licensed/chartered as captive insurers in conformity with NAIC accreditation standards, RRGs are permitted to use Generally Accepted Accounting Principles rather than Statutory Accounting Principles to report on their financial conditions, with required disclosure and reconciliation in footnote one. (see also Section II, page 3 of the Risk Retention and Purchasing Group Handbook)
- c. The filing is an ongoing requirement that must be complied with on an annual basis and is generally due to non-domiciliary states upon filing with the domiciliary state. The annual filing requirements for RRGs include an unaudited filing using the official Annual Statement Blank (property/casualty), an audited financial statement certified by an independent public accountant and a statement of opinion on loss and loss adjustment expense reserves made by an actuary or loss reserve specialist who is qualified in accordance with the criteria established by the NAIC in the annual statement instructions. See the above-mentioned NAIC Accreditation Program Manual, Part A: Laws and Regulations for annual filing requirements for RRGs.

12. What does the LRRRA say about taxes and fees charged by a non-domiciliary RRG?

- a. LRRRA S3902(a)(1)(B) says any state may require an RRG to:
 - a. Pay on a nondiscriminatory basis, applicable premium and other taxes, which are levied on admitted insurers and surplus lines insurers, brokers, or policyholders under the laws of the state.
- b. Fees are not directly addressed in the LRRRA and as such, there has been disagreement about the legality of both initial and renewal registration fees and compliance with LRRRA. The authority on this topic is therefore federal case law. For example, there is one case (*Nat'l Risk Retention Assoc. v. Brown*, 927 F. Supp. 195 (M.D. La. 1996)) in which the court ruled that certain state requirements, including the payment of an annual renewal registration fee, were preempted by the LRRRA. See the Risk Retention and Purchasing Group Handbook for additional detail on relevant cases and other fee considerations.

Adopted: 12/7/19

13. What remedies are available to a non-domiciliary state if violations of applicable State laws occur?

- a. Secure clarification from the RRG's state of domicile;
- b. Call for an examination of the RRG by the state of domicile [15 U.S.C. §3902(a)(1)(E)];
- c. Pursue legal action through a court of competent jurisdiction [15 U.S.C. §3902(a)(1)(H)].

14. Is there a list of domestic and non-domestic state contact persons in state insurance regulator offices who are knowledgeable about RRGs?

- a. Yes. Appendix C of the NAIC Risk Retention and Purchasing Group Handbook includes a list of state insurance department contact persons. The most recent list is maintained as a separate document on the NAIC's publication webpage alongside a complete copy of the Risk Retention and Purchasing Group Handbook. (Link to Handbook: https://www.naic.org/documents/prod_serv_legal_ris_bb.pdf)

NAIC UNIFORM RISK RETENTION GROUP REGISTRATION FORM

Appendix D

The following is the uniform registration form adopted by the NAIC. This registration form is being filed by a Risk Retention Group (RRG) operating in accordance with the Federal Liability Risk Retention Act of 1986 (LRRRA), 15 USC 3901-3906, chartered or licensed to write only liability insurance by the state of domicile listed in #1e. The registration form and supplemental documents are provided in accordance with §3902(d)(2) of the LRRRA. Under §3902 of the LRRRA, with the exception of the domiciliary state, RRGs are exempt from any state laws, rules, regulations, or orders that would make unlawful, or would regulate, directly or indirectly, the operation of an RRG, except that any state may require an RRG to comply with those laws specified in §3902(a)1(A),(B),(C) and (G) of the LRRRA. The domiciliary state regulates the formation and operation of the RRG.

Part A

STATE OF [Insert State in which the Risk
Retention Group intends to do business]

DEPARTMENT OF INSURANCE

RISK RETENTION GROUP - NOTICE AND REGISTRATION

(All Information Should Be Typed)

1a. Name of the Risk Retention Group as it appears on its Certificate of Authority:

1b. Address of the Risk Retention Group:

1c. NAIC Company Code:

1d. FEIN:

1e. State of domicile, date licensed and date chartered:

1f. Primary contact person for state of domicile to whom questions regarding the Risk Retention Group should be addressed (include name, phone number and email address):

NAIC UNIFORM RISK RETENTION GROUP REGISTRATION FORM

2. List any other name(s) by which the Risk Retention Group is known or may be doing business in this State or any other state:

3. The Risk Retention Group is authorized to engage in the following lines and/or classifications of liability insurance under the laws of its chartering State:

4. Give a general description of the liability insurance coverages the Risk Retention Group plans to write in the state it is registering to do business in.

5. Has the Risk Retention Group's domiciliary state approved the Risk Retention Group to register and expand its writings in the state it is seeking to become registered in?

6. Ownership of the Risk Retention Group consists of one or the other of the following (check one):

a) the owners of the Group are only persons who comprise the membership of the Group and who are provided insurance by the Group.

b) the sole owner of the Group is: _____

(Name and Address of Organization)

an organization which has as its members only persons who comprise the membership of the Group and which has as its owners only persons who comprise the membership of the Group and who are provided insurance by the Group.

7. The Risk Retention Group members are engaged in businesses or activities similar or related with respect to the liability to which such members are exposed by virtue of any related, similar or common business (whether profit or nonprofit), trade, product, services (including professional services), premises or operations. Give a general description of businesses or activities engaged in by the Group's members:

NAIC UNIFORM RISK RETENTION GROUP REGISTRATION FORM

8. (a) List the name, position with the Risk Retention Group, and address of each officer and director of the Risk Retention Group: (Attach additional pages, if necessary.)

(b) Identify and give the telephone number of the officer or director of the Risk Retention Group who can be contacted for any information regarding the management of the insurance activities of the Group:

Name: _____ Telephone #: _____

9. List the name, address, and telephone number of the company responsible for managing the insurance operations of the Risk Retention Group and the company contact person's name, telephone number and email. (If none, answer none.)

Contact Person: _____ Telephone # _____

Email: _____

10. List the name(s) NPR#, and address(es) of the licensed insurance agent(s) or broker(s) who will be responsible for marketing the Risk Retention Group's insurance policies in the State of [Insert State in which the Risk Retention Group intends to do business] and the current licensing status in the State of [Insert State in which the Risk Retention Group intends to do business]: (If none, answer none. Attach additional pages, if necessary.)

<u>Name</u>	<u>NPR#</u>	<u>Address</u>	<u>License Status in State Registering</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

NAIC UNIFORM RISK RETENTION GROUP REGISTRATION FORM

11. In accordance with the Liability Risk Retention Act, we verify the following:
- A. The Risk Retention Group is a corporation or other limited liability association whose primary activity consists of assuming and spreading all, or any portion, of the liability exposure of its members.
 - B. The Risk Retention Group is organized for the primary purpose of conducting the activity described under Item "A" above.
 - C. The Risk Retention Group does not exclude any person from membership in the Group solely to provide for members of the Group a competitive advantage over such a person.
 - D. The activities of the Risk Retention Group do not include the provision of insurance other than:
 - i. liability insurance for assuming and spreading all or any portion of the similar or related liability exposure of its Group members; and
 - ii. reinsurance with respect to the similar or related liability exposure of another Risk Retention Group (or a member of such other Risk Retention Group) engaged in business or activities so that such Risk Retention Group or member meets the requirement under Item #7 above for membership in the Risk Retention Group which provides such reinsurance.
12. In accordance with the LRRRA, if the State in which the Risk Retention Group is registering requires compliance with the following laws and requirements, the RRG agrees to the following:
- A. The Risk Retention Group will comply with the unfair claim settlement practices laws of this State.
 - B. The Risk Retention Group will pay, on a non-discriminatory basis, applicable premium and other taxes which are levied on admitted insurers, surplus line insurers, brokers or policyholders under the laws of this State.
 - C. The Risk Retention Group will participate, on a nondiscriminatory basis, in any mechanism established or authorized under the law of the State for the equitable apportionment among insurers of liability insurance losses and expenses incurred on policies written through such mechanism.
 - D. The Risk Retention Group will designate the Insurance Commissioner [Director, Superintendent] of this State as its agent solely for the purpose of receiving service of legal documents or process by executing Part B of this form, attached hereto.
 - E. The Risk Retention Group will submit to examination by the Insurance Commissioner [Director, Superintendent] of this State to determine the Group's financial condition, if:
 - i. the Insurance Commissioner [Director, Superintendent] of the Group's chartering State has not begun or has refused to initiate an examination of the Group; and
 - ii. any such examination by the Insurance Commissioner [Director, Superintendent] shall be coordinated to avoid unjustified duplication and unjustified repetition.

NAIC UNIFORM RISK RETENTION GROUP REGISTRATION FORM

- F. The Risk Retention Group will comply with a lawful order issued in a delinquency proceeding commenced by the Insurance Commissioner [Director, Superintendent] of this State upon a finding of financial impairment, or in a voluntary dissolution proceeding.
- G. The Risk Retention Group will comply with the laws of this State regarding deceptive, false or fraudulent acts or practices, including any injunctions regarding such conduct obtained from a court of competent jurisdiction.
- H. The Risk Retention Group will comply with an injunction issued by a court of competent jurisdiction upon petition by the Insurance Commissioner [Director, Superintendent] of this State alleging that the Group is in hazardous financial condition or is financially impaired.
- I. The Risk Retention Group will provide the following notice, in at least 10-point type, in any insurance policy issued by the Group:

NOTICE

This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your State. State insurance insolvency guaranty funds are not available for your risk retention group.

- 13. In accordance with the LRRRA, the Risk Retention Group affirms that it has submitted to the Insurance Commissioner [Director, Superintendent] as part of this filing and before it has offered any insurance in this State, a copy of the plan of operation or feasibility study which it has filed with the Insurance Commissioner [Director, Superintendent] of its state of domicile. This plan or study includes the name of the State in which the Group is chartered, as well as the Group's principal place of business, and such plan of operation or feasibility study further includes the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of liability insurance the Group intends to offer. The Group has also submitted to the Insurance Commissioner [Director, Superintendent] of this State any revisions of such plan of operation or feasibility study to reflect any changes if the Group intends to offer any additional lines of liability insurance or change in the designation of the State in which it is chartered.
- 14. The Risk Retention Group will submit a copy of its annual financial statement submitted to its chartering state, to the Insurance Commissioner [Director, Superintendent] of this State. The annual financial statement shall be certified by an independent public accountant and include a statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries or a qualified loss reserve specialist. The annual financial statement, certification and statement of opinion on loss and loss adjustment expense reserves will be submitted to the Insurance Commissioner [Director, Superintendent] of this State by the date it is required to be submitted to its chartering state.
- 15. The Risk Retention Group will not solicit or sell insurance to any person in this State who is not eligible for membership in the Group.
- 16. The Risk Retention Group will not solicit or sell insurance in this State, or otherwise operate in this State, if the Group is in hazardous financial condition or is financially impaired.
- 17. In accordance with the LRRRA, the terms of any insurance policy provided by the Risk Retention Group shall not provide or be construed to provide insurance policy coverage prohibited generally by State statute or declared unlawful by the highest court of the State whose law applies to such policy.

NAIC UNIFORM RISK RETENTION GROUP REGISTRATION FORM

Part B

APPOINTMENT OF ATTORNEY TO ACCEPT SERVICE AND DESIGNATION

The _____ (“the Group”), a risk retention group which is chartered and licensed as a liability insurance company under the laws of the State of _____, having notified the Insurance Commissioner [Director, Superintendent] of the State of _____ of its intention to do business in this State as a risk retention group pursuant to the federal Liability Risk Retention Act of 1986, hereby appoints the Insurance Commissioner [Director, Superintendent] of the State of _____, any successor in office, and any authorized deputy its true and lawful attorney, in and for the State of _____, upon whom all legal documents or process in any proceeding against it may be served. Such service of legal documents or process shall be of the same legal force and validity as if served personally upon the Group.

The Group designates:

(Name)

(Address)

(City, Town or Village)

(State and ZIP Code)

as its officer, agent or other person to whom shall be forwarded all legal documents or process served upon the Insurance Commissioner [Director, Superintendent] of the State of _____, any successors in office, or any authorized deputy, for the Group. This designation shall continue in full force and effect until superseded by a new written designation filed with the Insurance Commissioner [Director, Superintendent].

NAIC UNIFORM RISK RETENTION GROUP REGISTRATION FORM

This appointment and designation is made pursuant to a resolution by the Group's governing body authorizing it, and a certified copy of the resolution is attached hereto. This appointment shall be binding upon any person or corporation which as successor acquires the Group's assets or assumes its liabilities, by merger or consolidation or otherwise.

This appointment may be withdrawn only upon a written notice of termination and, in any event, shall not be terminated by the Group or its successor so long as any contracts or liabilities or duties arising out of contracts entered into by the Group while it was doing business in this State are in effect.

IN WITNESS OF THIS APPOINTMENT AND DESIGNATION, the Group, in accordance with the resolution of its Board of Directors duly passed on _____, 20____, has affixed its corporate seal, and caused the same to be subscribed and attested in its name by its President and Secretary, at the City of _____ in the State of _____ on _____, 20____.

(Name of Risk Retention Group)

By: _____ President

_____ Secretary

State of _____)

) ss:

County of _____)

Sworn before me this _____ day of _____, 20____.

_____, Notary Public. My Commission Expires: _____

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information a state may reasonably request to verify compliance with the LRRRA or to effect service of process.

(b) PURCHASING GROUPS

Section 3903(e) of the LRRRA requires that, in each state in which a PG does business, the PG register with and designate the insurance commissioner as the group's agent for the purpose of receiving service of legal documents or process. The designation facilitates the service of legal process against a PG which may not otherwise have an ongoing presence in the state but which is doing business in that jurisdiction. The language of this subsection, when read in conjunction with the entire LRRRA, should not be construed to limit any documentation or other information a state may reasonably request. The registration requirement does not apply to the few PGs qualifying for an exemption under the provisions of Section 3903(e) of the LRRRA.

3. NOTICE AND REGISTRATION FORMS

Each state may require the use of notice and registration forms which RRGs and PGs shall submit in order to do business in that particular state. These forms should provide for the submission of documents and information consistent with the LRRRA and applicable state law, along with other reasonable information necessary to verify that the entities qualify as RRGs or PGs and are, or will be, in compliance with all applicable laws.

It is recommended that states adopt the model registration forms which have been developed by the NAIC in order to facilitate compliance and promote uniformity. Such forms are included as Appendices D and E. Any amendments to the forms will be furnished to NAIC members.

Completed NAIC registration forms contain personal information, including names and social security numbers, or information which may be deemed confidential under state law. Regulators should develop information security protocols to safeguard the retention and destruction of this personal information. Regulators may refer to the NAIC *Standards for Safeguarding Consumer Information Model Regulation* (#673) for further guidance with respect to information security. There may be additional state-specific and federal laws and regulations regarding record retention and confidentiality, including the federal Fair Credit Reporting Act and the Federal Trade Commission regulations.

4. REGISTRATION AND OTHER FEES

The LRRRA enumerates the powers of non-domiciliary states when they are dealing with risk retention groups from other jurisdictions. The relevant portion of the LRRRA for purposes of determining whether states can charge registration and other fees provides as follows: "any State may require [a risk retention group] to pay, on a nondiscriminatory basis, applicable premium and other taxes which are levied on admitted insurers and surplus lines insurers..." 3902 (a)(1)(B). This language used in the LRRRA does not specifically mention or authorize non-domiciliary states to charge "fees."

Most courts draw a distinction between "taxes" and "fees." It is likely that any court reviewing a state law assessment to determine whether it is a tax or a fee preempted under the LRRRA would apply federal common law principles. Under federal common law

principles, the distinction between a tax and a fee is usually determined by the purpose for the assessment and power to impose it. Generally, taxes raise revenue, are involuntary and may be, but are not always, based on the income or volume of business conducted by the taxpayer in the jurisdiction. Fees, on the other hand, are charged for a particular governmental service that directly benefits the payer, are voluntary (i.e. one can choose whether to use the service) and are collected to compensate the governmental entity providing the services. The distinctions listed above are not exclusive and whether a given assessment is a tax or a fee is not always obvious.

The Court in the case of *NRRRA v. Brown* found that the LRRRA does not authorize a non-domiciliary state to charge fees. The Court in that case held that non-domiciliary states could not assess annual, application or policy form review fees against a risk retention group domiciled in another state. Moreover, in *Attorney's Liab. Assurance Society, Inc. v. Fitzgerald* the Court held that an additional regulatory fee imposed on non-resident risk retention groups was not justified. Given the language in the LRRRA and the holdings of these cases, states are urged to have counsel review their state law assessment provisions to determine their permissibility under the LRRRA. Even if the assessment is considered to be a tax it must be levied on a nondiscriminatory basis to be permitted under the LRRRA.

B. FINANCIAL CONDITION

1. RISK RETENTION GROUPS

The financial condition requirements of the domiciliary state with regard to RRGs are not preempted by the LRRRA and states may apply all such requirements, including financial condition examinations, to such groups.

Section 3902(d)(3) of the LRRRA requires that an RRG submit to the insurance commissioner of each state in which it is doing business a copy of the annual financial statement as filed with the group's domiciliary state. States should be aware that many states where RRGs are chartered as captive insurers in conformity with NAIC accreditation standards, permit RRGs to use Generally Accepted Accounting Principles rather than Statutory Accounting Principles to report on their financial conditions, with notations required in footnote one.

The filing is an ongoing requirement which must be complied with on an annual basis and is generally due to non-domiciliary states upon filing with the domiciliary state. The annual financial statement shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by an actuary or loss reserve specialist who is qualified in accordance with the criteria established by the NAIC in the annual statement instructions.

A state which has adopted the NAIC Model Risk Retention Act also requires that an RRG submit:

- a copy of each examination of the RRG as certified by the commissioner or official conducting the examination;
- upon request by the insurance commissioner, a copy of any information or document pertaining to any outside audit performed with respect to the RRG; and
- any other information as may be required to verify its continuing qualification as an RRG.

Attachment A-4

- identification of the lines and classifications of liability insurance which the PG intends to purchase;
- the identity of the insurance company from which the group intends to purchase insurance and the domicile of such company; and
- the location of the principal place of business of the group.

In addition, any state which has adopted the NAIC Model Risk Retention Act may require a PG to:

- identify all other states in which the group intends to do business;
- specify the method by which and the person or persons, if any, through whom insurance will be offered to its members whose risks are resident or located in the state; and
- provide any other information necessary to verify its continuing qualification as a PG.

The PG must notify the insurance commissioner of each state in which it is doing business of any subsequent changes in any of the items provided in the notice of intent.

The notice provisions regarding PGs are designed to require that PGs provide adequate information to the insurance commissioner so that an evaluation can be made as to whether a PG is: (a) a PG as defined in the LRRRA; (b) operating in a manner and purchasing commercial liability insurance coverage consistent with the laws of the state; and (c) utilizing an insurer that meets the qualifications to do business in that state.

States have broad regulatory authority over a PG via the regulation of the PG's insurers [see subsection (B)(2) of this Section] and its agents or brokers [see subsection (C) of this Section]. The NAIC Notice and Registration form provides information as to the identity of officers, directors and key management personnel of PGs. Background checks of a PG's officers, directors or managers that are involved in the soliciting, negotiating, or procuring of insurance for compensation can generally be accomplished through the application of state agent/broker licensing requirements or other laws which regulate insurance activities. States may be challenged if information is required on directors, officers and managers of PGs to the extent such information is not requested of other entities that purchase insurance on a group basis. However, a state is not precluded from requesting information necessary to determine compliance with any law not preempted by the LRRRA.

(c) CHALLENGES TO NON-DOMICILIARY STATES' REQUIREMENTS CASE LAW

RRGs and purchasing groups have challenged non-domiciliary states establishing requirements as preempted by the LRRRA.

In *Nat'l Risk Retention Assoc. v. Brown*, 927 F. Supp. 195 (M.D. La. 1996), National Risk Retention Association and risk retention groups chartered outside of Louisiana, but which sought to provide coverage in Louisiana, brought suit alleging the insurance commissioner was enforcing provisions of Louisiana law, namely in regard to formation and operation of risk retention groups, that had been preempted by the federal Liability Risk Retention Act. The Court found that Louisiana law which required RRGs chartered in another state to comply with the minimum capital and bond requirements for Louisiana chartered RRGs was preempted by the federal Act. The Court further found that the Louisiana statute which required a risk retention group to submit its plan of operation annually along with a \$1,000 fee to cover the cost of examination was preempted by § 3902(d)(2) of the federal Act which required submission of the group's plan of operation to the state's insurance commissioner only before it is licensed or registered in that state or when revisions to the plan are made. Finally, the Court held that the state's application requirement, fee and policy form review requirement were preempted by the federal Act since the Act set forth the documents which are to be submitted to the state in which it intends to do business but is not chartered. The requirements set forth under Louisiana law were broader than that allowed under the Act, were discriminatory and were preempted. *Nat'l Risk Retention Assoc. v. Brown*, 927 F. Supp. 195 (M.D. La. 1996).

In addition, courts have held that states may not charge an additional regulatory fee for RRGs. In *Attorney's Liab. Assurance Society, Inc. v. Fitzgerald*, 174 F. Supp.2d 619 (W.D. Mich. 2001), risk retention groups chartered in Vermont sought declaratory and injunctive relief alleging the regulatory fee assessed by the Michigan Office of Insurance was preempted by the LRRRA. Michigan required that non-resident risk retention groups pay an additional regulatory fee of one-half percent on direct business for a risk located within Michigan. The fee was in addition to the two percent premium tax paid by risk retention groups.

The commissioner argued the entities in question did not qualify as risk retention groups because they offered insurance beyond that which may be offered by RRGs and that even if the groups did qualify as RRGs, Michigan's fee was not preempted based on the federal Act § 3902(a)(1)(B) which allowed a non-domiciliary state to require a risk retention group to pay, on a non-discriminatory basis, applicable premium and other taxes which were levied on admitted insurers and surplus lines insurers, brokers, or policyholders under the laws of the state. One plaintiff offered coverage for wrongful employment practices and the other offered coverage for wrongful management of employee benefit plans. The commissioner argued these types of insurance fell outside the liability insurance authorized by the Act because the Act provided liability insurance that did not include personal risk liability and employer's liability with respect to its employees other than legal liability under the Federal Employer's Liability Act. However, the LRRRA also provided a risk retention group is one whose primary activity consists of assuming and spreading the liability exposure of its group members. Therefore, the plaintiffs alleged that writing coverage outside the scope of the Act did not necessarily bar a group from qualifying as a risk retention group. The Act further provided to qualify as a risk retention group, the entity must be one whose activities did not include the provision of insurance other than

liability insurance for assuming or spreading all or any portion of the similar or related liability exposure of its group members. After analyzing the legislative history of the Act, the Court found Congress meant only to exclude workers' compensation coverage and therefore, the plaintiffs qualified as RRGs based on the coverage they offered.

After determining the plaintiffs were in fact, RRGs under the LRRRA, the Court held the regulatory fee was preempted by the Act. The fee's purpose was to regulate non-resident risk retention groups which non-domiciliary states were prevented from doing under the federal Act. The amount of monitoring done by Michigan was not enough to justify a regulatory fee above what non-resident risk retention groups paid in premium taxes. *Attorney's Liab. Assurance Society, Inc. v. Fitzgerald*, 174 F. Supp.2d 619 (W.D. Mich. 2001).

However, at least one court has held that the LRRRA does not preempt all state regulatory authority over forms and rates of insurers providing coverage through purchasing groups. In *Ins. Co. of State of Penn. v. Corcoran*, the insurer sought to provide professional liability coverage for a nurse practitioners' purchasing group on a nationwide basis. The insurer intended to use a nationwide policy form and charge uniform nationwide rates. The New York superintendent of insurance advised insurers writing or planning to write policies for purchasing groups in New York that the Liability Risk Retention Act did not relieve insurers of their obligation to comply with policy form and rate approval requirements of New York. The insurer argued the Federal Act preempted all state regulation that would impair the creation or operation of risk purchasing groups. The Court held the Act only preempts state laws that prohibit insurers from offering purchasing groups advantages based on their loss and experience but did not preempt all state regulatory authority over policy forms and rates. *Ins. Co. of State of Penn. v. Corcoran*, 850 F.2d 88 (2nd Cir. 1988).

2. REGISTRATION - SERVICE OF PROCESS

(a) RISK RETENTION GROUPS

Section 3902(a)(1)(D) of the LRRRA provides that any state may require that an RRG doing business in the state register with and designate the insurance commissioner of each state in which it does business as the group's agent for the purpose of receiving service of legal documents or process. Registration is not the same as admission or company licensing; it is not intended to provide non-domiciliary states with any regulatory powers over RRGs other than that provided in the LRRRA. It is not within a state's authority to use the processing of a registration to bar RRGs seeking to lawfully operate in a state, nor can a state declare a "moratorium" on the filing of RRG registrations. However, an incomplete registration filed by an RRG in a state requiring registration or a registration that reflects an RRG is not qualified, may be viewed by that state as nonregistration.

The designation of the commissioner or other state official as service agent facilitates the service of legal process against an RRG which may not otherwise have an ongoing presence in the state but which is doing business in that jurisdiction. The language in this section, when read in conjunction with the entire LRRRA, should not be construed to limit any documentation or other

STATE	Initial RRG Registration Fees	Annual RRG Renewal Fees	Other Fees Applicable to RRGs	Notes
ALABAMA	--	--		<i>Also subject to Business Privilege Tax to Revenue - min tax is \$100</i>
ALASKA	\$1,000	\$200		
ARIZONA	--	--		
ARKANSAS	\$750	\$250		
CALIFORNIA	\$1,316	\$300		<i>Initial fee increased in 2019</i>
COLORADO	--	--		
CONNECTICUT	--	--		
DELAWARE	\$150	\$150	\$150	<i>\$150 for RRG renewal + \$150 for A/S filing fee; paid with prem tax return</i>
DISTRICT OF CO.	\$250	\$250		
FLORIDA	--	--	\$150	<i>Other fees: Annual Corporate List filing fee to Florida Corporations Division</i>
GEORGIA	\$100	\$50	\$200	<i>Annual filing fees are total \$250 (\$200 statement filing fees + \$50 RRG renewal)</i>
HAWAII	\$300	\$150		<i>initial/annual fees were first imposed in 2015</i>
IDAHO	--	--		
ILLINOIS	\$200	--		
INDIANA	\$110		\$100	<i>Statement filing fee</i>
IOWA	\$100	\$100		
KANSAS	\$250	--		
KENTUCKY	--		\$201	<i>Other fees: \$200 A/S and audit filing fees + \$1 process fee</i>
KENTUCKY-Muni Tax	--		\$6	<i>Y/E Municipal tax recon filing fee - \$5 + \$1 process fee</i>
LOUISIANA	\$1,000	--		
MAINE	--	--		
MARYLAND	\$75	\$25		
MASSACHUSETTS	\$125	\$125		<i>Registration renewal fee</i>
MICHIGAN	\$25	--	\$25	<i>A/S filing fee</i>
MINNESOTA	--	--		
MISSISSIPPI	--	--		
MISSOURI	\$100	\$100		<i>Registration renewal fee</i>
MONTANA	--	--		
NEBRASKA	--	--	\$200	<i>Other fees: annual statement file fees</i>
NEVADA	\$530	\$525		<i>Annual fees = \$250 renewal fee + \$25 AS filig fee + \$250 Ins. Admin. Fund Assessment)</i>
NEW HAMPSHIRE	--	--	\$100	
NEW JERSEY	\$100	--	\$100	<i>no A/S fee paid if premium tax paid</i>
NEW MEXICO	\$500	\$200	\$200 min*	<i>Additional annual fraud fee assessment - minimum is \$200</i>
NEW YORK	--	--		
NORTH CAROLINA	\$500	\$1,500		
NORTH DAKOTA	\$50	--		
OHIO	--	--		
OKLAHOMA	--	--		
OREGON	\$350	\$350		
OREGON-Income Tax	--	--		
PENNSYLVANIA	\$300	--		
RHODE ISLAND	--	\$100		
SOUTH CAROLINA	\$1,200	--		<i>NO longer collecting \$1,200 biennial license fees from foreign RRGs effective with 2019 reporting year</i>
SOUTH DAKOTA	--	--		
TENNESSEE	--	--		
TEXAS	\$250	--	\$250	<i>Other fees: Annual statement file fee + Miscellaneous additional fees</i>
UTAH	\$300	\$450		<i>registration renewal fees</i>
VERMONT	--	--		
VIRGINIA	--	\$300		<i>Annual Maintenance fee</i>
WASHINGTON	--	--		
WEST VIRGINIA	\$200	--	\$100	<i>A/S filing fee; RRGs not subject to retal tax</i>
WISCONSIN	--	--		
WYOMING	\$200	\$200		<i>Attachment B - CHART-2020 RRG Fees</i>

Attachment C

New Mexico Insurance Fraud Fee Assessments

A Case Study In Illegal Fee Assessments Against Non-Domiciliary RRGs

The New Mexico Fraud Act Summary

New Mexico has a statute known as the Insurance Fraud Act. That act authorizes the Superintendent of Insurance to assess fees on "authorized insurers" for the purpose of paying the expenses incurred by the Superintendent in carrying out the provisions of the Insurance Fraud Act.

The New Mexico Fraud Assessment is placed in a special designated Fraud Fund that is administered by the Superintendent of Insurance. The monies collected can only be used by that fund for the purposes of the Insurance Fraud Act. The amount of the assessment, while authorized by statute in minimum and maximum amounts is ultimately determined by the Superintendent of Insurance. It is allowed by statute to be imposed only on "authorized insurers", which is defined by statute as excluding foreign risk retention groups. However, in practice, the Superintendent of Insurance has assessed both "authorized insurers" as well as all other "insurers". The assessment is not expended for general public purposes, but instead is restricted by statute to be expended only in the furtherance of the regulation of insurance fraud.

New Mexico Fraud Fees Assessed are Preempted by LRRRA

As the case of Attorneys' Liability Assurance Society, Inc. V. Fitzgerald, 174 F.Supp.2d 619 (W.D.Mich. 2001) teaches, this fraud assessment is a fee that is pre-empted by the LRRRA's prohibition of the imposition of fees on non-domiciliary RRGs. See also Hedgepeth v. Tennessee, 215 F.3d 608, 612 (6th Cir. 2000) for a comprehensive discussion of the analysis of what constitutes a "fee".

New Mexico Fraud Fees Are Not Assessable Against Non-Domiciliary RRGs

New Mexico Statutes, Chapter 59A, Article 16C, Section 59A-16C-14 creates the insurance fraud fund, and authorizes collection of a fees by the superintendent of insurance only from "authorized insurers". It provides in relevant part:

"To implement the provisions of the Insurance Fraud Act, the superintendent shall determine a rate of assessment and collect a fee from **authorized insurers** in an amount . . ."

New Mexico Statutes, Chapter 59A, Article 1, Section 59A-1-8 defines Authorized Insurer:

Attachment C

"An '**authorized insurer**' is a [an] insurer holding a valid and subsisting **certificate of authority**, issued by the superintendent to transaction insurance in this state"

New Mexico Statutes, Chapter 59A, Article 55, Section 59A-55-5 is the statute that governs non-domiciliary RRGs. It is aptly titled:

"Risk retention groups **not having New Mexico certificate of authority**"

and reads in relevant part:

"A. Risk retention groups chartered and licensed in states other than New Mexico and seeking to business as a risk retention group in New Mexico shall provide to the superintendent before engaging in the business of insurance in New Mexico: [documentation as required by the LRRRA to be provided to the state]"

Under this statutory scheme, non-domiciliary RRGs are not "**authorized insurers**" within the meaning of that term in the New Mexico insurance code, and therefore, the superintendent of insurance has not been authorized by the New Mexico Fraud Act to assess a fee against non-domiciliary RRGs.

The Problem - New Mexico Superintendent Purports to Assess the Fraud Fee on Non-Domiciliary RRGs

Despite lacking both the authority of the statutes of New Mexico and the authority of the Federal Government to do so, the New Mexico superintendent of insurance is in the practice of sending out fraud fund assessments to non-domiciliary RRGs who have registered in New Mexico.

When RRGs have questioned the New Mexico superintendent of insurance about the validity of the assessments, the New Mexico superintendent of insurance has routinely not responded, to the inquiries substantively and instead has sent dunning letters, threatening imposition of penalties for failure to pay the fee.

Most recently, the superintendent of insurance has taken the position that: 1) the fraud assessment fee is not a fee, but rather a "tax"; and 2) that despite the clear definition of "authorized insurer" in the New Mexico insurance code, a reference in a repealed statute (former 59A-55-6(A), repealed January 1, 2020) to RRGs being subject to taxes on the same basis as "admitted insurers" makes RRGs subject to the fraud fee assessment.