Conference Call

RISK RETENTION GROUP (E) TASK FORCE

Monday, October 7, 2019
2:00 ET/1:00 CT

ROLL CALL

Michael S. Pieciak, Chair
Vermont
Matthew Rosendale
Montana

Stephen C. Taylor, Vice Chair
District of Columbia
Barbara D. Richardson
Nevada

Colin M. Hayashida
Hawaii
John G. Franchini
New Mexico

Nancy G. Atkins
Kentucky
Glen Mulready
Oklahoma

James J. Donelon
Louisiana
Raymond G. Farmer
South Carolina

NAIC Support Staff: Becky Meyer

AGENDA

1. Consider Adoption of its May 8 and Summer National Meeting Minutes—Sandra Bigglestone (VT)

2. Consider Adoption of its 2020 Proposed Charges—Sandra Bigglestone (VT)

3. Receive Comments on the Exposure of the Following Documents

   • Frequently Asked Questions (FAQ)
   • Best Practices – Risk Retention Groups
   • NAIC Uniform Risk Retention Group Registration Form
   • Comments:
     o District of Columbia
     o Nevada
     o Pennsylvania
     o National Risk Retention Association (NRRA)
     o Nonprofits Insurance Alliance
     o Vermont Captive Insurance Association (VCIA)
     o Premier Insurance Management Services

4. Discuss Next Steps for the Task Force—Sandra Bigglestone (VT)

   • Summary of Concerns Regarding Registration of RRGs in Non-Domiciliary States
   • NRRA November 19, 2018 Letter
   • VCIA July 19, 2019 Letter

5. Adjournment
This page is intentionally left blank.
The Risk Retention Group (E) Task Force met in New York, NY, Aug. 3, 2019. The following Task Force members participated: Michael S. Pieciak, Chair, represented by Sandra Bigglestone (VT); Stephen C. Taylor, Vice Chair, represented by Sean O’Donnell (DC); Colin M. Hayashida represented by Melanie Fujiwara (HI); Nancy G. Atkins represented by Sandy Batts (KY); James J. Donelon represented by Stewart Guerin (LA); Matthew Rosendale represented by Steve Matthews (MT); John G. Franchini represented by Victoria Baca (NM); Glen Mulready represented by Jamille Jaffurs (OK); and Raymond G. Farmer represented by Lee Hill (SC).

1. Discussed the Letter Received from the VCIA Regarding Efforts to Clarify Issues Around RRGs and Their Registration in Non-Domiciliary States

Jim McIntyre (Vermont Captive Insurance Association—VCIA) summarized the July 19 letter from the VCIA to the Task Force (Attachment One). He stated that about 40% of active risk retention groups (RRGs) operating in the U.S. are currently domiciled in Vermont. The most frequent issue raised by these RRGs relates to the actions of non-domiciliary states with respect to registration to do business in those states. The VCIA supports improving clarity on registration requirements and to have non-domiciliary states check their laws to ensure they are in compliance with the federal Liability Risk Retention Act (LLRA). The VCIA also supports the development of a frequently asked questions (FAQ) document to provide guidance to both domiciliary and non-domiciliary states regarding authority set forth in the LLRA.

2. Exposed the NAIC Uniform Risk Retention Group – Notice and Registration Form

Ms. Bigglestone stated that during the Task Force’s May 8 conference call, non-domiciliary states raised concerns related to incomplete or potentially noncompliant information received from the RRG through registration. As a result of the concerns raised by both industry and non-domiciliary states, a group of volunteers was established to review the NAIC Uniform Risk Retention Group – Notice and Registration form (registration form) and suggest changes to the Task Force. The volunteers proposed several changes to the registration form (Attachment Two). The changes are intended to help ensure the questions and expectations are clear and limit the time necessary to determine if an application is complete and accurate. During the review of the registration form, the volunteers also closely reviewed the LLRA to ensure the form is compliant. There are a limited number of additions to the form, but the primary changes were to reorganize the information into a more user-friendly format.

Skip Myers (National Risk Retention Association—NRRA) stated the NRRA agrees with the work the Task Force has completed. One of the NRRA’s primary concerns is inconsistency in the treatment RRGs receive in different non-domestic states. This concern is consistent with the 2005 U.S. Government Accountability Office (GAO) report, which noted inconsistencies in states when dealing with RRGs. The NRRA’s goal is to have fair and consistent treatment under state and federal laws, insomuch as it is possible to do so, and to educate the states—especially the non-domiciliary states. To accomplish this, communication among the states regarding RRGs is essential.

The Task Force exposed the registration form for a 30-day public comment period ending Sept. 6.

3. Exposed FAQ and Best Practices Documents for RRGs

Ms. Bigglestone stated when the various concerns of both industry and state insurance regulators were discussed during the Task Force’s May 8 conference call, the Task Force believed many of the concerns could be addressed through FAQ and best practices documents for RRGs. The group of volunteers, therefore, developed two draft documents that include information about the LLRA, communication between domiciliary and non-domiciliary states, and the role of the domiciliary state in overseeing an RRG. Becky Meyer (NAIC) summarized the FAQ and best practices (Attachment Three).

The Task Force exposed the FAQ and best practices documents for a 30-day public comment period ending Sept. 6.

4. Referred a Revision to Part B1: Financial Analysis Accreditation Guideline Specific to RRGs to the Financial Regulation Standards and Accreditation (F) Committee
Ms. Bigglestone said that the accreditation standards include an analysis guideline that has procedures specific to RRGs. These extra procedures are important for RRGs in part because the regulatory authority lies with the domiciliary state, and any non-domiciliary state’s authority is limited per the LRRA. However, there is some uncertainty about whether the guideline is intended to apply to all RRGs or only certain RRGs. The Task Force discussed a similar topic a few years ago when another revision was made to this guideline to remove the word “captive.” At that time, the Task Force agreed that the guideline was intended to apply to all RRGs, regardless of whether they were organized under captive or traditional statutes. However, there is now uncertainty regarding whether the guideline applies to RRGs that file using generally accepted accounting principles (GAAP), statutory statements or both. Therefore, a referral to clarify the intent of the RRG specific analysis guideline was drafted for consideration by the Task Force to the Financial Regulation Standards and Accreditation (F) Committee (Attachment Four).

Ms. Meyer said that in 2017, several revisions were made to the accreditation guidelines to incorporate risk-focused analysis. In conjunction with those revisions, a reference to the “Captives and/or Insurers Filing on a U.S. GAAP Basis Worksheet” in the Financial Analysis Handbook was added to the analysis guideline specific to RRGs. The reference was added as a tool for state insurance regulators and was not intended to limit the scope of the guideline. However, it seems to have created some confusion since the worksheet applies only to GAAP filers and may lead some to believe that the entire guideline applies only to GAAP filers.

Ms. Bigglestone said she agrees the guideline should apply to all RRGs, regardless of whether they file GAAP or statutory statements. She said she agrees with the recommendation to strike the reference to the “Captives and/or Insurers Filing on a U.S. GAAP Basis Worksheet” and return to the language used prior to 2017.

Mr. O’Donnell suggested changing the term “business plan” to “plan of operation” in the standard to be consistent with the LRRA.

Mr. O’Donnell made a motion, seconded by Mr. Matthews, to refer the revision to Part B1: Financial Analysis Accreditation Guideline specific to RRGs to the Financial Regulation Standards and Accreditation (F) Committee for consideration. The motion passed unanimously.

Having no further business, the Risk Retention Group (E) Task Force adjourned.
The Risk Retention Group (E) Task Force met via conference call May 8, 2019. The following Task Force members participated: Michael S. Pieciak, Chair, represented by Sandra Bigglestone (VT); Stephen C. Taylor, Vice Chair, represented by Sean O’Donnell and Dana Sheppard (DC); Colin M. Hayashida represented by Andrew Kurata (HI); Nancy G. Atkins represented by Sandy Batts (KY); James J. Donelon represented by Bill Werner (LA); Matthew Rosendale represented by Steve Matthews (MT); John G. Franchini represented by Anna Krylova (NM); Barbara D. Richardson represented by Peter Rao (NV); Glen Mulready represented by Joel Sander (OK); and Raymond G. Farmer represented by Michael Shull (SC). Also participating were: Janet Grace (CT); Kathleen Orth (MN); and Barbara Kluger (NY).

1. Discussed Summary of Concerns Regarding Registration of RRGs in Non-Domiciliary States

Ms. Bigglestone stated that a list of concerns/issues regarding non-domiciliary state registration actions, along with potential action items, has been developed to guide the work of the Task Force. She said the list includes concerns raised by the National Risk Retention Association (NRRA) and non-domiciliary states responsible for registering risk retention groups (RRGs). Becky Meyer (NAIC) summarized the list of concerns (Attachment A).

Ms. Bigglestone noted that the list includes the concerns of fees and delayed registration time frames presented by the NRRA. It also includes concerns voiced by non-domiciliary states such as incomplete, inaccurate or even non-compliant registrations. The possible action items include short-term solutions such as a frequently asked questions (FAQ) document or updates to the registration form, as well as long-term solutions such as updates to Part D—Organization, Licensing and Change of Control of a Domestic Insurer (Part D) of the Financial Regulation Standards and Accreditation Program or updates to the Model Risk Retention Act (#705).

Ms. Bigglestone stated that it could be beneficial to start work on items that can make the most impact in a short amount of time such as an FAQ document or updating the registration form, then the Task Force could move to more in-depth solutions as needed. She noted that some solutions could be developed by the Task Force while others, such as opening Model #705 for revisions, would require referrals to other NAIC groups.

Robert H. Myers Jr. (NRRA) said there appears to be some confusion about the federal Liability Risk Retention Act (LRRA). The LRRA was designed to give authority to the domestic state; therefore, it does not preempt the domestic state’s ability to regulate an RRG. Consequently, when a non-domestic state has a question or issue, it should be able to contact the domestic state. Because this communication may be a key to mitigating many of the issues summarized, the Task Force may consider starting its work by developing best practices for communication between the domestic and non-domestic state insurance regulators.

Ms. Bigglestone stated that she has seen questionnaires sent from a non-domestic state to a domestic state that appear helpful in gathering information, and they may be a starting point for the Task Force to develop best practices. She also stated that the Task Force could consider drafting guidance for filling out the registration form to further help ensure that information is appropriately shared and received.

Mr. O’Donnell agreed with taking a look at the registration form, and he suggested that the registration form may need to be updated to provide contact information for the domestic state insurance regulator overseeing the RRG. He noted that there is sometimes confusion about what information should be provided to the non-domiciliary state in accordance with the LRRA, and he suggested that updates to the registration form could provide clarity.

Ms. Kluger agreed that updates to the registration form could facilitate speeding up the registration process. She provided the example that sometimes there is confusion about the type of coverage being offered by the RRG and its compliance with the LRRA; if this is clear upfront, she believes delays in registrations may be reduced.
Ms. Bigglestone noted that there are differences between a new RRG registering in other states and an existing RRG that decides to expand to other states. For those RRGs expanding, it is possible that the original feasibility study that must be provided to the non-domiciliary state under the LRRA may not be useful if the business plan has changed. Therefore, the Task Force should consider what information the domiciliary state should be responsible for providing, as the domiciliary state should be aware of any changes in business plan and any expansion activity (which is, in itself, a change in business plan).

Mr. Matthews agreed that communication with the domiciliary state is important, and he suggested that the Task Force consider whether including contact information for the domiciliary state insurance regulator is sufficient or if it should go a step further and request that a statement from the domiciliary state insurance regulator be included with the registration form.

Ms. Orth stated that one concern is when a registration form is received from an RRG that is in a weak financial state and there are concerns of ongoing solvency. She questioned if a statement from the domestic state would remedy the issue or if other steps would be needed. Ms. Bigglestone agreed that situations would vary, and the concept of best practices for a system of communication could contemplate a variety of scenarios.

Mr. Sheppard stated that the ability to trust and rely on other states is a core element of the regulatory system. To help support this system of trust, he recommended reviewing Model #705 and updating it, if needed, including elements from Model #705 in Part B—Regulatory Practices and Procedures (Part B) of the Financial Regulation Standards and Accreditation Program, as well as subjecting RRGs to Part D of the accreditation program.

Ms. Grace stated that the domestic state must take responsibility for sound regulation of the licensing process for RRGs. One challenge with this system is that the RRG may write little to no business in the domestic state, lowering the priority for the domestic state as it focuses on companies with policyholders in its state.

Ms. Meyer stated that subjecting RRGs to Part D of the accreditation program could encourage domestic states to take more responsibility for the licensing process and enhance the states’ reliance on each other. Ms. Bigglestone asked if state insurance regulators believe that subjecting RRGs to Part D would help alleviate concerns. Mr. Matthews stated that there are still challenges with traditional companies that are already subject to Part D. Ms. Bigglestone noted that, per her review of the Part D standards, the process for domestic RRGs is similar, and including RRGs in the Part D standards should not add a burden to the RRG process.

Mr. Sheppard stated that it is important to hold both the domestic and non-domestic states accountable for their roles in regulating RRGs. Mr. Myers agreed, noting that this is the key to addressing the NRRA’s request for the Task Force to review concerns about treatment of non-domiciliary registrations. The NRRA wants to take steps that support a healthy RRG industry, and it believes this includes putting more emphasis on the role of the the domestic states and encouraging non-domestic states to rely on the domestic state as intended by the LRRA. One element to ensure that the process is successful is enhancing communication between the domestic and non-domestic state. If a non-domestic state has questions, concerns or lacks information, it should be able to go to the domestic state for assistance. Developing best practices for communication would support this goal.

Ms. Bigglestone suggested establishing a volunteer drafting group to start developing initial solutions such as best practices in communication, updates to the registration form, instructions/supporting guidance for the registration form, or answers for the FAQ document. The drafting group will report back to the Task Force during its next meeting.

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

TO: Risk Retention Group (E) Task Force
FROM: NAIC Staff
DATE: September 19, 2019
RE: 2020 Proposed Charges

Attached are the Risk Retention Group (E) Task Force’s 2020 proposed charges with changes from prior year tracked. One new charge is proposed to more clearly facilitate the ongoing work to address questions/concerns regarding the registration of RRGs.

To accomplish the charge, the following actions are expected to be considered by the Task Force. In general, 2020 will focus on monitoring progress and determining if additional changes and/or guidance are needed.

1. Hear from industry about use and response of revised registration form.
2. Hear from non-domestic regulators about use of revised registration form and increased communication/information from domestic state.
3. Hear from domiciliary states regarding any increases in communication with non-domestic states.
4. Consider revisions to the Registration Form, FAQ, and Best Practices in response to feedback received.
5. Provide a webinar discussing the FAQ/Best Practices with an emphasis on communication between domiciliary and non-domiciliary states and certain provisions of the Liability Risk Retention Act.
6. Consider if Part D of the accreditation standards should apply to risk retention groups and make a referral to the Financial Regulation Standards and Accreditation (F) Committee if necessary.
8. Identify amendments to the NAIC Risk Retention and Purchasing Group Handbook to aid in implementation of the tools developed by the Task Force.
9. Following input received on new/revised resources, consider if the Model Risk Retention Act (#705) should be updated.

G:\ACCREDITATION\Data\RRGTF Emails\2020 Charges\2020 Charges Memo.docx
2020 Proposed Charges

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 changes 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. Report developments on the effort to improve communication between regulators and consistent treatment of risk retention groups. Consider whether additional action is necessary, including educational opportunities, updating resources and further clarifications.

NAIC Support Staff: Becky Meyer
Risk Retention Groups: Frequently Asked Questions

1. What publications are available to help understand RRGs and state’s authority?
      The following key documents can be found as Appendices in the Handbook:
      • Appendix A: Federal Liability Risk Retention Act
      • 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

2. How does the LRRA address regulation of RRGs?
   a. Under §3902 of the LRRA, 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 LRRA. Only the domiciliary state may regulate the formation and operation of an RRG.
   b. The implementation of the LRRA 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 LRRA. 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. Once an RRG provides a complete NAIC Uniform Risk Retention Group
Registration Form may begin operating in the state and 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 LRRA 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 LRRA 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 LRRA §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 LRRA §3902(a)(1) also discussed in FAQ #12.

Commented [MB3]: Pennsylvania: Consider defining what constitutes a “complete” registration form as reference throughout this document.

Commented [MB4]: Pennsylvania: Recommend updating to “verify that the RRG is qualified under the definition of a Risk Retention Group.”
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 LRRA 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 LRRA, 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 LRRA 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. What does the LRRA say about renewals for RRGs in non-domiciliary states?
    a. The LRRA 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 LRRA 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)

11. What does the LRRA say about taxes and fees charged by a non-domiciliary RRG?
   a. LRRA 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 LRRA and as such, there has been disagreement about the
         legality of both initial and renewal registration fees and compliance with LRRA. The authority on
         this topic is therefore federal case law. Thus far, 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 LRRA. See the Risk Retention and Purchasing Group Handbook for additional detail on the
         case and other fee considerations.

12. 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)];

13. 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.

© 2019 National Association of Insurance Commissioners
Best Practices – Risk Retention Groups

The domiciliary state maintains authority and has responsibility to regulate the formation and operation of a Risk Retention Group (RRG). Therefore, when concerns arise in a non-domiciliary state about a RRG, the best resource is the domiciliary state. This includes concerns about solvency and capital levels, financial condition, or other non-compliance of an RRG as well as operational questions and concerns that should be directed to the domiciliary state.

States are encouraged to examine their RRG laws to make certain that they are consistent with (1) the LRRA and (2) the NAIC Model Risk Retention Act.

Questions/Concerns from Non-domiciliary State
Upon initial registration of an RRG in a non-domiciliary state, it is not uncommon for questions to arise that are best directed to the domiciliary state. Attachment A outlines a sample Inquiry Template that can be used to request this information. The template may be customized as deemed appropriate by the non-domiciliary state. Domiciliary states should respond in a timely manner to such requests.

Questions about operations and financial solvency that arise following initial registration should also be addressed to the domiciliary state.

If significant concerns still exist after communication with the domiciliary state and the non-domiciliary state concludes that the RRG is not compliant with any of the specific procedures set forth in the LRRA, the following steps may be undertaken:
   a. Refer to your own state RRG statute to ensure compliance of your prospective action;
   b. Provide written notice of any non-compliance directly to the RRG;
   c. Submit a demand for examination of the RRG to the domiciliary regulator, as provided by the LRRA [15 U.S.C. S3902(a)(1)(E)];
   d. Institute suit in a court of competent jurisdiction.

A non-domiciliary state may request the following from the domiciliary state and similarly, the domiciliary state should be prepared to provide the following to the non-domiciliary state:
   e. Insurer Profile Summary (IPS)
   f. Inquire about the extent of biographical affidavit review and results of background checks
   g. Most recent examination report (may be obtained from I-Site)
   h. Amendments to the RRG’s business plan or feasibility study
   i. Verification of domiciliary state approval to expand into non-domiciliary state

Alternatively, Attachment A – Inquiry Template may be used for this request with modifications as necessary.
Registration Timeline
The registration process for RRGs should be shorter than the licensing process for other types of insurers as the RRG is responsible only for a complete registration form and the related attachments. The non-domestic state cannot reject a complete registration that complies with state and federal laws. However, it is still necessary for the non-domiciliary state to review the registration form to ensure it is complete and demonstrates that the RRG complies with the LRRA. In addition, concerns can be raised with the domiciliary state, who has the authority to regulate the formation and operation of an RRG. The following guidelines take into consideration similar guidelines for ordinary insurance companies, and adherence is at the discretion of each state.

- A non-domiciliary state should review the registration form for completeness within 10 business days of its receipt of the form and notify the Risk Retention Group of the need to submit any missing elements.
- Following receipt of a complete application, a non-domiciliary state should notify the RRG within 30 days that its registration is confirmed.
- The domiciliary state should respond to inquiries from a non-domiciliary state in a prompt manner, typically no later than 10 business days after receiving the inquiry.

Domiciliary State Responsibilities
When a domiciliary state identifies an RRG as troubled or potentially troubled, the State insurance regulator should make efforts to communicate proactively with other state insurance regulators in which the RRG is registered (consistent with the Troubled Insurance Company Handbook). Although the domiciliary regulator is responsible for taking actions involving their domiciliary RRGs, awareness by a non-domiciliary state may help them to proactively do what they can to protect their residents and respond to policyholder complaints or concerns directed to them.

Plan of Operation/Feasibility Study
Domiciliary states should ensure the RRG’s plan of operation or feasibility study includes the following, at a minimum:
- information sufficient to verify that its 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, trade, product, services, premises or operations;
- information sufficient to verify that the liability insurance coverage to be provided by the Risk Retention Group will only cover the members of the Risk Retention Group;
- for each state in which it intends to operate, information regarding the liability insurance coverages, deductibles, coverage limits, rates and/or rating/underwriting methodology for each line of commercial liability insurance the group intends to offer;
- historical and expected loss experience of proposed members and national experience of similar exposures to the extent that this experience is reasonably available;
- appropriate opinions/feasibility work by a qualified independent casualty actuary, including a determination of minimum premium participation levels required to commence operation and to prevent a hazardous financial condition;

© 2019 National Association of Insurance Commissioners
- pro forma financial statements and projections, including assumptions, on an expected and adverse basis;
- identification of Board of Directors, including independence determination;
- biographical affidavits for all BOD members;
- evidence of compliance with corporate governance standards, including draft policies;
- underwriting and claim procedures;
- marketing methods and materials if available;
- draft insurance policies;
- names of reinsurers and reinsurance agreements, if available;
- investment policies;
- identification of each state in which the RRG intends to write business/register;
- identification of service providers, including fee structure and relationships to members; and
- subsequent material revisions to the plan of operation or feasibility study.

Commented [MB5]: Premier: Will listing this here prompt a non-domiciliary state to also ask for it when this is something handled by the domestic state? Limiting the distribution of confidential information (such as SSN#s) can help ensure this information is not subject to a security breach and remains confidential.
Attachment A – Inquiry Template

The above-subject company has applied for Registration as a Risk Retention Group ("RRG") in the State of __________ to write ________________ liability coverage to its members who are in the business of ________________. As you can appreciate, due to the provisions of the Liability Risk Retention Act of 1986 the (state) has limited authority to regulate RRGs and therefore to a large extent, the (state) relies on the RRGs' domiciliary state to exercise general oversight and responsibility in the areas of licensing, solvency, rates and marketing. As part of our due diligence, we would appreciate any information your office can share with us regarding the company with respect to the following items, some of which may be satisfied by providing the Insurer Profile Summary:

1. Any significant concerns the State of [domicile] has regarding the company.
2. Any issues that may have a significant impact on the company going forward.
3. Any issues regarding the number of consumer complaints the company has in [state of domicile] or other states that may have been brought to your attention.
4. Comments and/or concerns about the financial condition of the company.
5. Comments or concerns about the management or performance of the company.
6. Results of any financial analysis or market conduct findings.
7. The company’s priority level within the Financial Analysis Division.
8. Any conditions imposed by your Department upon the company’s license.
9. Any significant non-compliance issues with the State of [domicile] regulatory authority including filing requirements and corrective action, if any.
10. Comments regarding the company’s application for registration in the State of [state registering].
11. Approval from State of [domicile] for the RRG to register in the State of [state registering].

Commented [MB5]: Pennsylvania: update to “and/or” in both items.
The following is the uniform registration form adopted in 1991 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 (LRRA), 15 USC 3901-3906, chartered or licensed to write only liability insurance by the state of domicile listed in #1c. The registration form and supplemental documents are provided in accordance with §3902(d)(2) of the LRRA. Under §3902 of the LRRA, 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 operation of an RRG, except that any state may require an RRG to comply with those laws specified in the LRRA. 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. FEIN:

1c. State of domicile and date licensed/chartered:

1d. 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):

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 chartered and licensed as a liability insurance company under the laws of the State of [insert state], and is authorized to engage in the following lines and/or classifications of liability insurance under the laws of its chartering State:

© 2019 National Association of Insurance Commissioners
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 the only persons who comprise the membership of the Group and the only ones 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:

8. (a) List the name, position with the Risk Retention Group, SS#, and address of each officer and director of the Risk Retention Group: (Attach additional pages, if necessary.)
NAIC UNIFORM RISK RETENTION GROUP REGISTRATION FORM

(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 Number: ______________________

9. List the name, addresses, (postal and email), telephone number and Federal Employer Identification Number (FEIN) of the company responsible for managing the insurance operations of the Risk Retention Group and the contact person’s name and telephone number at the company:

(If none, answer none.)

Contact Person: ______________________ Telephone #: ______________________

10. List the name(s), NPR#, SS#(s) 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 in which they are licensed:

(If none, answer none. Attach additional pages, if necessary.)

<table>
<thead>
<tr>
<th>Name</th>
<th>SS#</th>
<th>NPR#</th>
<th>Address</th>
<th>License Status in State Registering(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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:

© 2019 National Association of Insurance Commissioners 3
NAIC UNIFORM RISK RETENTION GROUP REGISTRATION FORM

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 LRRA, 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 such Group under the laws of this State.

B.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.

C.D. The Risk Retention Group will designate the Insurance Commissioner [Director, Superintendent] of this State to be its agent solely for the purpose of receiving service of legal documents or process by executing Part B of this form, attached hereto.

D.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] is shall be coordinated to avoid unjustified duplication and unjustified repetition.

E.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.

E.G. The Risk Retention Group will comply with the laws of this State concerning deceptive, false or fraudulent acts or practices, including any injunctions regarding such conduct obtained from a court of competent jurisdiction.

G.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.

H.I. The Risk Retention Group will provide the following notice, in at least 10-point type, in any insurance policy issued by the Group:
NAIC UNIFORM RISK RETENTION GROUP REGISTRATION FORM

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.

12.13. **In accordance with the LRRA, 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 chartering 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 will promptly submitted to the Insurance Commissioner [Director, Superintendent] of this State any revisions of such plan of operation or feasibility study to reflect any changes to the plan if the Group intends to offer any additional lines of liability insurance or, including any change in the designation of the State in which it is chartered.

13.14. 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, by March 1 of each year. The annual financial statement will 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.

14.15. 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.

15.16. 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.

16.17. The Risk Retention Group will not issue any insurance policy in this State which provides coverage prohibited generally by statute of this State or declared unlawful by the highest court of this State whose law applies to such policy.

17. The Risk Retention Group has submitted a registration fee of $ if applicable, payable to the Insurance Commissioner [Director, Superintendent] of this State.

18. To the extent required by the LRRA, the Risk Retention Group will comply with all other applicable state laws.

19. The Risk Retention Group will notify the Insurance Commissioner [Director, Superintendent] as to any subsequent changes in any of the items included in this form.

The undersigned hereby swear and affirm that the foregoing statements and information regarding their principal, the (Name of Risk Retention Group) are true and correct.

President of the Risk Retention Group

© 2019 National Association of Insurance Commissioners
NAIC UNIFORM RISK RETENTION GROUP REGISTRATION FORM

Secretary of the Risk Retention Group

State of ____________

County of ____________

SS:

Sworn before me this ___ day of ______________, 20__.

____________________, Notary Public. My Commission Expires: ______________
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].
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: __________
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](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
      - 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, credit for reinsurance for RRGs, and procedures when a disclaimer of affiliation is filed

2. **How does the LRRA address regulation of RRGs?**
   a. Under §3902 of the LRRA, 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 LRRA. **Only** the domiciliary state may regulate the formation and operation of an RRG.
   b. The implementation of the LRRA 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 LRRA. 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. Once an RRG provides a complete NAIC Uniform Risk Retention Group
Registration Form they may begin operating in the state and 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 LRRA 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 LRRA 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 LRRA §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 LRRA §3902(a)(1) also discussed in FAQ #12.
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 LRRA 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 LRRA, 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 LRRA 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. What does the LRRA say about renewals for RRGs in non-domiciliary states?
    a. The LRRA 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 LRRA 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 NAIC Annual Statement Blank (Property/Casualty), an audited 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. See the above-mentioned NAIC Accreditation Program Manual, Part A: Laws and Regulations for RRGs, for annual filing requirements for RRGs.

11. What does the LRRA say about taxes and fees charged by a non-domiciliary RRG?
   a. LRRA 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 LRRA and as such, there has been disagreement about the legality of both initial and renewal registration fees and compliance with LRRA. The authority on this topic is therefore federal case law. Thus far, 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 LRRA. See the Risk Retention and Purchasing Group Handbook for additional detail on the case and other fee considerations.

12. 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)];

13. 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.
      https://www.naic.org/prod_serv_alpha_listing.htm#risk_retention
The domiciliary state maintains authority and has responsibility to regulate the formation and operation of a Risk Retention Group (RRG). Therefore, when concerns arise in a non-domiciliary state about a RRG, the best resource is the domiciliary state. This includes concerns about solvency and capital levels, financial condition, or other non-compliance of an RRG as well as operational questions and concerns that should be directed to the domiciliary state.

States are encouraged to examine their RRG laws to make certain that they are consistent with (1) the LRRA and (2) the NAIC Model Risk Retention Act.

**Questions/Concerns from Non-domiciliary State**

Upon initial registration of an RRG in a non-domiciliary state, it is not uncommon for questions to arise that are best directed to the domiciliary state. *Attachment A* outlines a sample Inquiry Template that can be used to request this information. The template may be customized as deemed appropriate by the non-domiciliary state. Domiciliary states should respond in a timely manner to such requests.

Questions about operations and financial solvency that arise following initial registration should also be addressed to the domiciliary state.

If significant concerns still exist after communication with the domiciliary state and the non-domiciliary state concludes that the RRG is not compliant with any of the specific procedures set forth in the LRRA, the following steps may be undertaken:

a. Refer to your own state RRG statute to ensure compliance of your prospective action;

b. Provide written notice of any non-compliance directly to the RRG;

c. Submit a demand for examination of the RRG to the domiciliary regulator, as provided by the LRRA [15 U.S.C. §3902(a)(1)(E)];

d. Institute suit in a court of competent jurisdiction.

A non-domiciliary state may request the following from the domiciliary state and similarly, the domiciliary state should be prepared to provide the following to the non-domiciliary state:

e. Insurer Profile Summary (IPS)

f. Inquire about the extent of biographical affidavit review and results of background checks

g. Most recent examination report (may be obtained from I-Site)

h. Amendments to the RRG’s business plan or feasibility study

i. Verification of domiciliary state approval to expand into non-domiciliary state

Alternatively, *Attachment A – Inquiry Template* may be used for this request with modifications as necessary.
**Registration Timeline**

The registration process for RRGs should be shorter than the licensing process for other types of insurers as the RRG is responsible only for a complete registration form and the related attachments. The non-domestic state cannot reject a complete registration that complies with state and federal laws. However, it is still necessary for the non-domiciliary state to review the registration form to ensure it is complete and demonstrates that the RRG complies with the LRRA. In addition, concerns can be raised with the domiciliary state, who has the authority to regulate the formation and operation of an RRG. The following guidelines take into consideration similar guidelines for ordinary insurance companies, and adherence is at the discretion of each state.

- A non-domiciliary state should review the registration form for completeness within 10 business days of its receipt of the form notify the Risk Retention Group of the need to submit any missing elements.
- Following receipt of a complete application, a non-domiciliary state should notify the RRG within 30 days that its registration is confirmed.
- The domiciliary state should respond to inquiries from a non-domiciliary state in a prompt manner, typically no later than 10 business days after receiving the inquiry.

**Domiciliary State Responsibilities**

When a domiciliary state identifies an RRG as troubled or potentially troubled, the State insurance regulator should make efforts to communicate proactively with other state insurance regulators in which the RRG is registered (consistent with the *Troubled Insurance Company Handbook*). Although the domiciliary regulator is responsible taking actions involving their domiciliary RRGs, awareness by a non-domiciliary state may help them to proactively do what they can to protect their residents and respond to policyholder complaints or concerns directed to the them.

**Plan of Operation/Feasibility Study/Application**

Domiciliary states should ensure the RRG’s plan of operation, feasibility study, or application for licensing includes the following, at a minimum:

- information sufficient to verify that its 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, trade, product, services, premises or operations;
- information sufficient to verify that the liability insurance coverage to be provided by the Risk Retention Group will only cover the members of the Risk Retention Group;
- for each state in which it intends to operate, information regarding the liability insurance coverages, deductibles, coverage limits, rates and/or rating/underwriting methodology for each line of commercial liability insurance the group intends to offer;
- historical and expected loss experience of proposed members and national experience of similar exposures to the extent that this experience is reasonably available;
- appropriate opinions/feasibility work by a qualified independent casualty actuary, including a determination of minimum premium participation levels required to commence operation and to prevent a hazardous financial condition;
- pro forma financial statements and projections, including assumptions, on an expected and adverse basis;
- identification of Board of Directors, including independence determination;
- biographical affidavits for all BOD members;
- evidence of compliance with corporate governance standards, including draft policies;
- underwriting and claim procedures;
- marketing methods and materials if available;
- draft insurance policies;
- names of reinsurers and reinsurance agreements, if available;
- investment policies;
- identification of each state in which the RRG intends to write business/register;
- identification of service providers, including fee structure and relationships to members/ and
- subsequent material revisions to the plan of operation or feasibility study.
Attachment A – Inquiry Template

The above-subject company has applied for Registration as a Risk Retention Group (“RRG”) in the State of ________ to write ____________ liability coverage to its members who are in the business of________________________________. As you can appreciate, due to the provisions of the Liability Risk Retention Act of 1986 the (state) has limited authority to regulate RRGs and therefore to a large extent, the (state) relies on the RRGs’ domiciliary state to exercise general oversight and responsibility in the areas of licensing, solvency, rates and marketing. As part of our due diligence, we would appreciate any information your office can share with us regarding the company with respect to the following items, some of which may be satisfied by providing the Insurer Profile Summary:

1. Any significant concerns the State of [domicile] has regarding the company.
2. Any issues that may have a significant impact on the company going forward.
3. Any issues regarding the number of consumer complaints the company has in [state of domicile] or other states that may have been brought to your attention.
4. Comments and/or concerns about the financial condition of the company.
5. Comments or concerns about the management or performance of the company.
6. Results of any financial analysis or market conduct findings.
7. The company’s priority level within the Financial Analysis Division.
8. Any conditions imposed by your Department upon the company’s license.
9. Any significant non-compliance issues with the State of [domicile] regulatory authority including filing requirements and corrective action, if any.
10. Comments regarding company’s application for registration in the State of [state registering].
11. Approval from State of [domicile] for the RRG to register in the State of [state registering].
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 (LRRA), 15 USC 3901-3906, chartered or licensed to write only liability insurance by the state of domicile listed in #1c. The registration form and supplemental documents are provided in accordance with §3902(d)(2) of the LRRA. Under §3902 of the LRRA, 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 operation of an RRG, except that any state may require an RRG to comply with those laws specified in the LRRA. 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. FEIN:

1c. State of domicile and date licensed/chartered:

1d. 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):

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:

Commented [MB1]: Request feedback from the full Task Force on how this is used and if it is necessary.

Commented [OS(2R1]: DC does not routinely require or use this information from domestic RRGs and suggests deleting the requirement for the FEIN.
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 the only persons who comprise the membership of the Group and the only ones 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:

________________________________________________________________________________________________________
________________________________________________________________________________________________________

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:
NAIC UNIFORM RISK RETENTION GROUP REGISTRATION FORM

Name: __________________________ Telephone Number: __________________________

9. List the name, addresses (postal and email), telephone number and Federal Employer Identification Number (FEIN) of the company responsible for managing the insurance operations of the Risk Retention Group and the company contact person’s name and telephone number. (If none, answer none.)

________________________________________________________________________
________________________________________________________________________

Contact Person: __________________________ Telephone #: __________________________

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.)

<table>
<thead>
<tr>
<th>Name</th>
<th>NPR#</th>
<th>Address</th>
<th>License Status in State Registering</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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

Commented [OS3]: DC does not collect this information from captive managers and suggests deleting the requirement for the FEIN.

Commented [MB4]: Items a-d are not new, but were previously items #3, 4, 6 and 9 on the original form.
NAIC UNIFORM RISK RETENTION GROUP REGISTRATION FORM

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 LRRA, 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.

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 LRRA, 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. The Risk Retention Group will not issue any insurance policy in this State which provides coverage prohibited generally by statute of this State or declared unlawful by the highest court of this State whose law applies to such policy.

18. To the extent required by the LRRA, the Risk Retention Group will comply with all other applicable state laws.

19. The Risk Retention Group will notify the Insurance Commissioner [Director, Superintendent] as to any subsequent changes in any of the items included in this form.

The undersigned hereby swear and affirm that the foregoing statements and information regarding their principal, the ___________________________ (Name of Risk Retention Group) are true and correct.

______________________________
President of the Risk Retention Group

______________________________
Secretary of the Risk Retention Group

State of ____________
County of ____________

ss:

Sworn before me this ___ day of ____________, 20__.

______________________________, Notary Public. My Commission Expires: ____________
NAIC UNIFORM RISK RETENTION GROUP REGISTRATION FORM
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].

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: ____________
Nevada has no objections to the changes/updates regarding RRGs.

Thank you for the opportunity to assist you in this matter.

Kathy Kelley (Lamb), AA 4 with the APIR designation
PLEASE NOTE MY NEW EMAIL: kkelley@doi.nv.gov
State of Nevada, Division of Insurance
Corporate & Financial Affairs
1818 E. College Parkway, Ste. 103
Carson City, NV 89706-7986
T: (775) 687-0753
F: (775) 687-0787
E-Mail: kkelley@doi.nv.gov
Facebook: https://www.facebook.com/NevadaDivisionofInsurance
Twitter: https://twitter.com/nevadoi
Visit Nevada Division of Insurance web pages: Address Changes, Annual Renewals of Company License, Annual Statement Filings, Biographical Affidavits, Electronic Payments, Holding Company Forms, Primary, Expansion & Corporate Amendment Applications, Statutory Deposits, Withdrawal of Company License.
NAIC Uniform Risk Retention Group – Notice and Registration form

Item 1c. – generally speaking, isn’t it likely that the date chartered and date licensed are different dates.

Item 8. – typo “Rroup”

Item 9. – consider requesting an email address for the company contact person

Risk Retention Groups: Frequently Asked Questions

General observation - “Complete” is used but not defined throughout the document. Several examples follow:

3.c. Once an RRG provides a complete NAIC Uniform Risk Retention Group Registration Form they may begin operating in the state and approval from the non-domestic state is not required.

4.a. Review the NAIC Uniform Risk Retention Group Registration Form and verify the RRG has provided a complete form.

6.a. A non-domestic state cannot reject the registration of an RRG that submits a complete registration form.

There is a difference between (1) a registration form in which all questions are answered and attachments are provided; and, (2) a registration form in which all questions are answered and attachments are provided with responses/documents demonstrating compliance with state and federal laws.

Considering the interpretation of the LRRA that an RRG can commence business in the state once a “complete” registration is filed, consider adding some definition or discussion around what a “complete” registration form is.

FAQ 4.b.a. – consider changing “for reasonableness” to “to verify that the RRG is qualified under the definition of Risk Retention Group.”

Best Practices – Risk Retention Groups

Registration Timeline – depending upon how “complete” is defined, a 10-day turnaround may not be reasonable.

Domiciliary State Responsibilities – Second sentence clean-up to read as:

Although the domiciliary regulator is responsible for taking actions involving their domiciliary RRGs, awareness by a non-domiciliary state may help them to proactively do what they can to protect their residents and respond to policyholder complaints or concerns directed to the them.
Attachment A – Inquiry Template – revisions to 5, 6 and 10 as follows:

Item 5 – Comments and/or concerns about the management or performance of the company.

Item 6 – Results of any financial analysis and/or market conduct findings.

Item 10 – Comments regarding the company’s application for registration in the State of [state registering].
September 5, 2019

VIA EMAIL - BMeyer@naic.org

Becky Meyer, CPA
Senior Accreditation Manager
National Association of Insurance Commissioners
1100 Walnut, Suite 1500
Kansas City, MO  64106

Re:  Risk Retention Group (E) Task Force
Ongoing Support of NAIC Programs, Products or Services

Dear Ms. Meyer:

Attached are the comments of the National Risk Retention Association (NRRA) in redline format.

Our only comment on the Best Practices document is grammatical so that the sentence would read properly.

For the FAQ document, we only added the *ALAS v. Fitzgerald* case and a cite to the NAIC RRG Handbook where both *NRRA v. Brown* and the *ALAS v. Fitzgerald* cases are discussed.

We recommend one change for the Notice and Registration document. The current version of Item 6(a) deviates from the language in the LRRA, 15 USC § 3901 (a)(4)(E)(i). In order to be consistent, 6(a) should be:

_____ the owners of the Group are only persons who comprise the membership of the Group and who are provided Insurance by the Group.

The drafting committee has done an excellent job of conforming the Notice and Registration document to the LRRA, *e.g.*, in Items 11 and 12, which is important to avoid a conflict between state and federal law. To avoid any confusion, we believe Item 6(a) should be conformed as noted above.
The NRRA very much appreciates the opportunity to comment on the work of the Risk Retention Group Task Force.

Very truly yours,

[Signature]

Joseph E. Deems
Executive Director
National Risk Retention Association

rjm
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
      • 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

2. How does the LRRA address regulation of RRGs?
   a. Under §3902 of the LRRA, 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 LRRA. Only the domiciliary state may regulate the formation and operation of an RRG.
   b. The implementation of the LRRA 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 LRRA. 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. Once an RRG provides a complete NAIC Uniform Risk Retention Group Registration Form
Registration Form they may begin operating in the state and 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 LRRA 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 LRRA 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 LRRA §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 LRRA §3902(a)(1) also discussed in FAQ #12.
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 LRRA 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 LRRA, 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 LRRA 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. What does the LRRA say about renewals for RRGs in non-domiciliary states?
    a. The LRRA 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 LRRA 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 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.

11. What does the LRRA say about taxes and fees charged by a non-domiciliary RRG?
   a. LRRA 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 LRRA and as such, there has been disagreement about the legality of both initial and renewal registration fees and compliance with LRRA. The authority on this topic is therefore federal case law. Thus far, there is one case and two cases (Nat’l Risk Retention Assoc. v. Brown, 927 F. Supp. 195 (M.D. La. 1996) and Attorney’s Liab. Assurance Society, Inc. v. Fitzgerald, 174 F. Supp. 2d 619 (W.D. Mich. 2001) in which the court ruled that certain state requirements, including the payment of an annual renewal registration fee, were preempted by the LRRA. See the Risk Retention and Purchasing Group Handbook (II-5, 6, 7) for additional detail on the case and other fee considerations.

12. 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)];

13. 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.
Best Practices – Risk Retention Groups

The domiciliary state maintains authority and has responsibility to regulate the formation and operation of a Risk Retention Group (RRG). Therefore, when concerns arise in a non-domiciliary state about a RRG, the best resource is the domiciliary state. This includes concerns about solvency and capital levels, financial condition, or other non-compliance of an RRG as well as operational questions and concerns that should be directed to the domiciliary state.

States are encouraged to examine their RRG laws to make certain that they are consistent with (1) the LRRA and (2) the NAIC Model Risk Retention Act.

Questions/Concerns from Non-domiciliary State
Upon initial registration of an RRG in a non-domiciliary state, it is not uncommon for questions to arise that are best directed to the domiciliary state. Attachment A outlines a sample Inquiry Template that can be used to request this information. The template may be customized as deemed appropriate by the non-domiciliary state. Domiciliary states should respond in a timely manner to such requests.

Questions about operations and financial solvency that arise following initial registration should also be addressed to the domiciliary state.

If significant concerns still exist after communication with the domiciliary state and the non-domiciliary state concludes that the RRG is not compliant with any of the specific procedures set forth in the LRRA, the following steps may be undertaken:

a. Refer to your own state RRG statute to ensure compliance of your prospective action;
b. Provide written notice of any non-compliance directly to the RRG;
c. Submit a demand for examination of the RRG to the domiciliary regulator, as provided by the LRRA [15 U.S.C. S3902(a)(1)(E)];
d. Institute suit in a court of competent jurisdiction.

A non-domiciliary state may request the following from the domiciliary state and similarly, the domiciliary state should be prepared to provide the following to the non-domiciliary state:

e. Insurer Profile Summary (IPS)
f. Inquire about the extent of biographical affidavit review and results of background checks
g. Most recent examination report (may be obtained from I-Site)
h. Amendments to the RRG’s business plan or feasibility study
i. Verification of domiciliary state approval to expand into non-domiciliary state

Alternatively, Attachment A – Inquiry Template may be used for this request with modifications as necessary.
Registration Timeline
The registration process for RRGs should be shorter than the licensing process for other types of insurers as the RRG is responsible only for a complete registration form and the related attachments. The non-domestic state cannot reject a complete registration that complies with state and federal laws. However, it is still necessary for the non-domiciliary state to review the registration form to ensure it is complete and demonstrates that the RRG complies with the LRRA. In addition, concerns can be raised with the domiciliary state, who has the authority to regulate the formation and operation of an RRG. The following guidelines take into consideration similar guidelines for ordinary insurance companies, and adherence is at the discretion of each state.

- A non-domiciliary state should review the registration form for completeness within 10 business days of its receipt of the form and notify the Risk Retention Group of the need to submit any missing elements.
- Following receipt of a complete application, a non-domiciliary state should notify the RRG within 30 days that its registration is confirmed.
- The domiciliary state should respond to inquiries from a non-domiciliary state in a prompt manner, typically no later than 10 business days after receiving the inquiry.

Domiciliary State Responsibilities
When a domiciliary state identifies an RRG as troubled or potentially troubled, the State insurance regulator should make efforts to communicate proactively with other state insurance regulators in which the RRG is registered (consistent with the Troubled Insurance Company Handbook). Although the domiciliary regulator is responsible taking actions involving their domiciliary RRGs, awareness by a non-domiciliary state may help them to proactively do what they can to protect their residents and respond to policyholder complaints or concerns directed to them.

Plan of Operation/Feasibility Study
Domiciliary states should ensure the RRG’s plan of operation or feasibility study includes the following, at a minimum:
- information sufficient to verify that its 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, trade, product, services, premises or operations;
- information sufficient to verify that the liability insurance coverage to be provided by the Risk Retention Group will only cover the members of the Risk Retention Group;
- for each state in which it intends to operate, information regarding the liability insurance coverages, deductibles, coverage limits, rates and/or rating/underwriting methodology for each line of commercial liability insurance the group intends to offer;
- historical and expected loss experience of proposed members and national experience of similar exposures to the extent that this experience is reasonably available;
- appropriate opinions/feasibility work by a qualified independent casualty actuary, including a determination of minimum premium participation levels required to commence operation and to prevent a hazardous financial condition;
- pro forma financial statements and projections, including assumptions, on an expected and adverse basis;
- identification of Board of Directors, including independence determination;
- biographical affidavits for all BOD members;
- evidence of compliance with corporate governance standards, including draft policies;
- underwriting and claim procedures;
- marketing methods and materials if available;
- draft insurance policies;
- names of reinsurers and reinsurance agreements, if available;
- investment policies;
- identification of each state in which the RRG intends to write business/register;
- identification of service providers, including fee structure and relationships to members; and
- subsequent material revisions to the plan of operation or feasibility study.
Attachment A – Inquiry Template

The above-subject company has applied for Registration as a Risk Retention Group ("RRG") in the State of ________ to write ____________ liability coverage to its members who are in the business of ______________________________. As you can appreciate, due to the provisions of the Liability Risk Retention Act of 1986 the (state) has limited authority to regulate RRGs and therefore to a large extent, the (state) relies on the RRGs’ domiciliary state to exercise general oversight and responsibility in the areas of licensing, solvency, rates and marketing. As part of our due diligence, we would appreciate any information your office can share with us regarding the company with respect to the following items, some of which may be satisfied by providing the Insurer Profile Summary:

1. Any significant concerns the State of [domicile] has regarding the company.
2. Any issues that may have a significant impact on the company going forward.
3. Any issues regarding the number of consumer complaints the company has in [state of domicile] or other states that may have been brought to your attention.
4. Comments and/or concerns about the financial condition of the company.
5. Comments or concerns about the management or performance of the company.
6. Results of any financial analysis or market conduct findings.
7. The company’s priority level within the Financial Analysis Division.
8. Any conditions imposed by your Department upon the company’s license.
9. Any significant non-compliance issues with the State of [domicile] regulatory authority including filing requirements and corrective action, if any.
10. Comments regarding company’s application for registration in the State of [state registering].
11. Approval from State of [domicile] for the RRG to register in the State of [state registering].
RISK RETENTION GROUP FORM

Appendix D

The following is the uniform registration form adopted in 1991 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 (LRRA), 15 USC 3901-3906, chartered or licensed to write only liability insurance by the state of domicile listed in #1c. The registration form and supplemental documents are provided in accordance with §3902(d)(2) of the LRRA. Under §3902 of the LRRA, 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 operation of an RRG, except that any state may require an RRG to comply with those laws specified in the LRRA. 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. FEIN:

______________________________________________________________

1c. State of domicile and date licensed/chartered:

______________________________________________________________

1d. 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):

______________________________________________________________

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 chartered and licensed as a liability insurance company under the laws of the State of, and is authorized to engage in the following lines and/or classifications of liability insurance under the laws of its chartering State:
RISK RETENTION GROUP FORM

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 the only persons who comprise the membership of the Group and the only ones 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:

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

Commented [NRRA]: 15 US Code 3901(a)(4) provides:
“risk retention group” means any corporation or other limited liability association—

(E) which—
(i) has as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group...

To be match the language of the statute, the language here should be:
the owners of the Group are only persons who comprise the membership of the Group and who are provided insurance by the Group.
RISK RETENTION GROUP FORM

(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 Number: __________________________

9. List the name, addresses, (postal and email), telephone number and Federal Employer Identification Number (FEIN) of the company responsible for managing the insurance operations of the Risk Retention Group and the company contact person’s name and telephone number, at the company: (If none, answer none.)

________________________________________
________________________________________
________________________________________

Contact Person: __________________________ Telephone #: __________________________

10. List the name(s), NPR#, SS#(s) 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(s) [Insert State in which the Risk Retention Group intends to do business] in which they are licensed: (If none, answer none. Attach additional pages, if necessary.)

<table>
<thead>
<tr>
<th>Name</th>
<th>SSN/P#</th>
<th>Address</th>
<th>License Status in State Registering(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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:

Commented [Meyer, Becky]: Items a-d are not new, but were previously items #3, 4, 6 and 9 on the original form.
RISK RETENTION GROUP FORM

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 LRRA, 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, such Group under the laws of this State.

B.-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.

C.-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.

D.-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] is shall be coordinated to avoid unjustified duplication and unjustified repetition.

E.-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.

E.-G. The Risk Retention Group will comply with the laws of this State concerning deceptive, false or fraudulent acts or practices, including any injunctions obtained from a court of competent jurisdiction.

G.-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.

H.-I. The Risk Retention Group will provide the following notice, in at least 10-point type, in any insurance policy issued by the Group:
RISK RETENTION GROUP FORM
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.

12.13. In accordance with the LRRA, 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 chartering State 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 will promptly submitted to the Insurance Commissioner [Director, Superintendent] of this State any revisions of such plan of operation or feasibility study to reflect any changes to the plan if the Group intends to offer any additional lines of liability insurance or, including any change in the designation of the State in which it is chartered.

13.14. 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, by March 1 of each year. 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.

14.15. 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.

15.16. 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.

16.17. The Risk Retention Group will not issue any insurance policy in this State which provides coverage prohibited generally by statute of this State or declared unlawful by the highest court of this State whose law applies to such policy.

17. The Risk Retention Group has submitted a registration fee of $____________, if applicable, payable to the Insurance Commissioner [Director, Superintendent] of this State.

18. To the extent required by the LRRA, the Risk Retention Group will comply with all other applicable state laws.

19. The Risk Retention Group will notify the Insurance Commissioner [Director, Superintendent] as to any subsequent changes in any of the items included in this form.

The undersigned hereby swear and affirm that the foregoing statements and information regarding their principal, the ___________________________(Name of Risk Retention Group) are true and correct.

President of the Risk Retention Group
RISK RETENTION GROUP FORM

Secretary of the Risk Retention Group

State of ____________

County of ____________

Sworn before me this ___ day of ______________, 20__.

____________________, Notary Public. My Commission Expires: ____________
RISK RETENTION GROUP 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].

RISK RETENTION GROUP 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 __________________

____________________________, Notary Public. My Commission Expires: ____________

Comments on the Uniform Registration Form for RRGs

Item 6 (a) and (b): How is “persons” defined for the purposes of this form. Since RRGs may only insure commercial insurance, does this word encompass both individual professionals and business entities?

Item 19: Is the Insurance Commissioner in Item 19 the domicile or non-domicile Commissioner? If non-domicile, does that mean that an RRG must report every change in the board of directors to every non-domicile regulator? If so, how soon after the change?

Comments on the Q&A

In the paragraph entitled Registration Timeline it states that, “The non-domestic state cannot reject a complete registration that complies with state and federal laws.” Can you provide examples of state laws that might be used to deny the Registration of an RRG?

Please let me know if you have any questions.

Cordially,

Pamela

Pamela E. Davis
Founder, President and CEO
831-621-6018 | Direct
800-359-6422 | Office

Nonprofits Insurance Alliance
A head for insurance. A heart for nonprofits.
insurancefornonprofits.org
September 6, 2019

Via email: bmeyer@naic.org

Ms. Becky Meyer, CPA
Senior Accreditation Manager
National Association of Insurance Commissioners
1100 Walnut, Suite 1500
Kansas City, MO  64106

Re: Comments on Risk Retention Group (E) Task Force on RRG Notice and Registration Form; Frequently Asked Questions and Best Practices

Dear Ms. Meyer:

The Vermont Captive Insurance Association (VCIA) and its 450 member organizations appreciate the opportunity to provide comments on these three documents relating to risk retention groups (RRGs). The State of Vermont is the domicile of approximately 40% of the roughly 220 active RRGs operating in the United States, and most of these are members of VCIA.

We greatly appreciate the hard work of the RRG (E) Task Force to tackle some of the issues raised by impermissible requirements imposed by non-domiciliary states on RRGs. We believe that many of the problems encountered by RRGs in non-domiciliary states result from efforts to impose requirements, particularly registration requirements and fees, not permitted by the Liability Risk Retention Act (LRRA).

VCIA commends the Task Force for its efforts to clarify application of the LRRA and educate state regulators and the RRG community on authority given by the LRRA to domiciliary states and to non-domiciliary states. The Task Force has done an excellent job addressing and clarifying these issues. The revised NAIC Uniform RRG Notice and Registration Form, Frequently Asked Questions, and Best Practices are comprehensive and straightforward, and provide clarity to the most serious registration issues raised by RRGs.
VCIA has four comments on the draft registration form:

(1) We recommend the second to last sentence of the introductory paragraph on page 1 be rephrased as follows: “Under §3902 of the LRRA, 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 operation of an RRG, except that any state may require an RRG to comply with those specific state laws not exempted by §3902 of the LRRA.” We believe this revision is important to clarify that the right of non-domiciliary states to regulate RRGs is limited to specific state laws.

(2) The Task Force may want to consider in Item 1 requesting the address and NAIC Company Code of the organization. It may also be more appropriate to request the organization’s FEIN in Item 1 rather than requiring in Item 9 the FEIN of the manager.

(3) In Item 6(a), with respect to members and insureds, we recommend that the language in the form be the same as in the LRRA because the language in the proposed form appears to be more restrictive than that in the LRRA. [See Section 3901 (a)(4)(E)(i)].

(4) We recommend Item 7 be deleted and a new Item 15 created as follows: “In accordance with the LRRA, and as evidenced by the domiciliary state’s action in approving licensure of the Risk Retention Group, the RRG affirms its 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.” Presently, Item 7 of the registration form requires RRG registrants to affirmatively prove to non-domiciliary states that the RRG is compliant with this LRRA requirement by requiring the RRG to include a description of the businesses or activities engaged in by the RRG’s members. Including this affirmative requirement in the registration form is inconsistent with the LRRA. The LRRA is very clear that the domicile state is solely empowered to regulate the formation and operation of RRGs. To form and license an RRG, the domicile state must review the RRG application to determine whether the applicant meets the federal law requirements for forming an RRG. One of the key requirements is a showing that the applicant’s members are sufficiently similar or related with respect to their liability exposures by virtue of any related, similar or common business, etc. Without satisfying this LRRA requirement, the RRG cannot be licensed in its domicile state. The revision recommended above will help clarify that the membership’s compliance with the LRRA is confirmed by the domicile state as part of formation and licensure and that this is not a determination subject to non-domiciliary state regulation.

(5) Item 17 appears to expand Section 3905(c) of the LRRA, which provides: “Prohibited insurance policy coverage. The terms of any insurance policy provided by a risk retention group . . . shall not provide or be construed to provide insurance policy coverage prohibited generally by the state statute or declared unlawful by the highest court of the state whose law applies to such policy.”
VCIA comment letter re: NAIC RRG TF Exposure Drafts – September 6, 2019

As drafted, Item 17 states that the law of the state in which the RRG is registering applies to the policy and that RRGs are barred from writing coverages that have been declared unlawful by such state’s highest court. This prohibition is much broader than what is contained in the LRRA. VCIA recommends that the language of Item 17 track Section 3905(c) more closely; i.e., “[t]he risk retention group will not issue any policy in the state which provides coverage prohibited generally by statute or declared unlawful by the highest court of the state whose law applies to the policy.”

In addition, VCIA has one comment on the draft Best Practices document:

(1) We recommend the second and third sentences of the section titled “Registration Timeline” be revised as the current language could be interpreted as implying that non-domiciliary states have broader authority over the registration process than that granted under the LRRA. Our suggested revision is as follows: “The non-domestic state cannot reject a complete registration that complies with those laws of the non-domestic state that are not pre-empted under the LRRA. In the event a non-domestic state has concerns with an RRG registration, such concerns should be raised with the domiciliary state regulator, who has the authority to regulate the formation and operation of an RRG.”

Thank you again for the opportunity to submit these comments.

Sincerely,

Richard Smith
President

cc: Sandra Bigglestone
Vermont Dept. of Financial Regulation
I think the three exposed RRG documents are well drafted and I support them. I have been managing RRGs since 1990 and have struggled in dealing with non-domiciliary states over the years. I think these documents would help clarify roles and responsibilities.

I did notice a couple of typos in the Best Practice document:

On page 2 in the Registration Timeline section

- A non-domiciliary state should review the registration form for completeness within 10 business days of its receipt of the form and notify the Risk Retention Group of the need to submit any missing elements.

On page 2 in the Domiciliary State Responsibilities section

When a domiciliary state identifies an RRG as troubled or potentially troubled, the State insurance regulator should make efforts to communicate proactively with other state insurance regulators in which the RRG is registered (consistent with the Troubled Insurance Company Handbook). Although the domiciliary regulator is responsible for taking actions involving their domiciliary RRGs, awareness by a non-domiciliary state may help them to proactively do what they can to protect their residents and respond to policyholder complaints or concerns directed to the them.

Also in the plan of operations/feasibility section I do question the need to provide copies of biographical affidavits to the non-domiciliary states. There are a couple of states that take this to heart and request that we send them updated bios whenever a new director is elected. In this day and age of identity theft and state level data theft/data ransom events (even though the bio form in VT no longer asks for SSN), directors expect us to keep their information confidential. What I typically do is tell the non-domiciliary state that the bio has been filed with Vermont DFR and they can contact Vermont for access to the bio if need be. So far that has been successful.

Sincerely,

Kate Boucher

Kathryn M. Boucher, CPA, ARM-E, ACI, FCI
Director of Captive Management
Premier Insurance Management Services - a Premier, Inc. company
American Excess Insurance Exchange, Risk Retention Group
150 Dorset St., PMB #238
S. Burlington, VT 05403
802-863-4400 (T) | 802-343-2015 (M) | 704-733-2229 (F)
Kate_boucher@premierinc.com
For information on AEIX: www.aeixrg.com
## Risk Retention Group (E) Task Force – 2019
**Updated 9/19/19**

<table>
<thead>
<tr>
<th>Concern/Issue</th>
<th>Possible Action</th>
<th>Status and Considerations</th>
</tr>
</thead>
</table>
| Fees charged by non-domiciliary states (initial and renewal registration fees) | • Develop FAQ ✓  
• Updates to RRPG Handbook  
• Updates to the Model Risk Retention Act | Discussed in FAQ                                                                          |
| Delays by non-domiciliary states in processing registration forms            | • Develop FAQ ✓  
• Updates to RRPG Handbook  
• Enhance domiciliary state expectations ✓  
• Consider subjecting RRGs to Part D of accreditation requirements | Discussed in Best Practices, including enhancing domiciliary state expectations |
| Time and resources needed to review and process registrations               | • Enhance domiciliary state expectations ✓ | Included in Best Practices                                                                |
| Lack of instructions/clarity in registration process (includes questions about immediacy of writing once registration submitted) | • Updates to RRPG Handbook  
• Updates to Company Licensing Best Practices Handbook | Updated registration form and Included discussion in FAQ and Best Practices |
| Registration forms received that are not complete or accurate (includes business plans that do not reflect current operations) | • Registration Form review Instructions ✓  
  ○ Updates to RRPG Handbook  
  ○ Updates to Company Licensing Best Practices Handbook | Updated the registration form itself                                                      |
| Registration forms received that contain violations                        | • Registration Form review Instructions ✓  
  ○ Updates to RRPG Handbook  
  ○ Updates to Company Licensing Best Practices Handbook  
• Develop FAQ ✓ | Updated the registration from itself                                                    |
<p>| Registration forms received for RRG that is insolvent or nearly insolvent   | • Enhance domiciliary state expectations ✓ | Updated registration form and Included discussion in Best Practices of potential action that can be taken |
| Options for recourse by non-domiciliary state if concerns with RRG          | • Develop FAQ – References to LRRA ✓ | Discussed in FAQ and Best Practices                                                      |</p>
<table>
<thead>
<tr>
<th>Notification to non-domiciliary state if serious issues are noted with RRG</th>
<th>• Enhance domiciliary state expectations (communication)</th>
<th>Discussed in FAQ and Best Practices</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-domiciliary state requesting access to same information/detail domiciliary state has upon registration (bios, etc.)</td>
<td>• Enhance domiciliary state expectations (communication)</td>
<td>Discussed in FAQ and Best Practices</td>
</tr>
<tr>
<td></td>
<td>• Updates to online NAIC databases</td>
<td></td>
</tr>
</tbody>
</table>
November 19, 2018

VIA EMAIL – David.Provost@vermont.gov

NAIC RRG Working Group
Attn: David Provost, Chairman
Vermont Department of Banking, Insurance
89 Main Street, Drawer 20
Montpelier, VT 05602-3101

Re: Request for RRG Working Group Input and Assistance
With Respect to Non-Domiciliary State Registration Actions

Dear Chairman Provost:

This letter is being written on behalf of the National Risk Retention Association (NRRA) to inform the RRG Working Group (Working Group) regarding the imposition of LRRA-prohibited actions on RRGs and the abuse of the registration mechanism by non-domiciliary states. We are seeking the support and proactive attention of the NAIC to benefit the RRG industry as a whole and to achieve consistency in the ways in which our members are treated by all states.

The issues fall into two categories.

Fees

The imposition of state-mandated fees by non-domiciliary states is not permitted under the LRRA. 1 RRGs are now paying over $770,000 per year in fees being charged by a little more than half of all states.

The increasing number of states imposing fees is frankly a matter of great concern for RRGs. The cost of challenging these fees by an individual RRG is prohibitive, which effectively means that the RRG has no effective recourse.

Registration

Section 3902(d) of the LRRA permits a non-domiciliary RRG to do business in a state immediately upon submitting to that state the information delineated in that section. The seminal federal court case on Risk Retention Groups, Nat’l Risk Retention Ass’n v. Brown, 927 F. Supp. 195 (M.D. La. 1996) confirms this position. There is no federal court decision to the contrary.

Consistent with the lead-state regulatory scheme of the LRRA, many states will promptly issue confirmation of an RRG’s registration in the state upon their receipt of the requisite information mandated under the LRRA and evidence of the RRG’s licensure by its domiciliary regulator. Unfortunately, more states are imposing a “review” process not unlike that imposed on traditional licensed insurers (and in some cases the exact same procedure) when it comes to the registration filing for foreign RRGs. Not only are more states initiating so-called “review” procedures for RRG registration filings, an increasing number of states are routinely taking substantially longer to “review” registration filings.

Beyond the initial registration of a foreign RRG, some states impose an ongoing annual “registration renewal” filing submission or process (e.g., Alaska, California, Iowa, Massachusetts, Mississippi, North Carolina and North Dakota). California’s RRG registration renewal form is five (5) pages long and is “reviewed” by the state insurance department for the RRG’s continued registration.

All of the hurdles outlined above fall well outside the scope of permissible non-domiciliary state authority and run counter to the original premise of the LRRA for the operation of an RRG. Rather than accepting the lead-state regulatory scheme for conducting business in non-domiciliary jurisdictions, many states, in effect, are attempting to second-guess the RRG’s domicile.

These problems represent a serious concern to the RRG community. To date the NAIC utilizes its “accreditation” standards to assess how well domiciliary states regulate their RRGs, but does not consider the unlawful actions undertaken by non-domiciliary states against RRGs.

We would appreciate the opportunity to address these issues in detail and to respond to your inquiries. We would appreciate your placing this letter on the agenda for the next meeting of the Working Group.

Thank you for your attention to this matter.

Very truly yours,

Joseph E. Deems
Executive Director
Chairman, Government Affairs
National Risk Retention Association (NRRA)

cc by email: Sandy Bigglestone (sandy.bigglestone@vermont.gov)
Becky Meyer (BMeyer@naic.org)
Robert H. Myers, Jr. (rmyers@mmmlaw.com)
July 19, 2019

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

Dear Commissioner Pieciak and Members of the Risk Retention Group (E) Task Force,

On behalf of the Vermont Captive Insurance Association (VCIA) and its 450 member organizations, I am writing to support your efforts to clarify the issues around Risk Retention Groups (RRGs) and their registration in non-domiciliary states. As you know, the State of Vermont is home to approximately 40% of the roughly 220 active RRGs operating in the United States, most which are members of VCIA. Your activities in this endeavor are both timely and appreciated.

As with the comments filed by the National Risk Retention Association (NRRA) on June 10th, we agree that the NAIC Risk Retention Group Registration Form is not the root cause of the problems that have been identified. Rather, these problems are a direct result of the efforts of non-domiciliary states to impose registration requirements and fees that are not permitted by the Liability Risk Retention Act. These impermissible efforts have resulted in unnecessary expense, delay and frustration on the part of countless organizations seeking to utilize this important risk management tool.

VCIA supports the Task Force’s development of an FAQ document and other guidelines to educate state regulators on the registration process for non-domiciliary RRG’s established by the LRRA. We agree with the NRRA that the FAQ and other materials should conform with the requirements of the LRRA and should clarify the scope of non-domiciliary state authority under the LRRA. We believe the examples provided by the NRRA memo are helpful in this regard.
VCIA Letter to NAIC RRG Task Force | July 19, 2019 | Page 2

We also agree with NRRA’s suggestion that communication between non-domiciliary and domiciliary state regulators can help to resolve some of the problems in this area. To be clear, under the LRRA, submission of a plan of operation and feasibility study approved by an RRG’s state of domicile are the only requirements to register in a non-domiciliary state. Nevertheless, improved communication between non-domiciliary and domiciliary regulators may help avoid delays in acknowledgment of registration and other problems. For example, if a non-domiciliary regulator has a concern or a question regarding a plan of operation or feasibility study approved by the domiciliary regulator, establishing protocols for clarification without imposing unreasonable delays in acknowledgment of the RRG’s registration is important.

The same is true if an issue arises concerning a disparity between the laws of the non-domiciliary and domiciliary states. Any such issue should be resolved in a manner consistent with the LRRA’s designation of the domiciliary state as the lead state regulator. For solvency concerns and other matters, an order of remedies that will assist non-domiciliary states to communicate with domiciliary regulators and, if need be, secure resolution of issues in a manner compliant with the LRRA should be created.

Finally, VCIA concurs with the suggestion that the NAIC (1) request states to examine and, if necessary, amend their RRG laws to ensure they are consistent with the LRRA and the NAIC Model Risk Retention Act; and (2) amend the Licensing Best Practices Handbook to clarify that RRG registration is not a licensing process and is subject to different standards, as set forth in the Risk Retention and Purchasing Group Handbook and other NAIC guidance specific to RRGs.

VCIA would be glad to provide any assistance to the furthering of the task force’s efforts in creating a clear pathway for state insurance regulators to establish a fair and consistent regulatory framework for the risk retention industry.

Thank you for your consideration of our comments.

Sincerely,

Richard Smith
President