



Date: 9/12/22

Virtual Meeting

**RISK RETENTION GROUP (E) TASK FORCE**

Wednesday, October 5, 2022

2:00 – 3:00 p.m. ET / 1:00 – 2:00 p.m. CT / 12:00 – 1:00 p.m. MT / 11:00 a.m. – 12:00 p.m. PT

**ROLL CALL**

Kevin Gaffney, Chair	Vermont	Sharon P. Clark	Kentucky
Karima M. Woods, Vice Chair	District of Columbia	Troy Downing	Montana
Mark Fowler	Alabama	Barbara D. Richardson	Nevada
Andrew N. Mais	Connecticut	Russell Toal	New Mexico
Trinidad Navarro	Delaware	Mike Causey	North Carolina
Colin M. Hayashida	Hawaii	Michael Wise	South Carolina
Doug Ommen	Iowa	Carter Lawrence	Tennessee

NAIC Support Staff: Becky Meyer

**AGENDA**

1. Consider Adoption of its April 19,2022 Meeting Minutes Attachment One  
—*Sandra Bigglestone (VT)*
2. Consider Adoption of its 2023 Proposed Charges Attachment Two  
—*Sandra Bigglestone (VT)*
3. Consider Adoption of Proposed Preliminary Memo Attachment Three  
—*Sandra Bigglestone (VT)*
  - Comment Letter—National Risk Retention Association Attachment Three-A
4. Consider Exposure of Task Force Recommendation on Application of Group Capital Calculation to Risk Retention Groups Attachment Four  
—*Sandra Bigglestone (VT)*
5. Consider Exposure of Financial Analysis Handbook Guidance on Consideration of Group Capital Calculation—*Sandra Bigglestone (VT)* Attachment Five
6. Receive Updates on Related NAIC and/or Federal Actions  
—*Sandra Bigglestone (VT)*
7. Discuss Any Other Matters Brought Before the Task Force  
—*Sandra Bigglestone (VT)*
8. Adjournment

SharePoint/FRS-E Committee/RRGTF/RRGTF Conference Calls/2022 Oct 5/[Agenda -RRGTF10-5-22](#)

Draft: 5/10/22

Risk Retention Group (E) Task Force  
Virtual Meeting  
April 19, 2022

The Risk Retention Group (E) Task Force met April 19, 2022. The following Task Force members participated: Michael S. Pieciak, Chair, represented by Christine Brown (VT); Karima M. Woods, Vice Chair, represented by Sean O'Donnell (DC); Jim L. Ridling represented by Jennifer Haskell (AL); Andrew N. Mais represented by represented by Fenhua Liu (CT); Doug Ommen represented by Kim Cross (IA); Sharon P. Clark represented by Russell Coy (KY); Troy Downing represented by Steve Matthews (MT); Mike Causey represented by Jackie Obusek (NC); Russell Toal represented by Leatrice Geckler (NM); Michael Wise represented by Greg Delleney (SC); and Carter Lawrence represented by Jonathan Habart (TN).

1. Adopted its 2021 Fall National Meeting Minutes

Mr. O'Donnell made a motion, seconded by Mr. Matthews, to adopt the Task Force's Nov. 30, 2021, minutes (*see NAIC Proceedings – Fall 2022, Risk Retention Group (E) Task Force*) minutes. The motion passed unanimously.

2. Exposed a Proposed Preliminary Memorandum

Ms. Brown stated that in 2021, a draft template for an RRG Preliminary Memorandum was developed with the goal that a domiciliary state will complete the template when a new risk retention group (RRG) is formed and there is no Insurer Profile Summary (IPS) available. This document would form the basis of the IPS, which would replace the Preliminary Memorandum once the first annual statement filing is received. The completed Preliminary Memorandum template can be provided upon request to states the RRG is initially registering in. Ms. Brown summarized the template (Attachment A).

Mr. O'Donnell noted the template can help improve communication and helps not only non-domiciliary states, but also domiciliary states as they go through the initial licensing process. Ms. Brown agreed the template would be helpful for domestic states to ensure key items are reviewed and considered during the initial licensing process. Ms. Haskell stated that as a domestic state for RRGs, responding to questions from non-domiciliary states can become time-consuming. This document would help domestic states respond to non-domiciliary states in a much more efficient manner for both states.

Heather Ross (National Risk Retention Association—NRRRA) summarized a letter from the NRRRA (Attachment B) and stated there is concern that this additional document could have the opposite effect and lengthen the registration process for new RRGs in non-domestic states. A non-domestic state may hold up the registration of an RRG if this documentation is not provided even though it is not required for registration under the federal Liability Risk Retention Act (LRRRA). Joseph Deems (NRRRA) agreed that from the perspective of the RRG industry, many RRGs face unnecessary delays. He said the NRRRA is supportive of the work the Task Force has done to offer best practices and improve communication, but in some instances, the additional guidance has been used as an excuse to hold up a registration that has met the minimum requirements in the LRRRA and, therefore, should not be delayed. A similar challenge is possible if a domestic state chooses not to use this voluntary template, and a non-domestic state delays registration because of it.

Ms. Haskell responded that the Preliminary Memorandum template sets the base for the IPS and is, therefore, a benefit for the domestic state to prepare it. If the work must be done due to domiciliary state requirements, including the requirement to create an IPS once statements are filed, then a standard format across states would

be beneficial. This standard template is preferable to the varied requests that will likely come from non-domiciliary states and should speed up the communication process.

The Preliminary Memorandum was exposed for a 30-day public comment period ending May 20.

### 3. Discussed Application of the GCC to RRGs

Ms. Brown stated that in 2020, the NAIC adopted revisions to the *Insurance Holding Company System Regulatory Act* (#440) and the *Insurance Holding Company System Model Regulation with Reporting Forms and Instructions* (#450). The revisions include a requirement for all groups to submit a group capital calculation (GCC). Per the model language, all groups with at least one insurer and one affiliate are subject to the filing, at least once. However, the Financial Regulation Standards and Accreditation (F) Committee exposed the accreditation requirement such that an exemption can be granted to the filing without the requirement to file once. This allows a holding company group to request an exemption, and the commissioner has discretion to allow the exemption. Ms. Brown stated that the Task Force has a charge to follow the actions of the Financial Regulation Standards and Accreditation (F) Committee and assess whether and/or how the changes should apply to RRGs and their affiliates. Since the proposed accreditation standard is now in the one-year exposure period, the Task Force will be drafting a recommendation to the Committee on applicability of the standard to RRGs.

Ms. Brown proposed that the Task Force draft a recommendation in support of applying the standard to RRGs, as long as the exemption without an initial filing remains part of the standard. She stated that this proposal provides flexibility to handle each RRG group appropriately—without limiting regulatory authority, but also recognizing that authority should be applied on a case-by-case basis. She also reminded the Task Force that the filing is done at the group level with the lead state. If an RRG is part of a larger insurance holding company group, the filing would be done at the parent company level. Therefore, this discussion is applicable when the RRG is the sole or lead insurer in the group.

Mr. Delleney, Mr. Matthews, and Mr. O'Donnell agreed with the suggestion to provide a recommendation to the Financial Regulation Standards and Accreditation (F) Committee in support of applying the updated standard to RRGs as long as the exemption without filing once remained part of the standard. NAIC staff were directed to draft a recommendation to the Committee for consideration by the Task Force during a future meeting.

Ms. Brown stated that consideration may also be given to drafting RRG-specific guidance on factors that may be considered in making an exemption determination. There is already some guidance on this topic in the *Financial Analysis Handbook* for groups in general, so RRG-specific considerations may also be helpful. Mr. O'Donnell and Mr. Delleney agreed to help draft potential guidance for consideration. Other Task Force members or interested state insurance regulators were invited to share their interest in drafting guidance that can be presented to the Task Force during a future meeting.

Mr. Deems asked if there should be consideration of how states determine which groups may or may not be exempt. Ms. Brown stated that additional consideration of capital structures and holding company determinations may be helpful and that training is also an area to look into. A regulator call to share current practices and considerations may generate best practices and additional training recommendations.

4. Received an Update on the Revisions to Model #870

Ms. Brown stated that in 2021, the Surplus Lines (C) Task Force began a project to update the *Nonadmitted Insurance Model Act* (#870) to modernize the model and bring it into alignment with the federal Nonadmitted and Reinsurance Reform Act. A drafting group has since been working on revisions and expects to bring a draft to the Surplus Lines (C) Task Force in the next month or two for exposure. While this work is still ongoing, a concern has been raised that the updates could create inconsistencies between the NAIC model and the federal Liability Risk Retention Act(LRRA) in regard to risk purchasing groups. The Risk Retention Group (E) Task Force does not typically consider issues associated with purchasing groups, but it does work closely with the LRRA. Ms. Brown stated that the issue in question is in regard to how “home state” is defined for unaffiliated entities—in this case, purchasing groups—which affects tax treatment and whether the group works directly with one home state versus individual states.

Mr. Deems stated that the NRRRA submitted a letter to the Surplus Lines (C) Task Force raising concerns about the lack of clarity in defining “affiliated” as it relates to Model #870, and the potential implications. The ambiguity has tax implications that need to be sorted out through the model revisions.

Ms. Brown noted that revisions are still in the drafting process and that there will be a public exposure period. Ms. Brown asked that once the exposure is made public that the information be sent to the Task Force, interested state insurance regulators, and interested parties for consideration.

6. Considered Training/Educational Opportunities for RRG Regulations

Ms. Brown stated that an ongoing consideration for the Task Force is training or educational opportunities on RRG specific topics. Varying capital structures and holding company structures and/or exemptions are areas that have been raised as possible topics. The NAIC does maintain an online course that covers the basics of RRGs, but there may be additional areas not covered in this training that would warrant additional education.

Ms. Haskell agreed that a number of training topics could be helpful, including differences in GAAP and statutory accounting principles, how GAAP accounting may affect risk-based capital calculations (RBC), and the impact of permitted practices for RRGs. Mr. Deems noted that the NRRRA would be interested in helping with training on case law related to RRGs. Ms. Brown stated that the feasibility of these ideas would be considered and discussed with the Task Force during a future meeting.

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

SharePoint/NAIC Support Staff Hub/Member Meetings/ECMTE/RRGTF/4.19.22RiskTFmin

## 2023 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 actions affect the NAIC Financial Regulation and Accreditation Standards Program, assess whether and/or how the changes should apply to RRGs and their affiliates.
  - B. Monitor and analyze federal actions, including any U.S. Government Accountability Office (GAO) reports. Consider any action necessary as a result of federal activity.
  - C. Monitor the impacts of recent tools and resources made available to domiciliary and non-domiciliary state insurance regulators pertaining to RRGs. Consider whether additional action is necessary, including educational opportunities, updating resources and further clarifications.

NAIC Support Staff: Becky Meyer

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## RRG PRELIMINARY MEMORANDUM

### **RRG Preliminary Memorandum**

An RRG Preliminary Memorandum is developed by the domestic state for a risk retention group (RRG) upon approving the initial licensing of the RRG. The information in this document will serve as a summary of key considerations in assessing and approving the license. The information will also serve as the base for developing an Insurer Profile Summary (IPS) once the RRG begins writing business and files its annual statement. The role of the RRG Preliminary Memorandum is for both internal communication within the domestic state and for external communication with other states in which the RRG is authorized to register and has submitted a registration form. In accordance with the federal Liability Risk Retention Act (LRRRA) a non-domestic state must rely on the domestic state to approve which states the RRG may write in. The non-domestic state does not perform their own review of the application for licensing in the domestic state but relies on the information in the RRGs registration form and communication from the domestic regulator. The RRG Preliminary Memorandum is not required, however, its use can help improve transparency and communication between regulators and reduce potential delays in registration. Additional recommendations regarding transparency and communication can be found in the RRG best practices and frequently asked questions documents on the Risk Retention Group (E) Task Force website.

A template that can be used to develop the RRG Preliminary Memorandum is provided below; however, the actual form and content should be determined by each respective state.

**XX DEPARTMENT OF INSURANCE  
RRG PRELIMINARY MEMORANDUM  
COMPANY NAME  
Date of Review**

<p><b>State Contact</b> List here</p> <p><b>List States Where Approved to Write Business</b> List all approved states here</p> <p><b>Accounting Standard</b> GAAP, modified GAAP, SAP</p> <p><b>Captive Manager</b> List name here List key contact here List phone here List email here</p> <p><b>Contact at Insurer</b> List name here List phone here List email here</p>
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**BUSINESS SUMMARY**

Provide a brief description of the risk retention group (RRG) and a summary of the business operations of the RRG. Consider inclusion of the following.

- Purpose of the RRG and the benefits gained by creating the RRG (i.e., is it meeting a need not met in the commercial market, formed by a promoter looking for a group, etc.).
- Describe the approved coverages and comment on their compliance with the LRRRA. Include policy limits and net retention.
- Describe the ownership structure and/or key members, association, or sponsor.
- Describe the capital structure of the RRG. Include minimum capital and surplus requirements, use of letters of credit, surplus notes, ability to raise additional capital, etc.
- Comment on how the business is produced (i.e., direct writings, agent(s), managing general agent (MGA), managing general underwriter (MGU)).

**GOVERNANCE**

Discuss the makeup of the board of directors and other oversight considerations including compliance with governance requirements in the *Model Risk Retention Act* (#705).

Discuss if the RRG is MGA or producer controlled.

Discuss service providers used.

Confirm background checks were done.

**PROFORMA FINANCIAL SNAPSHOT**

Proforma financial data may be summarized in a narrative format, chart format, or a combination. Information may include key financial statement items and/or key ratios. Sample data is shown below but the format, number of years of data, line items and ratios included should be customized. Consideration should be given to what information provides the most insight for the newly formed RRG. Information related to the feasibility study, including who performed the study may also be included.

**Assets and Liabilities**

<u>Years Ended December 31</u>	<u>20XX</u>	<u>20XX</u>
Total Invested Assets	219	253
Other Assets	111	131
<b>TOTAL ASSETS</b>	<b>330</b>	<b>384</b>
<b>LIABILITIES</b>		
Insurance reserves, net	97	95
Other liabilities	169	193
<b>TOTAL LIABILITIES</b>	<b>266</b>	<b>288</b>

Capital and Surplus	64	96
<b>TOTAL LIABILITIES AND C&amp;S</b>	<b>330</b>	<b>384</b>
<b>Operations</b>	<u><b>20XX</b></u>	<u><b>20XX</b></u>
Premiums, net	218	233
Investment income (net of gains/losses)	1	8
Other income	0	0
<b>Total revenues</b>	<b>219</b>	<b>241</b>
<b>LOSSES, BENEFITS AND EXPENSES</b>		
Incurred losses, net	177	157
Expenses	77	80
<b>Total losses and expenses</b>	<b>254</b>	<b>237</b>
Other	0	2
<b>NET INCOME</b>	<b>(35)</b>	<b>2</b>

### **AREAS OF INTEREST**

Provide a brief summary of the following items when applicable or noteworthy.

- Reinsurance
- Investment policy
- Related Parties
- Restrictions or special requirements such as permitted practices
- Additional details for coverages that require special underwriting, discounting and tail coverages
- Other

### **IMPACT OF HOLDING COMPANY ON INSURER**

Summarize the evaluation of the impact of the holding company system on the domestic insurer. Or state that the RRG is not part of a holding company group. The summary should include whether a disclaimer of affiliation or any other exemption or waiver related to holding company requirements has been granted, and the rationale for the determination.

### **KEY RISKS AND SUPERVISORY PLAN**

Summarize key risks identified and/or items that require further monitoring by the analyst or specific testing by the examiner. In addition, indicate if the Company is or should be subject to any enhanced monitoring, such as monthly reporting, a targeted examination or a more frequent exam cycle. Key risks may relate to the areas of interest above or may be separate considerations. Information should be brief and include prospective considerations.

Document the date of the first expected examination and the planned examination cycle.

Analysis Follow-Up

Examination Follow-Up



## 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 federal Liability Risk Retention Act (LRRRA) and (2) the NAIC *Model Risk Retention Act* (#705).

### ***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 LRRRA, 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 LRRRA [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, the following documents may be used for this request with modifications as necessary: Attachment A – Inquiry Template (when specific questions or concerns not typically addressed on the above documents arise) may be used for this request with modifications as necessary. Attachment B – RRG Preliminary Memorandum (for a new RRG in which the IPS is not yet available)

### **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-domiciliary state cannot reject a complete registration\* that complies with those laws of the non-domiciliary state that are not preempted under the LRRRA. In the event a non-domiciliary state has concerns with an RRG registration, such concerns should 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 to ensure all required information is entered on the form 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 registration\*, 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.

\*Refer to the document titled “Risk Retention Groups: Frequently Asked Questions”, 3(c) for the definition of a complete registration form.

### **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.

### **General Licensing Guidance**

Domiciliary states should ensure the RRG’s application for licensing, which includes the plan of operation and 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 and/or concerns about the management or performance of the company.
6. Results of any financial analysis and/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].



**VIA ELECTRONIC MAIL ONLY**

April 15, 2022

Michael S. Pieciak  
Chair, NAIC Risk Retention Group (E) Task Force  
1100 Walnut Street  
Suite 1500  
Kansas City, MO 64106-2197

Attention:     Becky Meyer ([bmeyer@naic.org](mailto:bmeyer@naic.org))  
                  Sandy Bigglestone ([sandy.bigglestone@vermont.gov](mailto:sandy.bigglestone@vermont.gov))  
                  Christine Brown ([christine.brown@vermont.gov](mailto:christine.brown@vermont.gov))

**Re:     Risk Retention Group (E) Task Force  
          RRG Preliminary Memorandum and Best Practices Update**

Dear Commissioner Pieciak:

We appreciate the opportunity to submit our comments for consideration by the Task Force with respect to its latest deliberations bearing on the initial registration of risk retention groups (RRGs) in non-chartering jurisdictions. At present, the Task Force is contemplating a revision to the “RRG Best Practices” to include a new “RRG Preliminary Memorandum” to be completed by domiciliary regulators for any new RRG for which an Insurer Profile Summary (IPS) is not yet available to non-domiciliary regulators.

The guidance for state insurance regulators previously promulgated by the Task Force and adopted December 7, 2019, the NAIC’s Risk Retention Groups: Frequently Asked Questions (“FAQs”) and Best Practices – Risk Retention Groups (“Best Practices”), was an excellent effort on the part of the Task Force in addressing the delays, issues and over-reaching on registration issues frequently faced by RRGs in the initial registration process. The National Risk Retention Association (“NRRA”) applauds the work of the Task Force in this critical concern for RRGs and deeply appreciates the Task Force’s invitation for input by NRRA in drafting this important guidance.

While we broadly commend the intention of the Task Force to continue in its efforts to alleviate the difficulties encountered by RRGs in many non-chartering jurisdictions in securing prompt registration consistent with the Liability Risk Retention Act (“LRRRA”), 15 U.S.C. Sec. 3901 et seq., we do have some concerns that the further proposals for a Best Practices Update and RRG Preliminary Memorandum could potentially lead to the unintended and entirely opposite result of further slowing rather than easing the initial registration process for RRGs.

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Michael S. Pieciak, Chair

Re: RRGTF - RRG Preliminary Memorandum and Best Practices Update

April 15, 2022

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The present guidance promulgated for state regulators properly sets forth that the registration of an RRG which has submitted a complete registration consistent with the LRRRA may not be unreasonably delayed, and further provides that such registration should be confirmed by a non-domiciliary state within 30 days of submission. A non-domiciliary state regulator may reach out to the domiciliary regulator if it desires additional information or has any concerns, but the FAQs make clear that any such requests to the domiciliary regulator should not impact the prompt issuance of confirmation of registration of an RRG that has submitted a complete registration.

In the event that a non-domiciliary regulator has any specific concerns or questions it wishes to direct to the domiciliary regulator of the RRG requesting registration, the Best Practices currently includes an “Inquiry Template” with 11 enumerated inquiries that a non-domiciliary regulator may use in whole, in part, or as a guide. Indeed, we are aware of instances where these exact template inquiries have been submitted in exchanges between non-domiciliary and domiciliary regulators.

While there are several states that do adhere to the Best Practices guidance and issue confirmation of registration of some RRGs within or close to the recommended time frame, the experience reported to us by many of our members is that, unfortunately, many other states still do not, in fact, follow this protocol. Despite the Best Practices guidance, several state regulators continue to insist that the registration of a non-domiciliary RRG must be subjected to the same or similar review process that applies in the case of an application for a fully licensed, traditional insurer. In these cases, the review process of a new RRG registration submission can extend beyond days and into months. Moreover, while it was not intended that the Best Practices inquiry template should add to any delay of an RRG’s registration, NRRA is aware of reported instances where the reason cited for delay in confirming registration of an RRG is that the state regulator is waiting on response from the domiciliary regulator to inquiries formulated based on the Best Practices inquiry template.

The current guidance for regulators in the FAQs and Best Practices properly recognizes that:

“The domiciliary state maintains authority and has responsibility to regulate the formation and operation of a Risk Retention Group (RRG)” (Page 1, RRG Best Practices).

And that:

“Following receipt of a complete registration, a non-domiciliary state should notify the RRG within 30 days that its registration is confirmed.”



Michael S. Pieciak, Chair  
Re: RRGTF - RRG Preliminary Memorandum and Best Practices Update  
April 15, 2022  
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With the foregoing as a background, we are concerned that more non-domiciliary regulators may elect to postpone confirming registration or further extend registration delays already occurring predicated upon their alleged reliance upon their prospective receipt of the proposed Preliminary Memorandum. It would also seem that the proposed Preliminary Memorandum would impose an additional obligation on the domiciliary regulator that may be largely unnecessary and duplicative of the Insurer Profile Summary (IPS) that will ultimately be developed by that regulator and available to non-domiciliary regulators. Perhaps more importantly also, NRRA is concerned that the cited reasons for the Memorandum (that is, to share in summarized form the domiciliary regulator’s “key considerations in assessing and approving the license”) may inadvertently open the door to an expectation of entitlement on the part of non-domiciliary regulators to more information than is strictly required under the LRRRA for the purpose of initial registration of an RRG. Fostering such an expectation could conceivably result in the unintended consequence of further delays in the registration process.

Consistent with the requirements of the LRRRA, it is sufficient for registration purposes that the non-domiciliary regulator receive a copy of the plan of operation as submitted to and approved by the domiciliary regulator. Nothing further is required for registration by the plain language on of the LRRRA. For the reasons cited above, we believe the proposed RRG Preliminary Memo may ultimately prove to be counterproductive to the Task Force’s stated goal of reducing registration delays.

In conclusion, the National Risk Retention Association appreciates your consideration of our comments in this matter. Should you need any further input in this regard, please do not hesitate to contact the undersigned.

Very truly yours,

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

Joseph E. Deems CA SBN 64012  
Executive Director  
National Risk Retention Association

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

**MEMORANDUM**

**TO:** Financial Regulation Standards and Accreditation (F) Committee  
**FROM:** Risk Retention Group (E) Task Force  
**DATE:** September 1, 2022  
**RE:** Response to Group Capital Calculation Accreditation Standard Exposure

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The Risk Retention Group (E) Task Force is charged with following the work of the Financial Regulation Standards and Accreditation (F) Committee and providing input on the applicability to risk retention groups (RRGs) of new or revised standards. The F Committee exposed significant elements to include the 2020 revisions to the *Insurance Holding Company System Model Act* (#440) and *Insurance Holding Company System Model Regulation* (#450) as updates to the Part A accreditation standards. The revisions implement a Group Capital Calculation (GCC) for the purpose of group solvency supervision and a Liquidity Stress Test (LST) for macroprudential surveillance.

The Task Force discussed the proposed revisions and provides the following recommendations.

**Liquidity Stress Test**

The Task Force recommends the proposed significant elements not be included in the RRG Part A standards because the Liquidity Stress Test applies to large life insurers and RRGs are not authorized to write life business.

**Group Capital Calculation**

The Task Force recommends that the proposed significant elements be included in the RRG Part A standards, with the understanding that the proposed significant elements are adopted as exposed. Specifically, the allowance for commissioners to grant exemptions to groups meeting the qualifications set forth in Model #450 Section 21A and Section 21B without the requirement to file at least once. This flexibility is necessary to allow for the unique nature of many RRG holding company groups without limiting regulatory authority in situations when the filing is appropriate.

Thank you for the opportunity to comment on this matter.



**VI.H. Group-Wide Supervision – Group Capital Calculation (Lead State) – Analyst Reference Guide**

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**Considerations When Exempting Groups**

As stated elsewhere within this guidance, the GCC and its related provisions in the NAICs Model Holding Company Act and corresponding regulation are not designed or otherwise intended for regulators to take regulatory action based on the reported level of a group's GCC. Rather, the GCC is intended to be a tool to better understand the risks of the group, mostly through the trending of the financial information in the "Input 4-Analytics" tab. However, specific to the provisions of the NAICs Model Holding Company Act and corresponding regulation, the Group Capital Calculation (E) Working Group did believe that the GCC might be more helpful for some groups and not as much for others when it developed criteria within the Act and the regulation for exemptions. On this point, the Working Group believed that in general the GCC would be more helpful for those groups that had 1) non-U.S. insurers within the group; 2) a bank within the group, or 3) a more material degree of non-insurers. Specific to the point regarding non-U.S. insurers or banks, the GCC is based upon the premise that the most relevant measure of capital is the actual legal entity requirements of capital from the applicable regulator. On this point, the required capital, as well as the trending of information on these particular legal entities might be the most valuable, particularly if the relative operations and assets of these entities compared to the U.S. RBC filers is material. Similarly, while the calculated capital on the non-insurance entities may not be as relevant as required capital on regulated insurers or banks, if the operations and assets of non-insurers relative to those of US RBC filers are material, the GCC may provide greater value to such types of groups.

To these points, the NAICs Model Holding Company Act and corresponding regulation contain possible exemptions for groups that have less than \$1 billion in premium and that do not possess any of the three characteristics just described. The possible exemptions exist after the GCC has been filed once, because without seeing the completed GCC at least once for a group, it may be difficult for the lead-state to determine if the GCC has value. However, it should also be understood that these three criteria of non-U.S. insurer, bank, or non-material non-insurers are not the only situations where the GCC would be valuable to the lead-state. As a reminder, all states are required to assess the sufficiency of capital within the holding company structure; prior to the GCC, this was done using various methods (e.g., debt to equity ratios, interest coverage ratios, existing RBC ratios and relative size of insurance). The GCC is expected to enhance a state's ability to make this assessment more easily. Therefore, in deciding if a group should be exempted, the lead-state will need to consider a number of factors, including how easily it can make this assessment without the GCC. For small groups where the U.S. RBC operations and assets are much larger than the non-insurance operations, it is likely the GCC would provide a smaller degree of value and exempting from the GCC may be appropriate. However, the analyst should also consider the fact that the simpler the holding company structure, the more easily the GCC can be completed. Specifically, given all of the data included in the GCC is existing data and therefore readily available to the company, a smaller and simple structured group should be able to accumulate into the GCC template in a short period of time. Also worth considering is that if such operations are contained within a number of different U.S. insurers where it is difficult to determine the degree of double counting of capital, the GCC may provide more value. To be clear, these are not the only situations where the GCC might be helpful even with a relatively small group. This is because the value may come from figures the GCC requires that the state may have otherwise not been aware of. Specifically, the GCC may identify non-RBC filers who may be experiencing some level of financial difficulties. This possible identification of information the lead-state was not otherwise aware of is the primary reason the Working Group suggested the GCC be filed once before deciding on whether a group should be exempted. While the NAIC Accreditation program may not require a state to have such authority to have the GCC filed once before exempting, this background information provided herein is intended to encourage the state to consider such possibilities before deciding on exempting a group, particularly since it may be difficult to stop an exemption in a given year once it's provided. In summary, as with everything else described in this documentation, the GCC requires judgement on behalf of the analyst and the lead-state which is based upon multiple factors including the lead-state's existing knowledge of the group. The same applies when considering whether a group should be exempt.

## **VI.H. Group-Wide Supervision – Group Capital Calculation (Lead State) – Analyst Reference Guide**

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### **Special Consideration for RRGs when Exempting Groups**

RRG's often have unique holding company structures that impact how risks are assessed and how they are regulated. For RRGs in a holding company system, the type of entities in the group as well as how much is known about the other entities play a key role in regulatory oversight, including granting exemptions from the GCC calculation. In addition to structure, factors consistent with the above guidance for all holding company groups should be considered when exempting an RRG from the GCC. Factors such as how easily the information necessary to understand the group's capital situation can be obtained without the GCC should be considered. The decision also includes whether the state already has the information needed to easily assess the sufficiency of capital within the holding company system.