

Date: 11/10/20

*Virtual Meeting
(in lieu of meeting at 2020 Fall National Meeting)*

RISK RETENTION GROUP (E) TASK FORCE

Wednesday, November 18, 2020

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

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

NAIC Support Staff: Becky Meyer/Sara Franson

AGENDA

1. Consider Adoption of its Sep. 23 Minutes—*Sandra Bigglestone (VT)* Attachment One
2. Discuss a Potential Survey to Receive Feedback on the Best Practices, Frequently Asked Questions (FAQ), and Risk Retention Group (RRG) Registration Form—*Sandra Bigglestone (VT)* Attachment Two
3. Discuss its Next Steps—*Sandra Bigglestone (VT)*
 - a. Summary of Concerns Regarding Registration of RRGs in Non-Domiciliary States Attachment Three
4. Receive Updates on NAIC Actions—*Sandra Bigglestone (VT)*
5. Discuss Any Other Matters Brought Before the Task Force—*Sandra Bigglestone (VT)*
6. Adjournment

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Draft: 10/28/20

Risk Retention Group (E) Task Force
Virtual Interim Meeting
September 23, 2020

The Risk Retention Group (E) Task Force met Sept. 23, 2020. The following Task Force members participated: Michael S. Pieciak, Chair, represented by Sandra Bigglestone (VT); Karima M. Woods, Vice Chair, represented by Sean O'Donnell (DC); Sharon P. Clark represented by Russell Coy (KY); James J. Donelon represented by Stewart Guerin (LA); Chlora Lindley-Myers represented by John Talley (MO); Matthew Rosendale represented by Steve Matthews (MT); Barbara D. Richardson represented by Peter Rao (NV); and Raymond G. Farmer represented by Michael Shull (SC). Also participating was: Cressinda Bybee (PA).

1. Adopted its March 2 and Fall National Meeting Minutes

Mr. Matthews made a motion, seconded by Mr. O'Donnell, to adopt the Task Force's March 2 (Attachment One) and Dec. 7, 2019 (*see NAIC Proceedings – Fall 2019, Risk Retention Group (E) Task Force*) minutes. The motion passed unanimously.

2. Adopted its 2021 Proposed Charges

Ms. Bigglestone stated that there are no changes to the Task Force's 2021 proposed charges compared to its 2020 charges. A new charge was added in 2020 related to monitoring work done to address both industry and non-domiciliary regulator concerns regarding the regulation of risk retention groups (RRGs). Due to COVID-19, this work is beginning late in the year, and it is expected to continue into 2021.

Mr. O'Donnell made a motion, seconded by Mr. Talley, to adopt the Task Force's 2021 proposed charges (Attachment Two). The motion passed unanimously.

3. Discussed Feedback on the Use of the Best Practices, FAQ, and RRG Registration Form

Ms. Bigglestone stated that last fall, the Task Force adopted Best Practices and a frequently asked questions (FAQ) document regarding the registration and regulation of RRGs in non-domiciliary states. The Task Force also referred changes to the NAIC Uniform Risk Retention Group Registration Form to the Property and Casualty Insurance (C) Committee, which were subsequently adopted on June 10. The goal of the Task Force is now to understand how these documents are being used and whether additional updates or new guidance is needed. Specifically, the Task Force is looking at whether states are using the new registration form, have received the form from new registrants, or have used or referenced the Best Practices and FAQ document and if any gaps have been identified.

Ms. Bigglestone said Vermont has witnessed an increase in regulator-to-regulator communication both during initial registration and during ongoing analysis, which indicates that things are moving in a positive direction. Vermont has placed the three documents on its website for ease of use. Mr. O'Donnell said Washington, DC has not received much feedback in the limited time since the new registration form has been available, but he does believe there has been an increase in communications from non-domiciliary states when their domestic RRGs are registering in another state, indicating positive initial results. Mr. Matthews said Montana has not received any negative feedback; therefore, he believes the guidance has been well received.

Robert Myers (National Risk Retention Association—NRRRA) commented on a letter provided by the NRRRA dated Aug. 7 (Attachment Three). He said everyone, including industry, is benefiting from the documents, and they are a good foundation for future benefits. The letter addresses the issue of registration and renewal fees charged by non-domiciliary states, which he says the Liability Risk Retention Act (LRRRA) does not allow, despite many states still charging these fees. The NRRRA has attempted to contact states to better understand the reason for charging the fees, but it has not been successful in getting a response as to why the fees can lawfully be charged. The NRRRA is therefore asking for help from the Task Force to survey the states and get an answer to the question of the legal basis for charging these fees. There are different answers that they have heard, such as a state law allows it or there is a bulletin that allows it, but it has been difficult to garner answers with any specificity. Mr. Myers stated that everyone would be better off if we had more information about these fees. He offered assistance from the NRRRA in the endeavor.

Ms. Bigglestone asked if the NRRRA received responses that tied the fees to the federal LRRRA or only to a particular state law or requirement. Joe Deems (NRRRA) stated that historically, issues have been resolved through normal correspondence with the state; however, regarding the issue of fees, there is often no response from the state. He said right after the Best Practices, FAQ document, and updated registration form were completed, the NRRRA saw states respond to that guidance. For example, South Carolina and Oklahoma immediately started use of the new form. Therefore, the NRRRA believes that the states will be more willing to share information related to fees with the Task Force. In the NRRRA's inquiries, Mr. Deems has found that certain states will respond to certain things, but if they do not know how to answer the question or they do not want to answer the question, they will not respond. The importance of the endeavor of gathering the information is that it provides the opportunity to look across the board and see the different states' thought processes. Part of this is motivated by many years of efforts to get answers. Mr. Deems noted that in most cases, the registration fees are too small to warrant a legal challenge; but across the board, recent statistics show over \$750,000 charged annually across the states. It should be non-adversarial to gather this information to collect the information and get a handle on what the states' thought processes are. Mr. Myers said that consistency is important; and over the years that the NRRRA has looked at this, it has not found basis in the federal LRRRA that would enable fees to be charged. If there is a law that allows these fees, it would be helpful to better understand why the fees are charged.

Ms. Bigglestone noted that gathering information is within the role of the Task Force, but she noted that there are other considerations as well. Mr. O'Donnell said a survey could be a good course of action, subject to NAIC guidance and approval. He noted that feedback related to the Best Practices, FAQ document, or new registration form would be helpful. He also noted that a challenge related to asking questions about fees is that the Task Force may face the same issue that the NRRRA has faced with responses not being received. Ms. Bigglestone said another challenge is determining how to treat the information, as many responses may need to be treated confidentiality. The Task Force may consider disclosing only a summary and not particular companies or states. Mr. Talley agreed that there is concern about whether the Task Force should gather the information and whether certain information, such as fees, can be gathered or is shareable at all. He generally supports a survey on certain topics to promote uniformity, but he wants to proceed with caution and would like to discuss it with others in his state before supporting the survey. Becky Meyer (NAIC) stated that surveys are commonly conducted at the NAIC, but what information is requested and shared and in what manner is something that should be discussed with the NAIC Legal Division. Dan Schelp (NAIC) said the NAIC Legal Division will look into the matter and consider what can be disclosed publicly. Mr. Mathews said he is generally in support of a survey, with attention to the type of information gathered and consultation with the NAIC Legal Division.

Ms. Bigglestone noted that one of the Task Force charges is to monitor the use of the tools that the Task Force has implemented for state insurance regulators and industry. Gathering information in the form of a survey is one method. Participating in calls is another way, and other ideas for monitoring and feedback are helpful. Ms. Bigglestone noted that another option might be presenting a webinar to better educate and present the use of the tools that are available. Mr. O'Donnell said a webinar would be a good way to get information out, but the question is whether there is an appetite for a webinar, especially from non-domiciliary states. The survey may be a good way to gauge interest. Ms. Bigglestone said she would work with NAIC staff to determine feasibility and next steps for a potential survey.

Mr. Coy asked NRRRA representatives to clarify if the issue with fees is with any fee or just those that are discriminatory to RRGs. Mr. Myers said the LRRRA does not permit fees, but it specifically allows taxes. A fee is typically something for a service provided by the state where a tax goes to the general treasury of the state for general purposes. There would need to be a determination of whether sums charged are fees or taxes; and if they are fees, they should not be allowed. There is a body of cases ruling on the issue. Mr. Deems stated that the NRRRA's goal is getting its arms around what is being charged and why it is being charged so it can formulate a plan on how to address these things. Education, as seen with the Best Practices and FAQ document, is a key factor. A lot of states charge so little money for the fees; the economic impact is not a determining factor, rather it is a lack of education.

Ms. Bybee said the NAIC *Model Risk Retention Act* (#705) has a reference to charging a filing fee. States that have adopted the model language and are charging a fee may be relying on this language for the fees that they are charging. Ms. Bigglestone said Vermont has determined that the language in Model #705 is not consistent with the LRRRA. Mr. Myers said it would be helpful to know if other states use the model language as the basis for charging fees. Mr. O'Donnell asked if the NAIC has any information available on the basis for the inclusion of the fee language in Model #705. Mr. Schelp said NAIC staff can look through the NAIC proceedings to see if there was specific discussion on that issue.

4. Heard Updates on NAIC Actions

Ms. Bigglestone stated that when the Task Force met March 2, the applicability of the 2011 and 2019 revisions to the *Credit for Reinsurance Model Law* (#785) and *Credit for Reinsurance Model Regulation* (#786) was discussed. A recommendation was made to the Financial Regulation Standards and Accreditation (F) Committee that both sets of revisions should apply to RRGs as part of the Part A—Laws and Regulations accreditation requirements. This recommendation was adopted by the Financial Regulation Standards and Accreditation (F) Committee and the Executive (EX) Committee and Plenary at the Summer National Meeting. The effective date is Sept. 1, 2022.

Ms. Bigglestone stated that the Task Force sent a referral to the Financial Regulation Standards and Accreditation (F) Committee regarding specific updates to the RRG-specific analysis guideline to help clarify that this guideline is applicable to all RRGs regardless of whether they are licensed as traditional insurers or captive insurers and whether they file on a U.S. generally accepted accounting principle (GAAP) or statutory accounting principle (SAP) basis. This referral was exposed by the Committee, and it will be considered for adoption at the Fall National Meeting. In addition, this discussion prompted the Financial Analysis Solvency Tools (E) Working Group to take a closer look at the procedures in the *Financial Analysis Handbook* (Handbook), and it is working to better align the Handbook with the accreditation guidelines.

Ms. Bigglestone stated that the Task Force continues to monitor the status of potential federal legislation to amend the LRRRA and expand its scope.

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

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NAIC Risk Retention (E) Task Force
Draft Survey Questions
November 10, 2020

- 1) Does your state domicile risk retention groups?
 - a. If yes, has your state implemented or provided access to the NAIC's 2019 Best Practices and FAQs for Risk Retention Groups and the NAIC's revised Uniform Risk Retention Group Registration Form adopted in 2020 by the C Committee?
 - i. If not, why?
 - ii. If yes, what method of access to the tools was used (website or other)?
- 2) Does your state have risk retention groups registered and conducting business?
- 3) Has your state implemented and used the NAIC's 2019 Best Practices and FAQs for Risk Retention Groups and the NAIC's revised Uniform Risk Retention Group Registration Form adopted in 2020 by the C Committee?
 - a) If not, why?
 - b) If yes, has your state provided access to these updated tools to the general public?
 - i) If not, why?
 - ii) If yes, how (website or other)?
- 2) Have you implemented additional means of communicating/making inquiries with RRG domiciliary regulators as part of the registration process or annual review process?
 - a) If so, did you receive timely responses and were the responses satisfactory?
 - b) What could be improved, if anything?
- 3) What areas of the updated tools do you find most beneficial in your regulatory role (what is working well)?
- 4) What areas do you feel need further clarification, improvement, expanded guidance (what is not working well)?
- 5) Do you have suggestions for the NAIC RRG TF to consider focusing on to keep moving forward with improvements or additional tools and resources?
- 6) What other topics should the NAIC RRG TF focus on to further improve the registration process and understanding of RRGs?
- 7) Are individuals in your state that would benefit from education initiatives regarding risk retention groups?
 - a) If so, what topics would be helpful to focus on?
 - b) If so, what format would be useful (i.e.: webinar)?
- 8) What suggestions do you have to best disseminate information on RRG regulation to state regulators?

Risk Retention Group (E) Task Force – 2019/2020
Updated 11/12/20

Concern/Issue	Possible Action	Status and Considerations
1. Fees charged by non-domiciliary states (initial and renewal registration fees)	<ul style="list-style-type: none"> • Develop FAQ ✓ • Updates to RRPB Handbook • Updates to the Model Risk Retention Act 	Discussed in FAQ
2. Delays by non-domiciliary states in processing registration forms	<ul style="list-style-type: none"> • Develop FAQ ✓ • Updates to RRPB Handbook • Enhance domiciliary state expectations ✓ • Consider subjecting RRGs to Part D of accreditation requirements 	Discussed in Best Practices, including enhancing domiciliary state expectations Consider domestic state best practices for licensing RRGs
3. Time and resources needed to review and process registrations	<ul style="list-style-type: none"> • Enhance domiciliary state expectations ✓ 	Included in Best Practices
4. Lack of instructions/clarity in registration process (includes questions about immediacy of writing once registration submitted)	<ul style="list-style-type: none"> • Updates to RRPB Handbook • Updates to Company Licensing Best Practices Handbook 	Updated registration form and Included discussion in FAQ and Best Practices
5. Registration forms received that are not complete or accurate (includes business plans that do not reflect current operations)	<ul style="list-style-type: none"> • Registration Form review Instructions ✓ <ul style="list-style-type: none"> ○ Updates to RRPB Handbook ○ Updates to Company Licensing Best Practices Handbook 	Updated the registration form itself
6. Registration forms received that contain violations	<ul style="list-style-type: none"> • Registration Form review Instructions ✓ <ul style="list-style-type: none"> ○ Updates to RRPB Handbook ○ Updates to Company Licensing Best Practices Handbook • Develop FAQ ✓ 	Updated the registration from itself
7. Registration forms received for RRG that is insolvent or nearly insolvent	<ul style="list-style-type: none"> • Enhance domiciliary state expectations ✓ 	Updated registration form and Included discussion in Best Practices of potential action that can be taken
8. Options for recourse by non-	<ul style="list-style-type: none"> • Develop FAQ – References to LRRB ✓ 	Discussed in FAQ and Best Practices

domiciliary state if concerns with RRG		
9. Notification to non-domiciliary state if serious issues are noted with RRG	<ul style="list-style-type: none"> Enhance domiciliary state expectations (communication) ✓ 	<p>Discussed in FAQ and Best Practices</p> <p>Continue discussion of best practices in communication between domestic and non-domestic states when violations are identified, or a registration is no longer approved by the domestic regulator.</p>
10. Non-domiciliary state requesting access to same information/detail domiciliary state has upon registration (bios, etc.)	<ul style="list-style-type: none"> Enhance domiciliary state expectations (communication) ✓ Updates to online NAIC databases 	Discussed in FAQ and Best Practices
11. Process for reporting changes at an RRG to the non-domiciliary regulator (see question 19 on the registration form)	<ul style="list-style-type: none"> Best practices for both regulators and industry 	Continue discussion