

Justin Schrader
Chief Financial Examiner, Nebraska Insurance Department
Chair, NAIC Group Solvency Issues (E) Working Group
[via-email: bjenson@naic.org]

July 16, 2021

Re: Exposure of Proposed Revisions to NAIC Financial Analysis Handbook to Implement ComFrame

Dear Mr. Schrader,

The American Council of Life Insurers¹ appreciates the opportunity to share our views on the NAIC Group Solvency Issues (E) Working Group's May 21 exposure of proposed revisions to incorporate ComFrame elements into the NAIC's *Financial Analysis Handbook* as the Working Group responds to its charge to "assess the IAIS Common Framework for the Supervision of Internationally Active Insurance Groups (ComFrame) and make recommendations on its implementation in a manner appropriate for the U.S."

ACLI offers the following recommendations for the Working Group's consideration and we look forward to opportunities to engage in this important work to better understand and influence next steps.

1. Clarify the scope of groups subject to ComFrame measures

ACLI members have expressed concern that the Handbook language would go beyond the authority of Model #440 and invite state regulators to identify groups that do not meet the Model #440 legal criteria as IAIGs. In addition, we believe that any application of ComFrame-based requirements to non-IAIG groups must be risk-based, proportionate, and based on clear legal authority.

To address this concern, we recommend:

- On page 1 (Introduction): modifying the text as follows: "~~they may also be appropriate for use in the supervision of other large insurance groups that do not yet meet the IAIG criteria. As such, analysts should use judgment in determining whether the IAIG considerations and procedures should be applied to a broader range of insurance groups.~~ In assessing any further application, analysts must not go beyond legal

¹ The American Council of Life Insurers (ACLI) is the leading trade association driving public policy and advocacy on behalf of the life insurance industry. 90 million American families rely on the life insurance industry for financial protection and retirement security. ACLI's member companies are dedicated to protecting consumers' financial wellbeing through life insurance, annuities, retirement plans, long-term care insurance, disability income insurance, reinsurance, and dental, vision and other supplemental benefits. ACLI's 280 member companies represent 94 percent of industry assets in the United States.

authority granted in model law or state law, any supervisory measures must be risk-based and proportionate to the size and makeup of the entity.”

- On page 12 (Procedures for identifying an IAIG), eliminating the following text: “~~In addition to the primary criteria for use in identifying an IAIG, although not explicitly addressed in Model #440, ComFrame guidance states that the group-wide supervisor may utilize discretion to determine that a group is not an IAIG even if it meets the criteria or that a group is an IAIG even if it does not meet the criteria, in limited circumstances. If discretion is used, then the reasons for exercising such discretion should be based on verifiable and documented quantitative and qualitative information. Examples of situations where it may be appropriate to determine that a group is an IAIG, even if it does not currently meet the criteria include but are not limited to:~~
 - ~~Growth/expansion or acquisition plans of the group~~
 - ~~Significant off balance sheet assets~~
 - ~~Situations where a temporary event or fluctuation causes the group to fall below thresholds”~~

2. Base the determination of the scope and head of the group on clear legal authority

ACLI member companies have expressed concern that the section that outlines procedures for identifying the scope and head of the IAIG (pages 13-14) effectively serves to codify new quasi-legal provisions in an NAIC manual. Notably, unlike prior and subsequent sections which are grounded in Model #440, no such grounding exists for the provisions in this section.

Because scope and head of the IAIG are fundamental to many of the proposed changes, we would appreciate the opportunity to have a conversation with NAIC staff to better understand regulators’ objectives and to help develop a solution.

3. Enable appropriate supervisor discretion and flexibility

ACLI members have expressed concern that the draft ComFrame-related guidance around the application of measures does not allow sufficient regulator discretion and flexibility.

To address this concern, we recommend:

- On page 1 (Introduction), adding the following new paragraph: “Likewise, because ComFrame is to be applied flexibly and proportionately, not every additional area of IAIG supervision will apply to each IAIG or will apply in the same way or to the same extent. Group-wide supervisors have the flexibility to tailor implementation of supervisory requirements and application of insurance supervision. ComFrame is not a one-size-fits-all approach to IAIG supervision as, ultimately, what is important is that supervisors and IAIGs achieve the outcomes set forth in ComFrame. Proportionate application, which is called for by the ICPs and ComFrame, involves using a variety of supervisory techniques and practices tailored to the insurer. The

techniques and practices applied should not go beyond what is necessary in order to achieve the intended outcomes of the ICPs and ComFrame.

- On page 15 (Other Responsibilities), inserting the underlined text as follows: “The lead state will have many procedures assigned to it, which includes determining and documenting: 1) the depth of and approach to the insurance holding company analysis; 2) the assessment of the group’s governance and enterprise risk; 3) questions addressed in a periodic meeting with the group; 4) targeted examination procedures; and 5) the extent to which there are any market conduct risks.”
- On page 16 (new IAIG paragraph), inserting the underlined text in the second sentence as follows: “In addition, key ComFrame considerations relevant to IAIGs are highlighted throughout to ensure that they are adequately addressed and incorporated, as appropriate, into holding company analysis processes and the GPS to meet the expectations of other involved international supervisors.”

4. Limit ComFrame-related guidance to groups for which the U.S. lead state is the recognized group-wide supervisor

ACLI members have expressed concern that the ComFrame guidance typically refers to IAIGs, but the intent is to limit this to IAIGs for which the lead state is the group-wide supervisor. The new “Procedures for identifying an IAIG” section, in VI.B, makes this somewhat clear by applying the IAIG designation to “U.S. based insurance holding company systems that operate internationally,” but all subsequent references refer only to IAIGs, and it is necessary for a reader to refer back to VI.B for clarity. It is also not necessarily clear that these measures should be applied to non-U.S. based IAIGs for which the lead state is the group-wide supervisor.

To address this concern, we recommend:

- Throughout the document, replacing references to IAIGs with “U.S.-based IAIGs.”
- Adding a note or footnote that says that the term “U.S.-based IAIGs” encompasses non-U.S.-based groups for which the U.S. lead state serves as the group-wide supervisor.

5. Eliminate references to the ICS

ACLI member companies have expressed concern about references to the ICS, given that the ICS will not be adopted in the U.S. and the ICS monitoring period to which this framing applies is temporary (i.e., it ends in 2024). There should not be an expectation that the ICS will be reported to group-wide supervisors beyond the end of the IAIS monitoring period.

To address this concern, we recommend:

- On page 43, (Procedure 3) modifying the text as follows: “Review the IAIG’s capital adequacy and the availability of capital to meet group-wide capital expectations, considering the regulatory capital requirements for each insurance legal entity within

the IAIG. When applicable, review group capital reporting such as the Aggregation Method (or the Group Capital Calculation) or the Reference Insurance Capital Standard (ICS) as reported to the IAIS. The review may include a comparison of group capital calculations to the Reference ICS, the extent to which material risks of the IAIG are captured, and any difficulties in implementing the Reference ICS. See also VI.J for guidance regarding discussions of group capital during IAIG supervisory college sessions.

- On page 46, modifying the text as follows: “IAIG Procedure #3 assists the analyst in assessing the group-wide capital position of the IAIG, as well as any potential issues related to capital fungibility. Also, when applicable, this procedure assists the analyst in understanding the ICS calculated by the IAIG or other reporting such as the Aggregation Method, during the ICS Monitoring Period. The ICS Monitoring Period runs from 2020 through the end of 2024 and is intended to assess the effectiveness of the newly developed standard. A main objective of the Monitoring Period is to receive feedback from insurance regulators on the Reference ICS and, if applicable, feedback on additional reporting. During the Monitoring Period, the ICS is not designed for the purpose of supervisory intervention on the basis of capital adequacy but may assist supervisors in ongoing risk assessment. During the Monitoring Period, U.S. IAIGs may report an alternative group capital calculation to the IAIS known as the Aggregation Method, which is expected to be similar to the U.S. Group Capital Calculation under development at the NAIG. The Aggregation Method will be subject to a Comparability Assessment and by the end of 2024, will be deemed to produce, or not produce, comparable outcomes to the ICS.”
- On page 96, modifying the text as follows: “Review and Assessment of Group Capital – The members of the IAIG’s supervisory college should obtain, discuss and assess group capital information from the IAIG, including which may include the Aggregation Method (or the Group Capital Calculation), or the Reference Insurance Capital Standard (ICS) as reported to the IAIS” the extent to which material risks of the IAIG are captured; 3) the appropriateness and practicality of the calculations required, and 4) any difficulties in implementing the group capital calculations by the IAIG or the group-wide supervisor.”

6. Ensure an outcomes-based approach to IAIG group reviews

ACLI member companies have expressed concerns that, in several places, the ComFrame-related guidance regarding group supervision is not sufficiently outcomes based. We believe it is appropriate for insurance groups to have processes and / or policies in place to manage various aspects of their businesses across the group such as those noted in ComFrame (e.g., CF8.5 (compliance), CF8.7 (audit), CF16.6 (investment), CF16.7 (actuarial, claims, reinsurance / risk transfer)). However, we believe the specificity around who or which area is to execute specific activities is not appropriate as it does not allow for differing organizational constructs.

To address this concern, we recommend the following:

- On page 17, revising the text as follows: “*Corporate Governance Annual Disclosure Model Act (#305) and the Corporate Governance Annual Disclosure Model Regulation (#306) provide the analyst with annual reporting from insurers on their corporate governance practices. While there is flexibility in determining the level at which governance information is reported in the annual filing, the insurer or insurance group is encouraged to make the CGAD disclosures at the level at which the risk appetite is determined, or at which the earnings, capital, liquidity, operations, and reputation of the insurer are overseen collectively and at which the supervision of those factors are coordinated and exercised, or the level at which legal liability for failure of general corporate governance duties would be placed. As such, this filing is often made at the group level and may assist the analyst in reviewing and assessing governance practices at that level.*”
- On page 17, revising the text as follows: “*If a U.S. state insurance commissioner is the global group-wide supervisor, the U.S. state insurance commissioner should receive the ORSA Summary Reports covering all material group-wide insurance operations.*”
- On pages 44-45, eliminating the term “group-wide” ahead of the various functions and their related sub-bullets described within procedures #5 through #11.
- On page 46-47, eliminating the term “group-wide” in the descriptive text for IAIG Procedures #6, #7, #8, #9, #10, and #11.b
- On page 76, revising the text as follows: “*Assess whether the group-wide risk assessment framework, or components thereof, is independently reviewed¹ at least once every three years, in order to ascertain that it remains fit for purpose.*”
- On page 77, revising the text as follows: “*Risk measurement includes stress testing, including and reverse stress testing and scenario analysis, as appropriate deemed relevant to its risk profile as well as the resilience of its total balance sheet against plausible macroeconomic stresses*”

7. Clarify the group-wide supervisor’s discretion and authority in the context of supervisory college activities

ACLI member companies have expressed concerns around some of the proposed language describing the responsibilities of the group-wide supervisor. The description of that role should reflect the group-wide supervisor’s discretion and authority in that role, including the authority over the structure, makeup and activities of a supervisory college. It should also reflect the fact that the need for a Crisis Management Group to engage in recovery and resolution planning, as well as the approach to that planning, will be unique for each group.

To address this concern, we recommend:

- On page 20, adding the following underlined sentence to end of the second-to-last paragraph: “*...To facilitate this, the group-wide supervisor should put in place a written coordination agreement between the members of the IAIG CMG. The*”

structure, participation in, and role of, any supervisory college or CMG is ultimately the responsibility of the group-wide supervisor.”

- On page 96 (Crisis Management Group- CMG), adding the following underlined text to the third main bullet: “The group-wide supervisor, in consultation with the CMG should determine whether to require that the IAIG develop a formal recovery plan to establish in advance the options to restore the financial position and viability of the IAIG in a crisis situation, as well as how and when the plan should be updated on an ongoing basis. The role, priorities, and approach of any CMG should be proportional to each group’s organization, capital structure, characteristics, and financial condition.”
- On page 96 (Crisis Management Group- CMG), modifying the following text in the second sub-bullet under the third main bullet: “~~It is recommended, t~~The group-wide supervisor considers the IAIG’s nature, scale and complexity when setting recovery plan requirements, including the form, content and detail of the recovery plan and the frequency for reviewing and updating the plan.”

8. Right size the work around fungibility and corporate governance

ACLI member companies have expressed concern that the language around fungibility and corporate governance could lead to extensive, open-ended, and unnecessarily burdensome reviews.

To address this concern, we recommend:

- On page 43, modifying Procedure 3a as follows: “~~Acknowledge~~ Consider the effect of potential legal, regulatory and operational impediments to the IAIG’s ability to transfer capital and assets within the group, including on a cross-border basis.”
- On page 52, modifying point 7 as follows: “7. Based on the analyst’s review of the CGAD and any additional information received, document any material concerns related to ~~whether the~~ appropriateness of the corporate governance framework of the group, ~~is appropriate to given~~ the structure, business, and risks of the IAIG including the risks of its legal entities, and ~~whether clear~~ the reporting lines ~~are~~ in place between the material legal entities and the Head of the IAIG.”
- On page 52, removing the sub-bullets under point 7.

9. Eliminate references to IAIS application papers

ACLI member companies have expressed concern that the proposed guidance includes references to IAIS application papers. We believe that the updates to the Financial Analysis Handbook should focus on the provisions within ComFrame.

To address this concern, we recommend:

- On pages 79 and 82, eliminating the references to the IAIS's Application Paper on Supervisory Colleges
- On page 96, eliminating the reference to the IAIS Application Paper on Recovery Planning
- On pages 96-97, eliminating the reference to the IAIS Application Paper on Resolution

We appreciate the opportunity to comment and look forward to working with you on this important initiative.

Best Regards,

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July 16, 2021

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Group Solvency Issues (E) Working Group
Nebraska Department of Insurance

c/o National Association of Insurance Commissioners
Attn: Bruce Jenson, Assistant Director – Solvency Monitoring
Via email: BJenson@NAIC.org

Group Solvency Issues (E) Working Group – ComFrame/Financial Analysis Handbook

Dear Mr. Schrader:

On behalf of AHIP’s member plans, we welcome the opportunity to comment on the proposed ComFrame-related revisions to the Financial Analysis Handbook.

AHIP members have a number of concerns with the proposed modifications to the Handbook, but our primary concern revolves around this proposal’s use of language in the Handbook to expand measures and applicability of ComFrame in ways that are not statutorily authorized. On the first page of the exposed text, there is this proposed language:

“**IAIG:** For internationally active insurance groups (IAIGs) where a state insurance regulator is acting as the groupwide supervisor (see VI.B for criteria and definitions), it may be necessary to address additional areas regarding group-wide activities and risks. Such areas are outlined in the International Association of Insurance Supervisors’ Common Framework for the Supervision of Internationally Active Insurance Groups (ComFrame) and have been incorporated throughout this chapter as deemed appropriate by state insurance regulators. While such considerations and procedures are applicable to insurance groups identified as IAIGs, they may also be appropriate for use in the supervision of other large insurance groups that do not yet meet the IAIG criteria. As such, analysts should use judgment in determining whether the IAIG considerations and procedures should be applied to a broader range of insurance groups.”

The last two sentences of this paragraph are the most troubling.

“While such considerations and procedures are applicable to insurance groups identified as IAIGs, they may also be appropriate for use in the supervision of other large insurance groups that do not yet meet the IAIG criteria. As such, analysts should use judgment in determining whether the IAIG considerations and procedures should be applied to a broader range of insurance groups.”

These two sentences should be deleted for multiple reasons. When regulators and industry worked together for months to ultimately develop the language which was adopted in December of 2014 as new Section 7.1 to Insurance Holding Company System Regulatory Act, #440 (HCA), the agreed language in 7.1.E set out measures and procedures for the Group-wide Supervisor to regulate “Internationally Active Insurance Groups,” a statutorily defined term. Notably, the HCA (as passed by the NAIC and in the states) does not contemplate granting states the authority to apply IAIG standards to insurers that are not by definition IAIGs through the financial analysis or any other state regulatory process. Nonetheless, as now proposed, the decision to apply IAIG procedures to non-IAIGs could be made unilaterally by a single analyst. Not only does this lead to inconsistent application among states creating unlevel playing field issues in the health insurance space, it undermines the entire notion of why the NAIC chose to regulate IAIGs differently than other companies.

Insurers, at the group and legal entity levels, make strategic decisions as to where, when, how, and if to expand based on a variety of factors, including regulatory requirements. Specifically, companies may have made the strategic decisions to not expose themselves to the requirements of ComFrame. Permitting an analyst to determine to treat a group as an IAIG regardless of whether it meets the statutory definition creates an unmanageable risk for an insurer trying to plan their business consistent with existing statutory requirements. In the health insurance space, there are no IAIGs and to permit regulators to treat them as such despite their risk profile and statutory requirements to the contrary is unfair and does not serve the regulatory objectives as set forth in ComFrame.

The provisions of Section 7.1 of the Model Holding Company Act only apply to IAIGs. It is inappropriate to give states the discretion to expand those requirements without specific statutory authority adopted through the state legislative process. A similar example of such an expansion without legal authority would be if an analyst was allowed to apply the privacy and data security restrictions of HIPAA and HITECH, to non-health insurers – all within the context of financial analysis and with no legislative approval.

On the other hand, IAIGs have affirmatively chosen to pursue the expanded customer bases, business volume, diversification, profits, economies of scale, and access to capital that may be available in the international market. Through the addition of Section 7.1 into the Holding Company Act, state regulators have recognized this all can create additional risk. If the goal of the proposed Handbook language is to create a level playing field between IAIGs and non-IAIGs, that defeats the entire purpose of drawing distinctions between IAIGs and non-IAIGs. By treating IAIGs and non-IAIGs the same, the underpinnings of ComFrame would be eroded just as much as if we were discussing eliminating the designation altogether. If the definition of IAIG is to mean anything at all, it has to mean that IAIGs are treated differently than non-IAIGs.

In the context of health insurance, with many single-state and regional groups, the potential for unlevel playing field issues will be exacerbated if states are given the authority to functionally designate one group an IAIG where a direct competitor with a different lead state but operating in the same state might not be considered an IAIG. This is a significant unintended consequence, which we ask that you consider as you evaluate the impact of the proposed language.

Further, the language allows the examiner to base their decision to apply “such considerations and procedures” to “other large insurance groups” without giving any specificity to what those considerations and procedures are, other than as discussed earlier in a broad reference to areas outlined in ComFrame. It further gives analysts and companies no guidance as to what is an “other large insurance group.” If the last two sentences to this paragraph are to be maintained in any form, these terms must be addressed at the least. To provide state-to-state consistency and predictability for regulators and companies alike, these terms, “considerations and procedures” and “other large insurance groups”, should be identified clearly, at least by topic and citation or definition. The lack of specificity creates further confusion and unpredictability making it impossible for companies to manage their strategic plans in light of the regulatory environment.

We thank you again for the opportunity to comment and for your patience and consideration of our views. We look forward to discussing them with you further.

Sincerely,

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1. References to ComFrame or the Insurance Core Principles (ICPs): There are numerous references to ComFrame or the ICPs that give the impression that the reader/analyst should refer to the ICPs as authoritative guidance for U.S. regulators for additional measures to consider. Example on page 13:

“The determination of both the scope and head of the IAIG is significant to group supervision as review procedures and risk assessments performed under ComFrame are conducted at this level. Therefore, the group-wide supervisor should carefully consider this guidance, as well as additional considerations outlined in Insurance Core Principle 23 – Group Wide Supervision, in making determinations regarding the scope and the head of the IAIG.”

Similar language appears throughout the text.

Comment: *ICPs and ComFrame guidance should not be referenced or incorporated into the Financial Analysis Handbook (FAH), as doing so has the effect of incorporating IAIS guidance by reference into state-based regulation. Rather, any specific measures in ComFrame or the ICPs that the GSIWG desires to include in the FAH should be considered only after amending such IAIS guidance as necessary and appropriate for the state-based supervisory regime in the U.S., and without attribution or reference to ComFrame or any other source. Otherwise, analysts may interpret the text as incorporating by reference other (or all) measures in ComFrame that the GSIWG did not intend to adopt.*

We understand that the drafting group’s intent with respect to such references is to point the analyst to ComFrame as a resource if needed to better understand the context surrounding a particular element or measure that the drafting group has added to the FAH due to its inclusion in ComFrame. However, analysts should be mindful that there are portions of ComFrame which the GSIWG intentionally did not adopt for purposes of the FAH (or other regulatory manuals), that are not appropriate for our state-based supervisory regime, and/or are inconsistent with requirements on insurers or authority of the respective state in implemented state legislation and regulations. Should the GSIWG desire to retain the aforementioned references to ComFrame in the FAH text, we recommend that such a statement (i.e., as in the preceding sentence) be included following each such reference.

2. Corresponding guidance in the Financial Condition Examiners Handbook: There are references in the text to add guidance in the Examiners Handbook. For example, Page 7:

“For more information on IAIG examination considerations, please see section XXX of the NAIC’s Financial Condition Examiners Handbook.”

We understand that ComFrame-related changes will be drafted for the Examiners Handbook (and the ORSA Guidance Manual as well), however we are unaware of the timetable for that work, including when it may be exposed.

Comment: *The GSIWG should defer adoption of any amended language related to concepts contained in ComFrame-related guidance in the NAIC’s handbooks (the FAH, Examiners Handbook and the ORSA Guidance Manual) until they have all been exposed, viewed as a complete package, and discussed in that light.*

3. A more integrated approach to on-site/exam and off-site/analysis for IAIGs: Some changes in the text suggest such an integrated approach. The following text is from pages 7-8 of the FAH:

“Given the level of complexity of many IAIGs and the critical need to ensure effective coordination in supervision, state insurance departments are encouraged to consider a more integrated approach to financial surveillance staffing for IAIGs.... As such, state insurance departments acting as group-wide supervisors for IAIGs are encouraged to consider moving towards a team-based, integrated approach to staffing in this area.”

Comment: *While likely a beneficial change, we suggest that the approach be piloted by one or more states before adopting this as guidance for the states. With the experience of one or more pilot initiatives, it is likely that the proposed guidance could then be more tailored to the specific challenges that might emerge and address matters which may, at this stage, be unforeseen.*

4. Expanding regulatory authority through the FAH v. underlying models:

There are instances where authority under Models/laws appears to be expanded through drafting in the FAH – see for example page 65, the comment at the bottom of the page re: ORSA and CGAD, which states as follows:

“To complete the IAIG assessment, the Group-Wide Supervisor may need to request and review additional information from the Head of the IAIG, which could include an ORSA Summary Report, Corporate Governance Annual Disclosure (CGAD) and/or additional information on risk management practices at the Head of the IAIG level.”

And there is the following text as well on page 49:

“It is the responsibility of the group-wide supervisor to ensure that the group meets minimum governance expectations at both the legal entity and Head of the IAIG level.”

We note that the Risk Management and Own Risk and Solvency Assessment Model Act does not prescribe that any group file a group-wide report. Rather, it provides for filing of an “...ORSA Summary Report or any combination of reports that together contain the information described in the ORSA Guidance Manual, applicable to the insurer and/or the insurance group of which it is a member.”

Comment: *It would not be appropriate for authority deemed necessary to be included in the Model Holding Company Act to be modified or expanded by drafting changes in the FAH. Such changes should follow the same committee process within the NAIC that resulted in the respective model and align with the authority contained in the model.*

We understand that a separate drafting group is beginning work on ComFrame-inspired changes to the ORSA Guidance Manual, that the issue we have raised about consistency of authority with the appropriate models as they have been implemented by a state will be considered as part of that drafting process, and that the FAH drafting group is open to further changes based on that input. In the meantime, we would suggest that the FAH drafting group “pencil in” as a placeholder that analysts should abide by the authority provided by the appropriate model (e.g., in this case, the Risk Management and Own Risk and Solvency Assessment Model Act (#505)) as implemented in the state, as well as other existing applicable state authority.

5. Coordinated exams of IAIGs: The FAH suggests it may be beneficial for examiners to work cross-border on coordinated targeted exams. See page 19:

“For IAIGs, targeted exam procedures may include the group-wide supervisor joining on-site inspections of an insurance legal entity in another jurisdiction to address specific issues of concern, coordinated by the relevant involved supervisor, with prior consent from that supervisor.”

There are also numerous other references to coordinated exams being performed, e.g., on page 44:

“Review the results of the most recent coordinated group examination of the IAIG to understand the group-wide internal control assessment performed.”

In fact, much of what is proposed in the FAH pertaining to group-wide functions (compliance, actuarial, internal audit, etc.) is predicated on a coordinated exam having been performed. We are not aware of the experience states may have to date in the performance of such exams coordinated with supervisors in other (non-U.S.) jurisdictions of large firms that operate on a cross-border basis.

Comment: *We presume that guidance about whether and how to perform a coordinated exam of an IAIG will be addressed in forthcoming guidance to be included in the Financial Condition Examination Handbook. We understand how the notion of such a coordinated examination may have some appeal given the experience gained in the U.S. among the various states working on coordinated exams of multi-state insurers. However, actually performing one on a group that operates on a cross-border basis raises many logistical and other challenges. For example, the states have focused primarily on periodic full-scope examinations, whereas in other jurisdictions such as the European Union (EU) inspection processes have been more thematically framed and focused on a specific topic.*

Transitioning to coordinated, multi-jurisdictional exam processes for IAIGs (and possibly for other groups as per our comment 2, above) would be a fundamental change and a key policy-level matter with inherent logistical and other complications. Similar to our comment 4, above, we suggest that a coordinated exam process be piloted by one or more states before adopting it as guidance for the states. With the experience of one or more pilot initiatives, it is likely that the proposed guidance could then be more tailored to the specific challenges that might emerge and address matters which may, at this stage, be unforeseen. Moreover, and per our comment #3 above, the GSIWG should defer adoption of any amended language related to concepts contained in ComFrame-related guidance in the NAIC’s handbooks (the FAH, Examiners Handbook and the ORSA Guidance Manual) until they have all been exposed, viewed as a complete package, and discussed in that light.

6. References to the ICS/AM:

See page 43:

“When applicable, review group capital reporting such as the Aggregation Method (or the Group Capital Calculation) or the Reference Insurance Capital Standard (ICS) as reported to the IAIS. The review may include a comparison of group capital calculations to the Reference ICS, the extent to which material risks of the IAIG are captured, and any difficulties in implementing the Reference ICS.”

See also on page 46:

“IAIG Procedure #3 assists the analyst in assessing the group-wide capital position of the IAIG, as well as any potential issues related to capital fungibility. Also, when applicable, this procedure assists the analyst in understanding the ICS calculated by the IAIG or other reporting such as the Aggregation Method, during the ICS Monitoring Period. The ICS Monitoring Period runs from 2020 through the end of 2024 and is intended to assess the effectiveness of the newly developed standard. A main objective of the Monitoring Period is to receive feedback from insurance regulators on the Reference ICS and, if applicable, feedback on additional reporting. During the Monitoring Period, the ICS is not designed for the purpose of supervisory intervention on the basis of capital adequacy but may assist supervisors in ongoing risk assessment. During the Monitoring Period, U.S. IAIGs may report an alternative group capital calculation to the IAIS known as the Aggregation Method, which is expected to be similar to the U.S. Group Capital Calculation under development at the NAIC. The Aggregation Method will be subject to a Comparability Assessment and by the end of 2024, will be deemed to produce, or not produce, comparable outcomes to the ICS.”

Comment: *The use of an inappropriate (ICS) or incomplete (AM and ICS) metric during the monitoring period for “ongoing risk assessment” is fraught with the risk of misleading conclusions. The IAIS has stated that “the purpose of the monitoring period is to monitor the performance of the ICS over a period of time, and not the capital adequacy of IAIGs.” Since neither the ICS nor the AM have been implemented yet, the above language and any other references to the ICS or AM should not be included in the FAH. Also, it is not foreseen that either of these capital measures (the AM or the ICS) will be used by US-based groups or even by groups based in other key jurisdictions (e.g., the EU will likely retain Solvency II, Canada will retain its group capital model, just as the U.S. states will likely retain the GCC). Further, the above text suggests the analyst may request a comparison of GCC to the ICS, which cannot be done unless the US group actually calculates the ICS, which is arduous, unnecessary, and otherwise not required. Comparison of risks captured between the two will be well documented in the upcoming IAIS comparability analysis. Difficulties in implementing the ICS, as well as fatal flaws in the ICS which render it an ineffective solvency-monitoring tool, are already well documented in various comment letters to the IAIS submitted by insurers and trades to the IAIS as part of its consultation processes.*

Instead of guiding the analyst to evaluate a group’s capital by reference to the AM or the ICS, the FAH should include guidance for the analyst to refer to the GCC (such language has been drafted and is subject to a separate exposure by the NAIC which is currently underway). If that change is made in the text, then the Additional Procedures for IAIGs (#4) in section VI. C should also be changed. Currently, it states, in part, as follows: “4. If significant concerns are identified related to the IAIG’s current or

prospective solvency, whether due to legal entity or group-wide risks, determine whether additional supervisory measures (as outlined in Model #440) should be implemented...” The text should clarify that the GCC would not constitute a binding solvency measure at a group level and, as a result, evaluating capital position at a group level is a different process than that used for legal entity analysis (which is subject to RBC which is a binding measure) and refer the analyst to the (currently under separate exposure) guidance on use of the GCC to be incorporated in the FAH.

7. Internal control-related measures: Such measures (See pages 43-44) have been imported from ComFrame, but it is unclear whether the GSIWG considered other measures that have been implemented in the U.S., but which are not in ComFrame. For example, general references are made to ComFrame for the analyst to consider, i.e., on page 43 as follows:

“The following procedures (#5 through #11) are outlined in ComFrame for the group-wide supervisor to utilize in assessing various elements of an IAIG’s internal control framework, including specific functions, strategies, and policies.”

Those procedures relate to various functions that purportedly exist at group level (see our comment # 8), i.e., related to outsourcing of critical functions, and the functions or policies for compliance, actuarial, internal audit, investments, claims management, and reinsurance and other forms of risk transfer. In each instance, the analyst is guided to review the results of the most recent coordinated group examination of the IAIG to understand the review performed in the respective area and determine if any follow-up is necessary to address concerns or recommendations and consider whether the function or policy meets specified criteria.

Moreover, the additional measures relating to internal controls have been included in the text notwithstanding that for U.S.-based firms, Sarbanes-Oxley Act (SOX) provisions apply to public firms and the NAIC’s Model Audit Rule was amended to include SOX-like internal control reporting to the states.

Comment: *The proposed language in the FAH that suggests the analyst refer to ComFrame should be deleted or amended as per our comment #1, above. Also, in determining what is necessary and appropriate, the GSIWG should determine if the provisions of SOX and the Model Audit Rule relating to internal controls are as or more effective than the proposed ComFrame provisions that are currently proposed to be added to the FAH, and thus mitigating the appearance of a “gap” between existing internal control measures in the U.S. and ComFrame and the need to include those provisions.*

8. Group-wide controls, processes, and functions: The text presumes such aspects exist, or should exist, on a group-wide basis. For example, see page 44:

“Consider the extent to which the examination addressed group-wide controls and processes related to the outsourcing of critical functions including...”

The same language is replicated in text sections applicable to the functions for compliance, actuarial, internal audit, investment policy, claims management, and reinsurance /risk transfer. It does not consider the “overarching concepts” section in the Introduction to ComFrame which states as follows:

“IAIGs have different models of governance (i.e., more centralised or more decentralised). ComFrame does not favour any particular governance model and is intended to be read to apply to all models. The organisation of an IAIG can be structured in various ways as long as the outcomes are achieved.”

The sections of the FAH text that pertain to group-wide functions (actuarial, compliance, etc.) suggest that the analyst “review the results of the most recent coordinated group examination of the IAIG to understand the group-wide [name] function assessment performed and determine if any follow-up is necessary to address concerns or recommendations” as a single incremental step. The draft FAH goes on to list numerous areas from ComFrame that should be assessed based on that step. For the actuarial function, for example, that includes “policies and controls; actuarial concerns at the group or legal-entity level; current and prospective solvency position; adequacy of reinsurance arrangements; actuarial-related risk modelling in ORSA and use of internal models; coordination with legal entity actuarial functions; and providing independent advice and regular reporting to the IAIG Board or one of its committees” – and all framed in context of a group-level function. While the text does not appear to suggest those matters are required per se, we are concerned about what may become a de facto requirement inasmuch as the expectations of state insurance regulators will be framed by this guidance.

Comment: *The GSIWG should amend the text in the FAH to (1) similarly acknowledge that IAIGs have different models of governance and that the FAH is not intended to favor one over another, and (2) avoid suggesting through the text that an IAIG (or any other group) necessarily needs a centralized form of management and group-wide functions in all cases. We understand that the drafting group is reluctant to include overarching guidance in a single place in the FAH, rather to repeat certain guidance as necessary for each applicable topic. Accordingly, we recommend that such an acknowledgment appear separately in the text for each of the group-wide functions. Additionally, the FAH should reference the relevant portion of the NAIC Financial Condition Examiners Handbook.*

9. Clarity of responsibilities of the state: While the text appears to be written from the standpoint of providing guidance to the analyst of a lead state acting in its capacity as the group-wide supervisor, we would recommend making that clear at the outset. The FAH is a resource for all analysts, whether their state acts in the capacity of a group-wide supervisor, or in the capacity of a domestic state regulator overseeing a legal entity in the group, or the lead state/GWS of a U.S. sub-group of a non-U.S. based group.

Comment: *We recommend that, at the outset of this section of the FAH, it be explicitly stated that the IAIG-related procedures that follow are intended for use of a lead state acting in its capacity as a group-wide supervisor.*

10. Use of a confidential information sharing tool or portal between jurisdictional supervisors: This is suggested as something for states to consider (p. 87), but it may introduce other concerns regarding confidential and secure access. These types of tools are abundant and vary. Key issues that need to be very carefully considered include who would host the platform on their server, who would have access, and how access would be controlled and monitored. Which jurisdictional authority applies to the confidential information being provided also should be carefully considered, e.g., the confidentiality

provisions of the primary regulatory authority of the legal entity would apply to confidential information regarding the entity whereas the confidentiality provisions of the lead state/groupwide supervisory would apply to groupwide information.

Moreover, confidentiality of company-specific proprietary information is a critical issue for the industry and any proposals should be subject to an open and thorough exposure process.

Comment: *This language should be omitted from the FAH for now and referred to a working group that is focused on confidentiality protections and tied to the confidentiality provisions in the model law(s).*

Stephen W. Broadie
Vice President, Financial & Counsel

July 16, 2021

Justin Schrader
Chair, NAIC Group Solvency Issues (E) Working Group
Nebraska Department of Insurance
1526 K Street, Suite 200
Lincoln, NE 68501-2089

Re: Proposed ComFrame Revisions to Financial Analysis Handbook

Dear Mr. Schrader:

The American Property Casualty Insurance Association (APCIA) is pleased to submit to you and the other members of the NAIC's Group Solvency Issues (E) Working Group our comments on the Working Group's draft ComFrame Revisions to the NAIC's Financial Analysis Handbook. APCIA is the primary national trade association for home, auto, and business insurers. The association promotes and protects the viability of private competition for the benefit of consumers and insurers, with a legacy dating back 150 years. APCIA members represent all sizes, structures, and regions—protecting families, communities, and businesses in the U.S. and across the globe.

We appreciate the extensive work that has gone into this draft, and the NAIC's participation in the work of the International Association of Insurance Supervisors (IAIS) that produced the Common Framework for Supervision of Internationally-Active Insurance Groups (ComFrame). APCIA staff have been involved in the development of ComFrame for many years. Appropriate implementation of ComFrame in the supervision of U.S.-based IAIGs will facilitate their ability to compete on a nondiscriminatory basis in foreign markets, and enhance our own healthy and competitive market. It is critical, however, that ComFrame's provisions and other international standards be implemented in state insurance regulation only to the extent that they are consistent with and enhance the U.S. regulatory system and insurance market. Our comments that follow are offered in that spirit.

We look forward to continuing to work with you and the Working Group as this draft progresses. If you, other members of the Working Group, or NAIC staff have any questions about our comments, please feel free to contact me or other APCIA staff at your convenience.

Sincerely,



Stephen W. Broadie



**BlueCross BlueShield
Association**

An Association of Independent
Blue Cross and Blue Shield Plans

July 16, 2021

NAIC Group Solvency Issues (E) Working Group
Attn: Bruce Jenson, NAIC Support Staff
Via email: bjenson@naic.org

RE: ComFrame Revisions to Financial Analysis Handbook Exposure Draft

Dear Chair Schrader, Vice Chair Walker, and Members of the Working Group:

Thank you for the opportunity to provide comments on the current Working Group exposure draft to add ComFrame revisions to the Financial Analysis Handbook. BCBSA is a national federation of 35 independent, community-based and locally operated Blue Cross and Blue Shield companies (Plans) that collectively provide health care coverage for one in three Americans. For more than 90 years, Blue Cross and Blue Shield companies have offered quality health care coverage in all markets across America – serving those who purchase coverage on their own as well as those who obtain coverage through an employer, Medicare and Medicaid.

Since BCBS Plans are U.S. domestic health carriers and not a part of Internationally Active Insurance Groups (IAIG's), the exposure draft should have no impact on our member Plans. However, the following two sentences included in the introductory section of the proposal raises concerns about the subjective applicability of the guidance to non-IAIG large insurance groups.

While such considerations and procedures are applicable to insurance group identified as IAIGs, they may also be appropriate for use in the supervision of other large insurance groups that do not yet meet the IAIG criteria. As such, analysts should use judgment in determining whether the IAIG considerations and procedures should be applied to a broader range of insurance groups.

According to the Handbook preface, the Financial Analysis Handbook is intended to provide a uniform risk-focused analysis approach to identify carriers experiencing financial problems and to identify prospective risks that pose the greatest potential for developing financial problems. The preface indicates that “the Handbook does not include state-specific information or regulations, and does not establish guidelines that insurance companies must follow. Parameters or benchmarks utilized are not regulatory requirements to be complied with by insurance companies.”

Since the Financial Analysis Handbook is intended as a guidance and training manual for analysts, we would propose the Working Group consider the following revised language for the introductory section.

While these considerations and procedures are applicable, according to the NAIC's Insurance Holding Company System Regulatory Act to insurance groups identified as IAIGs, it is also important to recognize that other groups, not currently identified as IAIGs may in the future, meet the statutory definition. Therefore, all analysts should be familiar with these requirements and, as groups approach the triggering definition of an IAIG, should be prepared to enter into conversations with their companies about the additional regulatory oversight that meeting that definition will entail.

We understand analysts who do not currently have IAIGs domiciled in their states should be aware of, and understand, the differences between IAIG oversight and the oversight for traditional U.S. domestic groups. We are concerned about the inclusion of language in a handbook that would encourage regulators to impose IAIG procedures on non-IAIG companies, regardless of statutory requirements, and in a non-uniform manner across the country. We believe this creates a random, non-uniform regulatory scheme nationwide that undermines the very purpose of the handbook.

We would like to thank the Working Group for its consideration of our comments. If you have any questions, please contact me directly at 312.297.5766 or joseph.zolecki@bcbsa.com.

Sincerely,



Joseph E. Zolecki, CFE
Director, Financial Regulatory Services
Blue Cross Blue Shield Association

Justin Schrader
Chief Financial Examiner, Nebraska Insurance Department
Chair, NAIC Group Solvency Issues (E) Working Group
[via-email: bjenson@naic.org]

August 13, 2021

Re: Exposure of Proposed Revisions to NAIC Financial Analysis Handbook to Implement ComFrame

Dear Mr. Schrader,

Our Coalition (“We”), which consists of MetLife, Inc., Prudential Financial, Inc., Reinsurance Group of America, Incorporated, and The Travelers Companies, Inc., appreciate the opportunity to comment on the proposed ComFrame revisions to the NAIC’s Financial Analysis Handbook (“FAH”) and the perspective you shared on this matter during the August 4, 2021 Group Solvency Issues Working Group (“Working Group”) meeting. As Internationally Active Insurance Groups (“IAIGs”) that have volunteered to participate in the Risk-based Global Insurance Capital Standard (“ICS”) Monitoring Period the International Association of Insurance Supervisors (“IAIS”) is conducting, we found the discussion on proposed revisions related to the ICS particularly helpful. Given our status as IAIGs and engagement in the Monitoring Period, we feel it is important that we offer a response to the perspectives you shared on August 4 to further inform the Working Group’s consideration of the path forward on this matter.

We support the risk-focused approach and framework the FAH provides analysts in support of their overall assessment and documentation of the financial solvency condition of insurers and insurance holding company groups. To execute the risk-based assessment, analysts leverage the numerous tools state regulators have developed over the years to address and understand the risks insurers assume (e.g., investment laws limits, risk based capital requirements, the ORSA, etc.). By leveraging existing tools, analysts ensure the activities of financial solvency surveillance are coordinated and provide consistency within state insurance departments and with other departments. We believe it is critical that the approach of anchoring the FAH to the tools state regulators deploy and the analysis they perform as part of their ongoing solvency surveillance work continue. To this end, we believe that the revisions to the FAH regarding the review of the capital adequacy of U.S. domiciled IAIG’s should emphasize leveraging the Group Capital Calculation (“GCC”). We believe any references to the ICS should be limited to guidance to support financial analysis of U.S. insurance entities that are part of a foreign-based group that is subject to the ICS by their foreign groupwide supervisor. Additional reasons we believe the FAH should emphasize leveraging the GCC for purposes of reviewing the capital adequacy of U.S. domiciled IAIGs include:

- State regulators have acknowledged the ICS framework is not appropriate for the U.S. insurance market given its inherent volatility and design flaws (e.g., approach to valuing insurance liabilities, structure and calibration of stresses, etc.) that give rise to inaccurate assessments of insurer risk exposures. Given the propensity for the ICS to provide an inaccurate picture of insurer risk exposures, we believe it would be inappropriate to suggest that analysts consider ICS results as part of their review and documentation of an insurer’s solvency condition.

- Beyond the design flaws referred to above, the ICS assumes capital is fungible within a group and does not identify or address capital deficiencies, if any, of the insurance entities in the group. Conversely, the inventory approach that underpins the GCC provides state regulators and analyst insight into capital adequacy at both the entity and group level for insurance and non-insurance entities, thereby providing greater insight into risks, the location and sources of capital, etc.
- During the August 4 call, the Working Group noted that the rationale for referencing ICS was that doing so may be informative for analysts of insurers that are participating in the Monitoring Period – we fail to see how the proposed references to the ICS would offer any value to analysts. Further, it is important to recognize the extensive process that already exists with respect to reviewing ICS results for insurers participating in the Monitoring Period which includes:
 - A detailed presentation of results by the insurer to their group-wide supervisor prior to submission of the results to the IAIS;
 - Group-wide supervisor completion of an extensive “ICS Data Collection Submission Supervisory Review” check-list that the IAIS has developed to assist analysts; and
 - Other elements the IAIS has established to familiarize group-wide supervisors with the ICS and promote their engagement in the Monitoring Period (e.g., development of “supervisor dashboards”, conducting an Annual Global Roundtable of Supervisors, etc.)

We reiterate our appreciation for the opportunity to share our perspectives on the proposed ComFrame revisions to the FAH with the Working Group. We would welcome the opportunity to discuss the perspectives included in this response with the Working Group as it considers that path forward on this matter.

Sincerely,

MetLife, Inc.
Prudential Financial, Inc.
Reinsurance Group of America, Incorporated
The Travelers Companies, Inc

Comments from Iowa Department of Insurance

Page #	Reference	Comment to NAIC
various	"Lead State" is used interchangeably with "lead state"	References to group-wide supervisor and lead state need to be consistent in usage of capitalization or lower case terms
17-18	If a U.S. state insurance commissioner is the global group-wide supervisor, the U.S. state insurance commissioner should receive the ORSA Summary Report covering all group-wide insurance operations. If the U.S. is not the global group-wide supervisor (i.e., lead state), the insurer may file ORSA Summary Reports Financial Analysis Handbook encompassing, at a minimum, the U.S. insurance operations, as long as the lead state receives ORSA Summary Reports encompassing the non-U.S. insurance operations.	This section doesn't read well, and the second sentence is confusing? Are GWS and LS being used interchangeably or is the indication the US is the LS but not the GWS?
18	The lead state commissioner should discuss with the global group-wide supervisor from the relevant foreign jurisdiction(s) the report received from the global group-wide supervisor to inquire of any concerns and to either confirm that the report was compliant with the foreign jurisdiction's requirements or consistent with the applicable principles outlined in the International Association of Insurance Supervisors (IAIS) Insurance Core Principle (ICP) 16: Enterprise Risk Management (ERM), as well as the NAIC Own Risk and Solvency Assessment (ORSA) Guidance Manual to determine if additional information is needed. The commissioner will, where possible, avoid creating duplicative regulatory requirements for internationally active insurers.	Is the expectation that if the GWS does not meet its requirements, then the US lead state should do it? That sounds problematic and we'd appreciate more discussion.
20	Overseeing the supervisory colleges process is another one of the key roles of the lead state.	Should this be group-wide supervisor rather than lead state?
79-80	In addition to U.S. guidance, the International Association of Insurance Supervisors (IAIS) has developed standards, guidance and expectations for regulators in conducting and participating in supervisory colleges, which are primarily presented in Insurance Core Principle (ICP) 25 – Supervisory Cooperation and Communication, as well as the IAIS's Application Paper on Supervisory Colleges. Information from these sources has been utilized in developing this chapter and regulators are encouraged to reference the source documents as necessary to gather additional insight.	This is more gray than a direct incorporation by reference, but in general, we disagree that the IAIS ICPs should be incorporated by reference into the FAH, particularly since changes are not subject to the authority of the same group of people.
82	The information included in ICP 25 and the application paper show some of the key considerations of organizing a Supervisory College before the college meets for the first time	Should incorporate information in handbook and not by reference
96	Refer to ICP CF 16.15 and the IAIS "Application Paper on Recovery Planning" for more information and guidance including: governance, monitoring, updating the recovery plan, and key elements of a recovery plan (e.g. stress scenarios, trigger frameworks to identify emerging risks, recovery options, communication strategies, and governance). (https://www.iaisweb.org/home) v Refer to ICP CF 12.2 and 12.3 and the Application Paper on Resolution Powers and Planning for more information and guidance including: approach to determining if resolution plans are needed, and key elements of a plan (e.g., resolution	Should incorporate information in handbook and not by reference