



The referral was adopted by the F Committee at the Fall National Meeting with an effective date of September 1, 2022. The decision will come before Plenary for its approval at the 2020 Spring National Meeting.

## MEMORANDUM

TO: Financial Regulation Standards and Accreditation (F) Committee

FROM: John F. Finston (CA)  
Chair, Reinsurance (E) Task Force

DATE: March 20, 2017

RE: 2016 Revisions to *Credit for Reinsurance Model Law* (#785)  
*Term and Universal Life Insurance Reserve Financing Model Regulation* (#787)

### Executive Summary

On June 30, 2014, the Principle-Based Reserving Implementation (EX) Task Force adopted the recommendations in the report of Rector & Associates, Inc. dated June 4, 2014, regarding a proposal for the XXX/AXXX Reinsurance Framework. The Framework sought to address concerns regarding reserve financing transactions and to do so without encouraging them to move offshore. The changes would be prospective and apply only to life insurance policies containing guaranteed nonlevel gross premiums, guaranteed nonlevel benefits and universal life with secondary guarantees business (XXX/AXXX). The NAIC Executive (EX) Committee adopted the Framework (in concept) on Aug. 17, 2014. As an interim step to implementing the Framework, the NAIC adopted Actuarial Guideline XLVIII *Actuarial Opinion and Memorandum Requirements for the Reinsurance of Policies Required to be Valued under Sections 6 and 7 of the NAIC Valuation of Life Insurance Policies Model Regulation (Model 830)* (AG 48) on Dec. 16, 2014. It was expected that AG 48 would eventually be replaced by effective codification through the *Credit for Reinsurance Model Law* (#785) and creation of a new model regulation to establish requirements regarding the reinsurance of XXX/AXXX policies.

The NAIC adopted revisions to Model #785 on Jan. 8, 2016, which give insurance commissioners authority to issue regulations codifying AG 48 and the XXX/AXXX Reinsurance Framework. The Reinsurance (E) Task Force adopted the *Term and Universal Life Insurance Reserve Financing Model Regulation* (#787) at the Summer National Meeting on Aug. 27, 2016, and it was adopted by the Financial Condition (E) Committee with slight revisions via conference call on Sept. 30, 2016. Model #787 was then adopted by the Executive (EX) Committee and Plenary on Dec. 13, 2016. At that same time, the NAIC also revised AG 48 to conform with the provisions of Model #787, effective Jan. 1, 2017.

The Reinsurance (E) Task Force hereby submits the following recommendations to the Financial Regulation Standards and Accreditation (F) Committee:

1. The 2016 revisions to Model #785 and new Model #787 should be adopted as a new accreditation standard by the NAIC.
2. The F-Committee should consider a waiver in its normal timeline for adoption of an accreditation standard, and expeditiously consider adoption of this standard. The Task Force would recommend that the accreditation standard become effective January 1, 2020.

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**A statement and explanation of how the potential standard is directly related to solvency surveillance and why the proposal should be included in the standards:**

The 2016 revisions to Model #785 provide that the commissioner may adopt regulations with respect to (1) life insurance policies with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits; (2) universal life insurance policies with provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period; (3) variable annuities with guaranteed death or living benefits; (4) long-term care insurance policies; and (5) other life and health insurance and annuity products as to which the NAIC adopts model regulatory requirements with respect to credit for reinsurance. The revisions to Model #785 also contain a “professional reinsurer exemption” for reinsurers that maintain at least \$250 million in capital and surplus when determined in accordance with the NAIC *Accounting Practices and Procedures Manual*, including all amendments thereto adopted by the NAIC, excluding the impact of any permitted or prescribed practices; and is (1) licensed in at least 26 states; or (2) licensed in at least 10 states, and licensed or accredited in a total of at least 35 states.

Model #787 does not materially change the ability of insurers to obtain credit for reinsurance ceded to “certified” reinsurers or to obtain credit for reinsurance ceded to “licensed” or “accredited” reinsurers that follow statutory accounting and risk-based capital (RBC) rules. As a practical matter, the Model #787 requirements apply to reinsurance ceded to captive insurers, SPVs, reinsurers that are not eligible to become “certified” reinsurers, or reinsurers that materially deviate from statutory accounting and/or RBC rules. In those situations, subject to certain exemptions and grandfathering provisions, the ceding insurer may receive credit for reinsurance if:

- The ceding insurer continues to establish gross reserves, in full, using applicable reserving guidance;
- Funds consisting of Primary Security, in an amount at least equal to the Required Level of Primary Security, are held by or on behalf of the ceding insurer, as security under the reinsurance contract, on a funds withheld, trust, or modified coinsurance basis;
- The Actuarial Method used to establish the Required Level of Primary Security for each reinsurance treaty subject to Model #787 is based on VM-20, applied on a treaty-by-treaty basis;
- Funds consisting of Other Security, in an amount at least equal to any portion of the statutory reserves as to which Primary Security is not held are held by or on behalf of the ceding insurer as security under the reinsurance contract; and
- The reinsurance arrangement is approved by the ceding insurer’s domestic regulator.

**A statement as to why ultimate adoption by every jurisdiction may be desirable:**

The NAIC Principle-Based Reserving Implementation (EX) Task Force serves as the coordinating body for all NAIC technical groups involved with projects related to the Principle-Based Reserves (PBR) initiative for life and health policies. This Task Force was also charged with further assessing, and making recommendations regarding the solvency implications of life insurance reserve financing mechanisms addressed in the June 6, 2013, NAIC White Paper *Captives and Special Purpose Vehicles*, which provides in relevant part:

The Captive and Special Purpose Vehicle (SPV) Use (E) Subgroup studied the use of captives and SPVs formed by commercial insurers. The Subgroup concluded that commercial insurers cede business to captives for a variety of business purposes. The Subgroup determined that the main use of captives and SPVs by commercial insurers was related to the financing of XXX and AXXX perceived reserve redundancies. The implementation of principle-based reserving (PBR) could reduce the need for commercial insurers to create new captives and SPVs to address perceived reserve redundancies; however, existing captives and SPVs are likely to remain in existence for several years or decades, until the existing blocks of business are run-off. **Regulators need to be able to assess and monitor the risks**

**that captives and SPVs may pose to the holding company system, and the current regulatory process should be enhanced to provide standardized tools and processes to be used by all regulators when reviewing such transactions.** Commercial insurer-owned captives and SPVs should not be used to avoid statutory accounting. **To the extent that insurer-affiliated captives and SPVs may be created in the future for unforeseen purposes, additional guidance should be developed by the NAIC to assist the states in a uniform review of transactions. [Emphasis added].**

In addition, in coordination with the adoption in principle of the XXX/AXXX Reinsurance Framework, the Financial Regulation Standards and Accreditation (F) Committee was given the following charge: “As the various work products are adopted by the Principle-Based Reserving (EX) Task Force, Executive Committee, and Plenary, consider them for inclusion in the Part A and Part B Accreditation Standards.”

Finally, effective Jan. 1, 2016, the NAIC amended the *Preamble for Part A: Laws and Regulations of the NAIC Policy Statement on Financial Regulation Standards* to apply to the regulation of a state’s domestic insurers licensed and/or organized under its captive or special purpose vehicle statutes or any other similar statutory construct with respect to XXX/AXXX business, which is deemed to satisfy the Part A accreditation requirements if the applicable reinsurance transaction satisfies the XXX/AXXX Reinsurance Framework requirements adopted by the NAIC. Further, the revised Preamble provided, as follows: “The revisions to the Credit for Reinsurance Model Act (#785) and the new XXX/AXXX Model Regulation will need to be specifically considered for accreditation purposes once adopted by the NAIC.”

**A statement as to the number of jurisdictions that have adopted and implemented the proposal or a similar proposal and their experience to date:**

AG 48 became effective Jan. 1, 2015, and became part of the NAIC *Accounting Practices and Procedures Manual* through its inclusion in Appendix C. As such, provisions similar to the proposal have been effective in all states since that date.

As of this date, three states (Louisiana, Oklahoma and Utah) have gone beyond AG 48 and have adopted the 2016 revisions to Model #785 giving commissioners authority to issue regulations codifying AG 48 and the XXX/AXXX Reinsurance Framework, with several other states currently considering such revisions.

The new Part A Preamble became effective Jan. 1, 2016, with regard to XXX/AXXX reinsurance captives. NAIC staff worked with necessary state insurance departments to assess compliance with the new Part A Preamble related to captives that assume XXX/AXXX business, and reported its findings at the 2016 Fall National Meeting to the Financial Regulation Standards and Accreditation (F) Committee. NAIC staff reviewed all of the Dec. 31, 2015, XXX/AXXX Reinsurance Supplements that were filed with the NAIC to first ascertain whether the appropriate level of primary and other securities was being held to back the non-exempt XXX/AXXX reinsurance transactions. NAIC staff reported that all of the transactions held the required amount of securities, and therefore, all of the transactions satisfied the new Part A requirements.

**A statement as to the provisions needed to meet the minimum requirements of the standard. That is, whether a state would be required to have “substantially similar” language or rather a regulatory framework. If it is being proposed that “substantially similar” language be required, the referring committee, task force or working group shall recommend those items that should be considered significant elements:**

Regulators needed to be able to assess and monitor the risks posed with respect to XXX/AXXX captive reinsurance transactions, and the regulatory process was enhanced through the adoption of the XXX/AXXX Reinsurance Framework, AG 48 and Model #787 to provide standardized tools and processes to be used by all regulators when reviewing such transactions. However, these new tools are complex and technical in nature, requiring the use of a new actuarial methodology to achieve the desired financial solvency results. Therefore, the Reinsurance (E) Task Force recommends that any new accreditation standard developed for Model #787 be

adopted by NAIC-accredited jurisdictions in a “substantially similar” manner, as that term is defined in the Accreditation Interlineations of the NAIC Financial Regulation Standards and Accreditation Program. In addition, all of the elements of the XXX/AXXX Reinsurance Framework have been put into place, with the exception of the new accreditation standard. Therefore, F-Committee should consider a waiver in its normal timeline for adoption of an accreditation standard, and expeditiously consider adoption of this new standard effective as of January 1, 2020.

**An estimate of the cost for insurance companies to comply with the proposal and the impact on state insurance departments to enforce it, if reasonably quantifiable:**

The NAIC has not performed a cost/benefit analysis with respect to Model #787, nor do we believe that the specific costs for insurance companies to comply with the proposal and the impact on state insurance departments to enforce it are reasonably quantifiable. However, it should be noted that Model #787 does not require dramatic changes from how insurance companies have been financing XXX/AXXX captive reinsurance transactions since the NAIC’s adoption of AG 48. As with AG 48, Model #787 provides “standardized tools and processes to be used by all regulators when reviewing such transactions.” Prior to the adoption of AG 48, insurers would enter into various captive reinsurance transactions to “finance” different portions of the statutory reserve differently—i.e., to fund different portions of the reserve using different kinds of assets—based on what insurers believed to be a better correlation between the kind of asset used and the probability that it would be needed. Many state regulators were comfortable with these transactions in theory, but there was significant unease regarding how these transactions were being implemented, and especially as to the lack of consistency from insurer to insurer and regulator to regulator regarding key aspects as to how these transactions may have been approved. Such transactions are still permitted under Model #787, but now a clear and consistent process has been implemented to ensure that the proper amount and type of assets have been applied with respect to these transactions in order to ensure that they continue to meet strong financial solvency standards.




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## MEMORANDUM

TO: Financial Regulation Standards and Accreditation (F) Committee

FROM: Reinsurance (E) Task Force

DATE: August 24, 2017

RE: *Term and Universal Life Insurance Reserve Financing Model Regulation (#787)*

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### Executive Summary

The NAIC membership adopted the *Term and Universal Life Insurance Reserve Financing Model Regulation (#787)* at the 2016 Fall National Meeting on Dec. 13, 2016. At that same time, the NAIC membership also adopted revisions to *Actuarial Guideline XLVIII—Actuarial Opinion and Memorandum Requirements for the Reinsurance of Policies Required to be Valued under Sections 6 and 7 of the NAIC Valuation of Life Insurance Policies Model Regulation (AG 48)* to conform with the provisions of Model #787, effective Jan. 1, 2017. Model #787 establishes uniform, national standards governing reserve financing arrangements pertaining to term life and universal life insurance policies with secondary guarantees, and ensures that funds consisting of primary security and other security are held in the forms and amounts required.

At its meeting on Aug. 7, 2017, the Reinsurance (E) Task Force agreed to submit the following recommendations to the Financial Regulation Standards and Accreditation (F) Committee:

1. Model #787 should be adopted as a new accreditation standard by the NAIC, with significant elements as outlined in Attachment A.
2. The Financial Regulation Standards and Accreditation (F) Committee should consider a waiver in its normal timeline for adoption of an accreditation standard, and expeditiously consider adoption of this standard. The Task Force recommends that the accreditation standard become effective Jan. 1, 2020. The Task Force further recommends that a state's adoption of AG 48 will serve to satisfy this accreditation standard until such time that the state adopts the significant elements of Model #787.
3. The 2016 revisions to the *Credit for Reinsurance Model Law (#785)* should be considered acceptable but not required by the states.

In addition to the preceding recommendations, the Task Force is offering the following additional information in order to assist the Financial Regulation Standards and Accreditation (F) Committee in reviewing the proposed accreditation standard for Model #787.

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### **Substantially Similar**

The Task Force has recommended in the draft accreditation standard that the “substantially similar” standard be utilized to meet the minimum requirements of the standard. However, the Task Force did note that Drafting Notes to Section 2, Section 3 and Section 5 of Model #785 might suggest a stronger standard of review than “substantially similar.” The Drafting Notes provide, as follows: “To assist in achieving national uniformity, commissioners are asked to strongly consider adopting regulations that are **substantially similar in all material respects** to NAIC adopted model regulations in the handling and treatment of such reinsurance arrangements.” [Emphasis added]. In recognition of this, and to assist in review of the actuarial method used to determine the required level of primary security as described in Section 6 of Model #787, the Task Force recommends that the NAIC Legal Division specifically note any material changes in a state’s regulation during an accreditation review for consideration by the Financial Regulation Standards and Accreditation (F) Committee.

### **State Adoption of AG 48**

The Task Force recommends that the accreditation standard become effective on an expedited basis beginning Jan. 1, 2020. However, the Task Force further recognizes that meeting the expedited date may not be feasible for some states in instances due, in whole or part, to other legislative priorities of the states. It is the recommendation of the Task Force that, in such cases, a state’s compliance with AG 48 should be considered as satisfactory to the Financial Regulation Standards and Accreditation (F) Committee as substantial compliance with Model #787. AG 48 became effective Jan. 1, 2015, and became part of the *Accounting Practices and Procedures Manual* through its inclusion in Appendix C, and has been amended to conform with Model #787 effective Jan. 1, 2017.

### **2016 Revisions to Model #785**

The Task Force does not recommend that the 2016 revisions to Model #785 be included in the proposed accreditation standard. These revisions provide that the commissioner may adopt regulations with respect to: 1) life insurance policies with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits; 2) universal life insurance policies with provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period; 3) variable annuities with guaranteed death or living benefits; 4) long-term care insurance policies; and 5) other life and health insurance and annuity products as to which the NAIC adopts model regulatory requirements with respect to credit for reinsurance. The revisions to Model #785 also contain a “professional reinsurer exemption” for reinsurers that maintain at least \$250 million in capital and surplus when determined in accordance with the *Accounting Practices and Procedures Manual*, including all amendments thereto adopted by the NAIC, excluding the impact of any permitted or prescribed practices, and is: 1) licensed in at least 26 states; or 2) licensed in at least 10 states, and licensed or accredited in a total of at least 35 states.

The reasoning of the Task Force is that Model #787 only applies to term life and universal life with secondary guarantees (XXX/AXXX) captive reinsurance transactions, and that variable annuities, long-term care insurance and other life and health insurance and annuity products are not currently addressed. Therefore, it would be considered to be premature to require the states to adopt these provisions. In addition, the professional reinsurer exemption of Section 5B(4) of Model #785 is specifically referenced in the draft accreditation standard. Therefore, it is the recommendation of the Task Force that the 2016 revisions to Model #785 are optional, and should be considered as acceptable but not required by the states.

## Attachment A

**Proposed Accreditation Standard**  
***Term and Universal Life Insurance Reserve Financing Model Regulation (#787)***

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State statute and/or regulation should be substantially similar to uniform, national standards that govern reserve financing arrangements pertaining to life insurance policies containing guaranteed nonlevel gross premiums, guaranteed nonlevel benefits and universal life insurance policies with secondary guarantees, to ensure that both the total security and the primary security are provided in forms and amounts that are in compliance with the requirements set forth in the *Term and Universal Life Insurance Reserve Financing Model Regulation (#787)*.

- a. Provides that the *Credit for Reinsurance Model Regulation (#786)* and Model #787 shall both apply to reinsurance treaties that cede liabilities pertaining to Covered Policies; provided, that in the event of a direct conflict between the provisions of Model #787 and the provisions of Model #786, the provisions of Model #787 shall apply, but only to the extent of the conflict, substantially similar to Section 3 of Model #787?
- b. Provides that Model #787 does not apply to reinsurance exempt by the provisions of Section 4 of Model #787, including reinsurance ceded to an assuming insurer that meets the requirements of either Section 5B(4)(a) of the *Credit for Reinsurance Model Law (#785)*, which pertains to certain certified reinsurers, or Section 5B(4)(b) of Model #785, which pertains to reinsurers meeting certain threshold size and licensing requirements?
- c. Provides definitions of “Covered Policies,” “Grandfathered Policies,” “Required Level of Primary Security,” “Actuarial Method,” “Primary Security,” “Other Security” and “Valuation Manual” that are substantially similar to such terms as defined in Section 5 of Model #787?
- d. Provides for an Actuarial Method to establish the Required Level of Primary Security for each reinsurance treaty subject to this regulation that is substantially similar to the methodology as set forth in Section 6A of Model #787?
- e. Provides for valuations to be used 1) in calculating the Required Level of Primary Security pursuant to the Actuarial Method; and 2) in determining the amount of Primary Security and Other Security, as applicable, held by or on behalf of the ceding insurer, that are substantially similar to the valuations set out in Section 6B of Model #787?
- f. Provides for requirements to obtain credit for reinsurance with respect to ceded liabilities pertaining to Covered Policies that are substantially similar to the requirements set out in Section 7A of Model #787?
- g. Provides for requirements at inception date and on an ongoing basis substantially similar to Section 7B(1) of Model #787?
- h. Provides that if the requirements to hold Primary Security and total security are not both satisfied, the ceding insurer shall establish a liability equal to the excess of the credit for reinsurance taken over the amount of Primary Security actually held, unless any deficiency has been eliminated pursuant to remediation provisions substantially similar to Section 7B(2) of Model #787?
- i. Includes a prohibition against avoidance provision similar to Section 9 of Model #787?

