

To: Commissioner Todd E. Kiser (UT), Chair of Financial Regulation Standards and Accreditation (F) Committee

From: Jeff Hunt (TX) and Joel Sander (OK), Co-Chairs of National Treatment and Coordination (E) Working Group

Date: February 15, 2019

Re: Company Licensing Accreditation Standards

Executive Summary

The National Treatment and Coordination (E) Working Group (Working Group) is charged with monitoring usage of the Form A database and implementation of company licensing best practices. As a result of this monitoring, updates and enhancements are made that must also be considered for their impact on the accreditation program and, specifically, Part D: Organization, Licensing and Change of Control of Domestic Insurers (Part D).

On February 14, 2019 the Working Group adopted a recommendation regarding the Part D Accreditation Standards to a) update the guidelines to reflect current practices, b) expand the scope to include redomestications, and c) include Part D in the review team's recommendation with the result that the outcome can affect a state's accredited status.

A baseline set of standards for the completion of primary applications for the licensing of new companies and redomestications, and Form A filings promotes reliance on other states in these important functions. Each application requires consideration of financial solvency of the insurers to both strengthen financial regulation and prevent unlicensed or fraudulent activities. The significant reliance on other states combined with the potential solvency impact of non-compliance with the Part D standards result in the recommendation to the Financial Regulation Standards and Accreditation (F) Committee outlined in this referral.

The Working Group recommends that the revisions to the guidelines be adopted with an effective date of January 1, 2020. However, the Working Group also recommends that the effective date for subjecting Part D to Recommendation A or B and thus impacting a state's accredited status, be effective January 1, 2022. This timeline allows states to adjust to the revised guidelines before elevating the status of the Part D standards. The recommendations are intended to be prospective and applicable to filings received on or after the effective date.

Summary of Changes

Updates to Reflect Current Practices

Following is a summary of the Working Group's recommended revisions to the Part D accreditation guidelines:

- 1) update the scope to include primary applications for redomestications,
- 2) update timing guidelines to rely on department policies along with state statute or regulation or the Company Licensing Best Practices Handbook,
- 3) add a new standard for the scope and performance of procedures for redomestications which includes elements of a quality review in addition to communication expectations,

- 4) update the process-oriented guidelines for Form A filings to include documenting an assessment of business plans and the quality and expertise of key persons, and
- 5) require updates to the Form A database at a minimum every six months for open filings.
- 6) update the title of Part D to “Primary Licensing, Redomestications and Change of Control”

Expand Scope to Redomestications

Insurance companies redomicile for a variety of reasons. When a redomestication occurs, state regulators take on the responsibility to review the request. The Working Group believes it is key for regulators in both states to communicate, review the information provided, and understand the reasons for the redomestication. In addition, the Working Group received a referral from the Financial Analysis (E) Working Group (FAWG) supporting inclusion of redomestications in the Part D Standards based on their work monitoring troubled and potentially troubled companies. As an example, FAWG has identified situations where companies have sought to take advantage of the redomestication process to achieve regulatory arbitrage. The recommended accreditation guidelines include elements for a quality review of these transactions as well as communication requirements with other regulators.

Subject to Recommendation A or B

In 2016, The Working Group together with the Group Solvency Issues (E) Working Group redesigned the Form A Database to enhance regulatory reviews and provide a more dynamic regulatory tool. The database now captures more information regarding mergers, acquisitions, consolidated hearings and/or coordinated reviews of Form A filings. The Form A is reviewed and analyzed by the state in which the Form A is filed, and the appropriate action is taken by the state to either approve or disapprove the transaction within a specified time frame. Making this information available to regulators in each state via the Form A Database provides awareness of other similar transactions such as a large insurer initiating acquisitions in numerous states or denials/issues with filings from the same ultimate controlling party. The database can also lead to efficiencies in analyzing similar transactions using the Lead State concept incorporated into the database.

To fully realize the regulatory value the Form A Database can provide, all states must effectively use the database for each applicable transaction. The Working Group recommends subjecting the Part D accreditation guidelines to a Recommendation A or B as defined in the accreditation manual to ensure a complete database of information.

In the primary application process for new companies, other states may not immediately rely on the work done by the domiciliary state, but as soon as the insurer begins requesting licenses in other states, heavy reliance is placed on the initial application process done by the domiciliary state. In the primary application process for redomestications, other states rely on the new domestic regulator as discussed above.

Therefore, primary applications for new companies and redomestications, in addition to Form A filings, are equally important and should be encompassed in the Recommendation A or B for the entirety of Part D.

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 purpose of subjecting primary licensing, redomestications and mergers/acquisitions to Recommendation A or B is to ensure that states have effective processes in place that other states may rely on when these functions are performed. A quality review of each filing includes assessing the financial solvency of the company to ensure the interests of the policyholders are met. These filings promote interstate communication and coordination, which are key elements of effective solvency regulation and an area of increased focus as holding company assessments, supervisory colleges and other coordinated efforts increase the effectiveness of regulation.

In addition, the Form A Database provides a system to communicate whether any similar or related Form A has been approved, denied or withdrawn from another state. The purpose of this database is to: 1) facilitate the communication of actions taken by the states on all Form A filings; and 2) facilitate the coordination of Form A reviews in an attempt to avoid the duplication of regulatory processes via a Web-based application. This database will assist insurance regulators by producing a streamlined regulatory process that maintains the integrity of state holding company laws, while being responsive to a dynamic and evolving industry.

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

States place significant reliance on the work of another state's review and approval/denial of a primary application for a new company or redomestication or a Form A filing. Elements within the standard such as review of items submitted by the company along with communication between states enhance the system of state-based regulation. Reliance is most effective when states have comfort that other states are in compliance with the minimum uniform standards.

In addition to increasing the uniformity of review, the updated guidelines are designed to enhance the value of the Form A Database. As of December 2018, a substantial number of Form A filings had not been updated in over a year, likely due to delays outside the state's control. The revised guidelines will require a status update in the Form A Database at least once every six months. With more current information available, states have more tools to avoid fraudulent or questionable acquisitions that could lead to insolvency of an insurer.

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

Part D initially became effective for accreditation in 2012 as an "unscored" section of the accreditation program. This meant that a state could not fail accreditation based solely on the lack of compliance with these standards. If deficiencies were noted, the review team would provide management comments to the state insurance department, requesting the state to consider improvements as needed, but Part D would not factor into a state's accredited status. Because state's have been subject to this section since 2012, there is already a base level of compliance. Including the standards in the review team's recommendation appropriately elevates the importance of the reliance placed on these processes.

Note: The accreditation program moved from a scoring system to a recommendation system effective January 1, 2017.

A statement as to the provisions needed to meet the minimum requirements of the standard:

Revised standards and guidelines for Part D are attached.

PART D: ORGANIZATION, LICENSING AND CHANGE OF CONTROL OF DOMESTIC INSURERS **PRIMARY LICENSING, REDOMESTICATIONS AND CHANGE OF CONTROL**

Preamble for Part D

The focus of the Part D standards is on strengthening financial regulation and the prevention of unlicensed or fraudulent activities. The scope of this section only includes primary applications for the licensing of new companies and redomestications, and Form A filings. The section applies to only traditional life/health and property/casualty companies, and this scope is narrower than that of Part B in that it does not include entities such as health maintenance organizations, health service plans, and captive insurers (including captive risk retention groups). These standards only deal with the department's analysis of domestic companies or those applying for redomestication, and do not include foreign or alien insurers. The initial company licensing process does not consider the "multi-state" concept since the company is in its initial licensing phase. The standards regarding primary applications for redomestications, and Form A filings ~~deal with~~ apply to only those filings submitted that are related to multi-state insurers, as that term is defined in the Part B Preamble.

Part D: Organization, Licensing and Change of Control of Domestic Insurers **Primary Licensing, Redomestications and Change of Control**

a. Sufficient Qualified Staff and Resources

Standard: The department should have the appropriate staff and resources to effectively and timely review applications for primary licensure of new companies and redomestications, and Form A filings for all domestic insurers.

Results-Oriented Guidelines:

1. The department should have qualified staff with appropriate skill sets, abilities, knowledge and experience levels to satisfactorily and effectively perform a thorough review of applications for primary licensure of new companies and redomestications, and Form A filings. When assessing whether a department has qualified staff and resources, consideration should be given to the quality of work ~~performed by department staff~~ as documented in the files.
2. The review of applications for primary licensure of new companies and redomestications, and Form A filings should be completed timely, as described by department procedures, as discussed in the Compliance Guidelines ~~process-oriented guidelines~~. If the review was not completed timely, the department should document the reasons for such, and the review team may take extenuating circumstances into consideration.

Process-Oriented Guidelines:

1. The department staff responsible for reviewing the applications for primary licensure of new companies and redomestications, and Form A filings should have an accounting, insurance, financial analysis and/or actuarial background. College degrees should focus on accounting,

insurance, finance or actuarial science. Professional designations and credentials may also demonstrate expertise in insurance and/or financial analysis.

2. The department should have a policy that establishes timing requirements for the review of applications for primary licensure of new companies and redomestications, and Form A filings. The policy should include timing expectations for initial review from date of receipt, notification to the insurer, and completion of the review. The policy should account for any requirements mandated by the state's statute or regulation. The use of the Company Licensing Best Practices Handbook is considered acceptable.

~~The department should review applications for primary licensure of new companies and, redomestications, and Form A filings within 30 days of receipt. If additional or supplementary information is needed from the insurer based on the initial review for completeness, the insurer should be notified of such within 45 days of receipt of the application.~~

3. ~~For primary applications of new companies and redomestications, the review should be completed in accordance with timing requirements mandated by the state's statute or regulation, unless if the state's statutes or regulations do not specify timing requirements, in which case, the review should be completed within 90 calendar days of receipt. A review of an application is complete once the insurer is notified of approval or denial. If additional information not originally requested in the application is needed to finalize the review of the application, the review may take longer to complete. Once a request for information is made, the timing requirement is suspended until the information is received from the applicant.~~

~~— For Form A filings, the review of the primary application or Form A should be completed in accordance with timing requirements mandated by the state's statute or regulation.~~

b. Scope and Performance of Procedures for Primary Applications

Standard: The department should have documented licensing procedures to provide for consistency in the review process and to ensure that appropriate procedures are performed on all primary applications. The use of the Company Licensing Best Practices Handbook is considered acceptable.

Results-Oriented Guidelines:

1. The review process should adequately assess primary applications and allow the department to reach appropriate conclusions regarding whether the primary applications are approved or denied.

Process-Oriented Guidelines:

1. The department should review and document its assessment of each of the following:
 - Business and strategic plans.
 - Pro forma financial projections.
 - Adequacy of proposed reinsurance program.
 - Adequacy of investment policy.
 - Adequacy of short-term and long-term financing arrangements:

- Initial financing of proposed operations or transactions.
- Maintenance of adequate capital and surplus levels.
- Biographical affidavits
- Assessment of the quality and expertise of the following:
 - Ultimate controlling person.
 - Proposed officers and directors.
 - Appointed actuary.
 - Appointed accountant.
- Related party agreements' compliance with Statement of Statutory Accounting Principles (SSAP) No. 25—*Affiliates and Other Related Parties*.

2. The department should review the NAIC Form A and ~~Special Activities Database (SAD)~~Market Action Tracking System (MATS) databases for related information about the primary applicant and other key persons.

c. Scope and Performance of Procedures for Redomestications

Standard: The department should have documented procedures for the review of redomestication applications to provide for consistency in the review process and to ensure that appropriate procedures are performed for all redomestications. The use of the Company Licensing Best Practices Handbook and/or Financial Analysis Handbook are considered acceptable.

Results-Oriented Guidelines:

1. The review process should adequately assess the redomestication application and accompanying information to effectively allow the department to reach appropriate conclusions regarding whether a redomestication application is approved or denied.
2. The department should effectively communicate with the domestic state to gain an understanding of the reasons for redomestication and any concerns of the domestic state. Any concerns raised should be assessed and documented with rationale to support the conclusion.

Process-Oriented Guidelines:

1. The department should review the application and accompanying information and document, at a minimum, its assessment of each of the following:
 - Business and strategic plans of the insurer.
 - Actuarial Opinion
 - Annual and Quarterly statements
 - Risk-based capital (RBC) report
 - Independent CPA audit report
 - Insurance Holding Company System Annual Registration Statement and Exhibits (Form B)
 - Assessment of senior management, board of directors and corporate governance

2. The department should meet with the domestic regulator to obtain, discuss, and conclude on, at a minimum, the items listed below. The meeting should be held via conference call; an email exchange alone is not considered sufficient.
 - Most recent Insurer Profile Summary (IPS) and supervisory plan, including supporting analysis detail for significant risks
 - Reason for redomestication
 - Concerns identified with the insurer/group
 - History of communication with the insurer/group
 - History of regulatory actions
 - Results of recent examinations (financial and market conduct), including findings and resolutions
 - Status of and responsibilities for annual financial analysis and group analysis, if applicable
 - Status of and responsibilities for the financial examinations
3. The department should notify the lead state of the insurance holding company group of receipt of a primary application for redomestication and obtain a copy of the most recent Group Profile Summary (GPS), if applicable.

de. Scope and Performance of Procedures for Form A Filings

Standard: The department should have documented procedures for the review of Form A filings to provide for consistency in the review process and to ensure that appropriate procedures are performed on all Form A filing reviews. The use of the Company Licensing Best Practices Handbook and/or Financial Analysis Handbook is considered acceptable.

Results-Oriented Guidelines:

1. The review process should ~~be designed to~~ adequately assess the Form A filings and accompanying information and ~~to~~ effectively allow the department to reach appropriate conclusions regarding whether the Form A filings are approved or denied.

Process-Oriented Guidelines:

1. The department ~~should's~~ review and document its assessment of each of ~~of Form A filings~~ ~~should include~~ the following:
 - Business and strategic plans of the insurer.
 - Identity and background of the applicant and individuals associated with the applicant including use of biographical affidavits to assess the quality and expertise of the following:
 - Ultimate controlling person
 - Proposed officers and directors (as listed on Jurat Page of most recent or upcoming financial statement)
 - Other owners of 10% or more of voting securities
 - The source, nature and amount of the consideration used or to be used in effecting the merger or other acquisition of control.

- Fully audited financial information regarding the earnings and financial condition of the acquiring parties for the preceding five years. If fully audited financial information is not available, substantially similar information such as compiled financial statements or tax returns, as deemed acceptable to the commissioner, may be reviewed in lieu of fully audited financial information.

- Unaudited financial information regarding the earnings and financial condition of the acquiring parties as of a date not earlier than 90 days prior to the filing of ~~each statement~~the Form A.

2. The department should ~~utilize and update~~review the Form A Database for prior filings made by the Form A applicant and the ultimate outcome of such filing(s).

3. Pertinent and relevant information from the Form A filing should be manually entered into the Form A Database within 10 business days of receipt of the Form A.

4. Any changes to the status of the filing or other data elements should be entered into the Form A Database within 10 business days.

~~4.5.~~If the progress of a filing stalls, the Form A database should be updated at a minimum every six months to confirm the status of the filing and document the reason the filing has stalled.