

PROJECT HISTORY - 2014

MODEL GUIDELINE FOR PAYMENT OF INTEREST TO RECEIVER ON OVERDUE REINSURANCE RECOVERABLES (#1600)

1. Description of the Project, Issues Addressed, etc.

During 2010 and 2011, the Receivership Reinsurance Recoverables (E) Working Group, at the direction of the Receivership and Insolvency (E) Task Force, reviewed and drafted possible solutions to address concerns for the timing and collection of reinsurance recoverables held by insurers in receivership.

The Working Group reviewed suggestions and decided on possible solutions. One of the solutions the Working Group recommended is to require interest on overdue reinsurance payments. This solution is intended to bring leverage against reinsurers by requiring them to pay interest applicable to delayed payments with uniform language across states.

On March 27, 2011, the Working Group issued a memorandum to the Receivership and Insolvency (E) Task Force, and on June 8, 2011, the Task Force sent a referral to the Reinsurance (E) Task Force recommending it consider the uniform reinsurance contract language in the *Credit for Reinsurance Model Law* (#785) to address interest on overdue payments in receivership.

On Sept. 19, 2011, the Financial Condition (E) Committee received a separate referral from the Receivership and Insolvency (E) Task Force requesting assistance with the recommended solution from the adopted March 27 memorandum regarding the enforcement of the collection of undisputed balances. The Committee requested that the Reinsurance (E) Task Force study issues regarding regulatory support for the collection of undisputed reinsurance recoverable balances held by ceding insurance companies in receivership and consider any appropriate NAIC action.

On Feb. 27, 2012, the Reinsurance (E) Task Force issued a report to the Receivership and Insolvency (E) Task Force stating it received and discussed requests from Receivership and Insolvency (E) Task Force during an interim meeting on July 11, 2011, during the process of considering revisions to the *Credit for Reinsurance Model Law* (#785) and *Credit for Reinsurance Model Regulation* (#786). With regard to the proposed reinsurance contract language to address interest on overdue payments, following discussion with regulators and interested parties, the Reinsurance (E) Task Force determined that a mandatory contract clause within the Model #785 or Model #786 would not be the appropriate mechanism to address this item. The members generally agreed with the intent of the proposed solution; however, the general consensus was that this item might be more appropriately addressed within a state's laws regarding insolvency or general civil procedure. In addition, discussion suggested that further consideration might be necessary with respect to certain aspects of this proposed solution, e.g., definition of the term "valid claim." As such, the Reinsurance (E) Task Force did not implement this clause within Model #785 or Model #786.

On March 4, 2012, the Reinsurance (E) Task Force reconstituted the Receivership Reinsurance Recoverables (E) Working Group with the charge to study and provide a recommendation for the issue of requiring interest on overdue reinsurance payments in receivership.

On Sept. 18, 2012, the Working Group held a conference call, at the conclusion of which it considered drafting a Guideline.

During 2013, NAIC staff conducted surveys of states to gather more information about existing state laws as they pertain to reinsurance payments in receivership. NAIC staff reviewed state survey results; the *Insurer*

Receivership Model Act (#555), with a focus on section 504-Powers of the Liquidator, and 611-Reinsurer's Liability; and the language of the Model Acts preceding Model #555—*Insurers Rehabilitation and Liquidation Model Act* and the *Insurers Supervision, Rehabilitation and Liquidation Model Act*. Based on this review, a proposed Guideline was drafted for discussion.

2. Name of Group Responsible for Drafting the Model and States Participating

The Working Group was responsible for drafting the Guideline. The 2013-2014 members of the Working Group that drafted the Guideline were: Delaware (Chair), Illinois, Indiana, Pennsylvania, and Texas. The five-member Working Group adopted the Guideline Aug. 16, 2014.

3. Project Authorized by What Charge and Date First Given to the Group

The Working Group, at the direction of the Receivership and Insolvency (E) Task Force, was reconstituted March 4, 2012, and charged to study and provide a recommendation for the issue of requiring interest on overdue reinsurance payments in receivership.

4. A General Description of the Drafting Process and Due Process

- The Guideline was discussed at open meetings of the Working Group held Dec. 15, 2013; Mar. 29, 2014; and Aug. 16, 2014.
- The Guideline was exposed for public comment from Dec. 15, 2013– Feb. 14, 2014. The exposure was distributed to members, interested regulators and interested parties of both the Working Group and the Receivership and Insolvency (E) Task Force and posted to the NAIC website. Comment letters were received from California, New Jersey, the Reinsurance Association of America (RAA) and Stillman Consulting Services (SCS). The letters were discussed on Mar. 29, 2014, and the RAA was asked to draft additional revisions to the Guideline's drafting note to clarify the Guideline's intent.
- The draft Guideline was released for public comment a second time from July 1, 2014– July. 21, 2014, with the RAA's proposed edits to the drafting note. The exposure was distributed to members, interested regulators and interested parties of both the Working Group and the Receivership and Insolvency (E) Task Force, and posted to the NAIC website. Comments were received from California, Utah and Washington, and were discussed Aug. 16, 2014.
- The Working Group adopted the Guideline on Aug. 16, 2014.
- The Receivership and Insolvency (E) Task Force adopted the Guideline Aug. 17, 2014.
- The Financial Condition (E) Committee adopted the Guideline Aug. 18, 2014.

5. A Discussion of the Significant Issues

The following topics of the Guideline were discussed with regulators and interested parties:

- It was noted during drafting that the simplicity of the Guideline's language was intentional and is designed to fit into each state's existing receivership laws.
- It was also noted during discussions that each state's implementation of such a provision is important. As stated in the Guideline's drafting note, the Guideline is intended for use by receivers in instances where a reinsurer unjustifiably denies payment after such time as a claim under its reinsurance agreements has been shown to be properly due and owed. The Guideline is not an amendment to the NAIC receivership models and is not intended to affect other rights and responsibilities under receivership law, but is intended as a Guideline for use by those states seeking to permit a receiver to collect the payment of interest on overdue reinsurance recoverable. If it is used as intended, the Guideline could be helpful in cases where there is an uncooperative reinsurer.

6. Any Other Important Information

None.