NAIC | NATIONAL MEETING
FALL 2022

Date: 11/30/22

2022 Fall National Meeting
Tampa, Florida

Statutory Accounting Principles (E) Working Group
Tuesday, December 13, 2022
10:00 a.m. – 12:00 p.m.

OVERVIEW AGENDA

HEARING AGENDA

		Hearing Page Number	Attachment
1.	**SAPWG Hearing #1 – Adoption of Minutes—Dale Bruggeman (OH)**	1	1-4
2.	**SAPWG Hearing #1 – Review and Adoption of Non-Contested Positions —Dale Bruggeman (OH)**		
	• Ref #2022-09: ASU 2022-01: Fair Value Hedging – Portfolio Layer Method	2	5
	• Ref #2022-10: ASU 2022-02: Troubled Debt Restructurings and Vintage Disclosures	3	6
	• Ref #2022-13: Related Party - Footnote Updates	3	7
3.	**SAPWG Hearing #1 – Review of Comments on Exposed Items—Dale Bruggeman (OH)**		
	• Ref #2022-01: Conceptual Framework Updates	4	8-9
	• Ref #2022-11: Collateral for Loans	5	10
	• Ref #2022-12: Review of INT 03-02: Modifications to an Existing Intercompany Pooling Arrangement	7	11
	• Ref #2021-25: Leasehold Improvements after Lease Termination	10	12
	Comment Letters		13
4.	**SAPWG Hearing #2 – Review of Comments on INT 22-02**		
	• INT 22-02: Third Quarter 2022 through First Quarter 2023 Reporting of the Inflation	1	14
	• Comments (Due Dec. 1)	1	15

OVERVIEW AGENDA

MEETING AGENDA

	Meeting Page Number	Attachment
5. SAPWG Meeting – Maintenance Agenda – Pending List—*Dale Bruggeman (OH)*		
• Ref #2022-14: New Market Tax Credits / Tax Equity Investments	1	A-B
• Ref #2022-15: Affiliate Reporting Clarification	3	C
• Ref #2022-16: ASU 2022-03, Fair Value Measurement of Restricted Securities	3	D
• Ref #2022-17: Interest Income Disclosure Update	4	E
• Ref #2022-18: ASU 2022-04, Disclosure of Supplier Finance Program Obligations	5	F
• Ref #2022-19: SSAP No. 7 - IMR	6	G-H
6. SAPWG Meeting – Maintenance Agenda – Active Listing—Dale Bruggeman (OH)		
• Ref #2017-33: ASU 2017-12 – Derivatives and Hedging	7	I
• Ref #2019-21: Proposed Bond Definition	8	J-K
7. SAPWG Meeting – Any Other Matters Brought Before the Working Group —Dale Bruggeman (OH)		
• Update on the Referral from the Macroprudential (E) Working Group	9	L
• Review of U.S. GAAP Exposures	9	M

- ➢ **Comment Deadline for all items – Friday, February 10, 2023**

Hearing Agenda #1

Statutory Accounting Principles (E) Working Group
Hearing Agenda #1
December 13, 2022
10:00 a.m. – 12:00 p.m. (ET)

ROLL CALL

Dale Bruggeman, Chair	Ohio	Judy Weaver	Michigan
Kevin Clark, Vice Chair	Iowa	Doug Bartlett	New Hampshire
Sheila Travis	Alabama	Bob Kasinow	New York
Kim Hudson	California	Melissa Greiner/Matt Milford	Pennsylvania
William Arfanis/Michael Estabrook	Connecticut	Jamie Walker	Texas
Rylynn Brown	Delaware	Doug Stolte/David Smith	Virginia
Eric Moser	Illinois	Amy Malm/Elena Vetrina	Wisconsin
Melissa Gibson/Stewart Guerin	Louisiana		

NAIC Support Staff: Julie Gann, Robin Marcotte, Jake Stultz, Jason Farr

Note: This meeting will be recorded for subsequent use.

REVIEW AND ADOPTION OF MINUTES

1. Summer National Meeting **(Attachment 1)**
2. October 6, 2022, E-Vote **(Attachment 2)**
3. October 24, 2022 **(Attachment 3)**
4. November 16, 2022 **(Attachment 4)**

The Statutory Accounting Principles (E) Working Group met in regulator-to-regulator sessions on Dec. 8. This regulator session was pursuant to the NAIC Open Meetings Policy paragraph 3 (discussion of specific companies, entities or individuals) and paragraph 6 (consultations with NAIC staff related to NAIC technical guidance of the *Accounting Practices and Procedures Manual*). No actions were taken during these meetings as the discussion previewed the Fall National Meeting agendas and discussed other items with NAIC staff pursuant to the NAIC open meeting policy.

REVIEW AND ADOPTION of NON-CONTESTED POSITIONS

The Working Group may individually discuss the following items, or may consider adoption in a single motion:

1. Ref #2022-09: ASU 2022-01: Fair Value Hedging – Portfolio Layer Method
2. Ref #2022-10: ASU 2022-02: Troubled Debt Restructurings and Vintage Disclosures
3. Ref #2022-13: Related Party - Footnote Updates

Ref #	Title	Attachment #	Agreement with Exposed Document?	Comment Letter Page Number
2022-09 SSAP No. 86 (Julie)	**ASU 2022-01: Fair Value Hedging – Portfolio Layer Method**	**5 – Agenda Item**	**In Support**	**IP - 7**

Summary:
On August 10, the Working Group exposed edits to incorporate key aspects of the U.S. GAAP guidance for portfolio layer method hedges and partial-term hedges into *SSAP No. 86—Derivatives.* The Working Group also directed NAIC staff to prepare one issue paper with all recent and upcoming derivative revisions. (The issue paper will contain other derivative revisions recently considered from U.S. GAAP.) Summary of Revisions Proposed in this Agenda Item – Portfolio Layer Method and Partial Term:

- SSAP No. 86: Revisions are proposed to paragraph 26 (fair value hedges) to detail criteria for portfolio and partial-term hedges. A small disclosure edit is proposed to paragraph 62 and guidance for reporting when the hedge is discontinued is proposed for inclusion in Exhibit C. Revisions have also been proposed to identify the adoption of *ASU 2022-01, Fair Value Hedging – Portfolio Layer Method* and to adopt with modification the guidance for partial-term hedges from ASU 2017-12. For the current proposal, the partial term hedge guidance is limited to hedged assets (not liabilities.) This is different from U.S. GAAP, but further statutory discussion is needed on basis adjustments when hedging liabilities, especially under partial term. It has been suggested that the Working Group move forward with incorporating the guidance for hedged assets at this time, as that addresses the current industry need, and consider guidance for hedged liabilities subsequently. (It was noted that industry is not aware of situations of partial-term liability hedges. Furthermore, the adjustment for hedged liabilities is a broader issue in SSAP No. 86, so the revisions would be more expansive.) Portfolio layer method hedges are limited to recognized assets under U.S. GAAP, so proposed guidance for SAP for those hedges is consistent. (Industry has identified that the FASB may consider expanding the scope of portfolio layer method hedges to liabilities. If this occurs, consideration will then occur for statutory accounting.)

- Exhibit A – Assessment of Hedge Effectiveness: Limited revisions to paragraphs 17-18 to mirror updated U.S. GAAP guidance and add a new section

Interested Parties' Comments:
Interested parties support the proposed changes.

Recommendation:
NAIC staff recommends that the Working Group adopt the exposed SAP clarifications to SSAP No. 86 with an effective date of January 1, 2023, with early adoption permitted. (This effective date will be populated in the exposed language in paragraphs 65c and 74f.) This item incorporates guidance from *ASU 2022-01, Fair Value Hedging – Portfolio Layer Method* and certain guidance from *ASU 2017-12, Derivatives and Hedging: Targeted Improvements to Accounting for Hedging Activities* to incorporate concepts for the portfolio layer method and partial term hedges for recognized assets. An issue paper has been prepared to detail statutory accounting revisions related to derivatives for historical purposes. This item will be considered within the Meeting agenda under the original agenda item reviewing the 2017 U.S. GAAP guidance: 2017-33: *ASU 2017-22 – Derivatives and Hedging*. (Note: the exposure requested comments on the need to permit dedesignation / redesignation of existing hedges and no comments were received. As such, no edits are proposed for such accommodations.)

Ref #	Title	Attachment #	Agreement with Exposed Document?	Comment Letter Page Number
2022-10 SSAP No. 36 (Julie)	**ASU 2022-02: Troubled Debt Restructurings and Vintage Disclosures**	**6 – Agenda Item**	**No Comment**	**IP - 7**

Summary:
On August 10, the Working Group exposed the intent to retain existing guidance in *SSAP No. 36—Troubled Debt Restructuring* along with revisions to the relevant literature section to identify the rejection of ASU 2022-02 and detail the GAAP/SAP differences for the accounting of troubled debt restructurings for creditors. Note that the proposed revisions to SSAP No. 36, paragraph 26 addresses ASU 2022-02 and paragraphs 27-29 detail the historical differences that are currently in paragraphs 26-30. This minor reorganization was completed in a more reader friendly format as it includes moving old effective date language from the relevant literature section to the effective date paragraph. With this exposure, comments are requested on whether the expanded U.S. GAAP disclosures with modifications should be considered for statutory accounting.

NAIC staff recommended that the CECL disclosures, including the revisions for "vintage gross write-offs" for public business entities be considered as part of the review of ASU 2016-13 for expected credit losses. However, comments were requested on this recommendation and whether the disclosures should be considered in advance of reviewing ASU 2016-13 for statutory accounting.

Interested Parties' Comments:
Interested parties have no comment on this item.

Recommendation:
NAIC staff recommends that the Working Group adopt the exposed SAP revisions to SSAP No. 36. The revisions reject *ASU 2022-02: Troubled Debt Restructurings and Vintage Disclosures* for statutory accounting. These revisions update the relevant literature guidance as the adopted statutory guidance will now reflect superseded U.S. GAAP.

Ref #	Title	Attachment #	Agreement with Exposed Document?	Comment Letter Page Number
2022-13 SSAP No. 25 SSAP No. 97 (Jake)	**Related Parties – Footnote Updates**	**7 – Agenda Item**	**No Comment**	**IP - 11**

Summary:
On August 10, the Working Group exposed revisions to *SSAP No. 25—Affiliates and Other Related Parties* and *SSAP No. 97—Investments in Subsidiary, Controlled and Affiliated Entities* to incorporate language to exempt foreign open-end investment funds governed and authorized in accordance with regulations established by the applicable foreign jurisdiction from the look-through provisions included in SSAP No. 25.

Interested Parties' Comments:
Interested parties have no comment on this item.

Recommendation:
NAIC staff recommends that the Working Group adopt the exposed revisions to SSAP No. 97 and SSAP No. 25 to incorporate language to exempt foreign open-end investment funds governed and authorized in accordance with regulations established by the applicable foreign jurisdiction from the look-through provisions included in *SSAP No. 25—Affiliates and Other Related Parties.*

REVIEW of COMMENTS on EXPOSED ITEMS

The following items received comments during the exposure period that are open for discussion.

1. Ref #2022-01: Conceptual Framework Updates
2. Ref #2022-11: Collateral for Loans
3. Ref #2022-12: Review of INT 03-02: Modifications to an Existing Intercompany Pooling Arrangement
4. Ref #2021-25: Leasehold Improvements after Lease Termination

Ref #	Title	Attachment #	Agreement with Exposed Document?	Comment Letter Page Number
2022-01 SSAP No. 5R (Robin)	**Conceptual Framework Updates—Liabilities**	**8 – Agenda Item 9 – Issue Paper**	**Comments Received**	**IP - 6**

Summary:
This agenda item is reviewing *FASB Concepts Statement No. 8, Conceptual Framework for Financial Reporting—Chapter 7, Presentation*, which identifies factors to consider when deciding how items should be displayed on the financial statements, and *Concepts Statement No. 8, Conceptual Framework for Financial Reporting—Chapter 4, Elements of Financial Statements*, which updates the definition of an asset and of a liability.

On August 10, 2022, the Statutory Accounting Principles (E) Working Group took the following actions:

1. Adopted, the exposed revisions, to the Preamble and *SSAP No. 4—Assets and Nonadmitted Assets* and *Issue Paper No. 166—Updates to the Definition of an Asset*, which documents the revisions to SSAP No. 4.

2. Re-exposed the proposed revisions and draft issue paper related to the definition change of a liability in *SSAP No. 5R—Liabilities, Contingencies and Impairment of Assets to allow* additional time for industry to review the changes in accordance with statutory accounting statements.

FASB Concepts Statement No. 8, *Conceptual Framework for Financial Reporting—Chapter 4, Elements of Financial Statements* introduced updated definitions of certain key elements used in financial reporting – the definition of an asset and liability.

- FASB has updated the **definition of an ASSET** to be defined as a present right of an entity to an economic benefit. The asset definition possesses two essential characteristics in that 1) an asset is a present right and 2), the right is to an economic benefit.

- FASB has updated the **definition of a LIABILITY** to be defined as a present obligation of an entity to transfer an economic benefit. The liability definition possesses two essential characteristics in that 1) the liability is a present obligation, and 2) the obligation requires an entity to transfer or otherwise provide economic benefit to others. (For the purposes of this characteristic, *transfer* is typically used to describe obligations to pay cash or convey assets, while the term *provide* is used to describe obligations to provide services or stand by to do so.)

Interested Parties' Comments:
The Working Group adopted, as final, the exposed revisions to the Preamble and *SSAP No. 4—Assets and Nonadmitted Assets.* The revisions incorporate updates from FASB Concepts Statement No. 8, *Conceptual Framework for Financial Reporting—Chapter 7, Presentation,* which identifies factors to consider when deciding how items should be displayed on the financial statements, and Concepts Statement No. 8*, Conceptual Framework for Financial Reporting—Chapter 4, Elements of Financial Statements,* which updates the definition of an asset. In

addition, the Working Group adopted *Issue Paper 166—Definition of Assets*, which documents the revisions to SSAP No. 4.

Additionally, the Working Group re-exposed the proposed revisions and draft issue paper related to the definition change of a liability in *SSAP No. 5R—Liabilities, Contingencies and Impairment of Assets.* This exposure intends to provide additional time for industry to review the changes in accordance with statutory accounting statements.

Interested parties suggest the following language be added to both the liability (which was re-exposed) and asset definition

- The guidance in this statement shall only be applicable to the extent there is not contradictory guidance regarding liabilities addressed in other existing statements.

This will ensure that there will not be any conflicts between the new definition and specific guidance in the SSAP's.

<u>*Recommendation:*</u>
NAIC Staff recommends the Working Group adopt the exposed revisions and incorporate alternative language drafted by Staff (illustrated below) which has a similar approach to the wording proposed by interested parties. This language is proposed for incorporation as a footnote to the asset and liability definitions in both the recently adopted SSAP No. 4, the related Issue Paper No. 166 and to SSAP No. 5R and its related Issue Paper.

This language is helpful because FASB treats the asset and liability definitions in Concepts Statement No. 8 like the statutory accounting statement of concepts. That is, they are concepts to consider when developing guidance. Accordingly, the update of Concepts Statement No. 8 does not change FASB authoritative literature. By contrast, SAP has treated SSAP No. 4 and SSAP No. 5R which incorporate the definition of an asset and a liability as authoritative foundational statements. FASB noted that some existing authoritative FASB literature is inconsistent with the update to Concepts Statement No. 8. **Therefore, NAIC staff recommends that the Working Group consider incorporating the following, which is similar in intent to the interested parties' language:**

> <u>The guidance in this statement for (asset or liability) recognition is applicable unless another authoritative statement provides more topic specific contradictory guidance. In such cases the topic specific guidance shall apply.</u>

Ref #	Title	Attachment #	Agreement with Exposed Document?	Comment Letter Page Number
2022-11 SSAP No. 21R (Robin)	**Collateral for Loans**	**10 – Agenda Item**	**Comments Received**	**IP - 7**

Summary:
On August 10, the Working Group exposed the revisions to *SSAP No. 21R—Other Admitted Assets* to clarify that the invested assets pledged as collateral for admitted collateral loans must qualify as admitted invested assets. This agenda item was drafted to address an inconsistency regarding the collateral loan guidance in *SSAP No. 20—Nonadmitted Assets* and SSAP No. 21R. Both *SSAP No. 20—Nonadmitted Assets* and SSAP No. 21R identify the need for adequate collateral that qualifies as an "invested asset." SSAP No. 20 is explicit that the investment asset collateral must qualify as an admitted asset. Recent discussions with state regulators have highlighted that although SSAP No. 21R references the guidance in SSAP No. 20, that it would be beneficial to also note the need for the collateral to qualify as an <u>admitted invested asset.</u>

<u>*Interested Parties' Comments:*</u>
Interested parties understand the need to align SSAP No. 20 and SSAP No. 21 guidance and agree with the exposed change. We recommend further clarity for one particular collateral type: an equity investment in a joint venture, partnership, or LLC ("equity investment in an LLC"), which would be accounted for under SSAP No. 48 if it were owned directly.

SSAP No. 48 investments qualify as admitted assets when acquired; however, investors are ultimately required to obtain a GAAP audit, subject to a reporting lag on a consistent annual basis in order for the investments to continue to qualify as admitted assets. Interested Parties believe the GAAP audit requirement is primarily driven by the requirement to apply equity method accounting ("EMA") and to value directly held equity investments based on the reporting entity's share of underlying GAAP equity is not applied to collateral loans in SSAP No. 21. SSAP No. 21 specifies that a fair value assessment is required to determine that sufficient collateral exists to support admittance of a collateral loan. In the rare case where the collateral itself is owned outright by the insurer, due to default on the collateral loan and foreclosure on the loan, it is primarily important that the collateral has sufficient fair value such that if it were liquidated by the insurer, it would support the initial investment in the collateral loan. Interested parties note also that the same fair value assessment is already required to support SSAP No. 21, paragraph 4a, which defines impairment rules for collateral loans, using the fair value of collateral as an input to the impairment assessment.

In short, interested parties believe that a fair value assessment is the most relevant valuation information applicable to equity-type collateral. On the other hand, audited statements are the most relevant valuation information for directly held equity-type investments but are not necessarily useful for collateral assets.

To provide additional clarity and consistency with directly acquired SSAP No. 48 investments, we would suggest additional footnote language, as follows:

> In cases where an equity investment in a joint venture, partnership or LLC is pledged as collateral in a collateral loan, an adequate fair value assessment (in compliance with SSAP No. 100), is required to support an admitted asset for the purpose of collateral sufficiency. In the event that the loan is foreclosed, ownership of the SSAP No. 48 investment would initially be recognized as an admitted asset, but a GAAP audit must ultimately be obtained on a consistent annual basis to continue to support valuation and admittance of the SSAP No. 48 investment, consistent with requirements for directly acquired investments in such assets.

Recommendation:
NAIC staff recommends that the Working Group discuss the exposed revisions to SSAP No. 21R and the footnote proposed by interested parties. Some regulators have expressed concerns with the footnote noting that they have concerns about having unaudited LLCs, LLC, JV etc. which are pledged as collateral. NAIC staff defers to the Working Group on the action to take at the National Meeting. The Working Group could adopt as exposed, adopt with the footnote, or consider exposure to give more time for regulatory review.

To provide additional information on the discussion, the interested parties proposed footnote would not require SSAP No. 48 investments used as collateral loans to be supported by an audit until direct ownership. For example, if the loan defaulted, and the reporting entity takes possession of the collateral (SSAP No. 48 investment), an audit would be required for the investment to be admitted. Some regulators have expressed that in their view that SSAP No. 48 investments pledged as collateral that an audit should be required.

Ref #	Title	Attachment #	Agreement with Exposed Document?	Comment Letter Page Number
2022-12 INT 03-02 (Robin)	**Review of INT 03-02*: Modification to an Existing Intercompany Pooling Arrangement***	**11 – Agenda Item**	**Comments Received**	**IP - 8**

<u>*Summary:*</u>
On August 10, the Working Group exposed the intent to nullify INT 03-02, as it is inconsistent with SSAP No. 25—*Affiliates and Other Related Parties* guidance regarding economic and non-economic transactions between related parties. The guidance in INT 03-02 can result with, unrecognized gains (dividends) or losses through the using the statutory book valuation when using assets (bonds) to make payments to affiliates for modifications to existing intercompany reinsurance pooling agreements. Treatment of transfers of assets between affiliates should be consistent for all intercompany transactions and there is not a compelling need to be different when valuing assets for intercompany reinsurance transactions.

This interpretation is from 2003 and although it does not list that it is interpreting *SSAP No. 25—Affiliates and Other Related Parties* the results of the guidance create conflicts with SSAP No. 25. This is because the question in the interpretation is written as if the choice is to either follow reinsurance guidance or to follow related party guidance. Related party guidance applies to all such transactions including reinsurance. The recent changes in the interest rate environment have highlighted that using book value of invested assets can result in the transfer of unrecognized losses or of an unrecognized capital contribution.

<u>*Interested Parties' Comments:*</u>
The Working Group exposed the intent to nullify Interpretation 03-02*: Modification to an Existing Intercompany Pooling Arrangement* (INT 03-02), because of conflicts between INT 03-02 and *SSAP No. 25—Affiliates and Other Related Parties* guidance regarding economic and non-economic transactions between related parties. The guidance in INT 03-02 can result in unrecognized gains (dividends) or losses through the use of statutory book valuation when using assets (bonds) to make payments to affiliates for modifications to existing intercompany reinsurance pooling agreements.

Included in the discussion in INT 03-02 is the following:

> Further, since modifications to intercompany pooling agreements typically involve the transfer of net liabilities incurred since the inception of the existing pooling agreement (i.e., prior to the effective date of the new agreement), the retroactive reinsurance accounting guidance in paragraphs 33-39 of SSAP No. 62R is applicable. Paragraph 33 states that this special accounting treatment is warranted "due to the potential abuses involving the creation of surplus to policyholders and the distortion of underwriting results…" However, paragraph 36.d. specifically applies to intercompany reinsurance arrangements, and amendments to intercompany reinsurance agreements, since the reinsurance agreement is among companies 100% owned by a common parent.

INT 03-02 notes that the "statutory accounting intent is to avoid surplus gains for the insurance group as a result of implementing a modification to an intercompany pooling arrangement." As a result, INT 03-02 concludes that the appropriate valuation basis for assets and liabilities transferred among affiliates as part of the modification of an intercompany pooling arrangement is statutory book value. With respect to the intent of paragraph 36.d of SSAP No. 62R, INT 03-02 specifically states: "The presumption of this intent was that there would be no surplus gains to the ceding entity resulting from amendments or modifications to these types of reinsurance agreements."

We have concerns regarding the proposal to nullify the INT and offer the following comments:

- The discussion in the proposal to nullify INT 03-02 addresses whether intercompany pooling transactions are economic or non-economic transactions. Interested parties note that, with regard to the loss reserves that are moved among entities as part of a change in intercompany pooling, the transferor(s) still has continuing involvement in the reserves (through participation in the pooling arrangement) resulting in a non-economic transaction that is currently recorded as such. Consistent with the movement of the loss reserves, the movement of bonds related to a change in an intercompany pooling arrangement is also treated as a non-economic transaction under the INT.

    - We also note that the transfer of loss reserves at statutory book values in a modification of an intercompany pooling arrangement is consistent with the guidance in SSAP No. 68 regarding statutory mergers.

- Modifications to intercompany pooling arrangements are typically effective retroactive to the beginning of the year. Therefore, the statutory book values of the liabilities at the beginning of the year are used in the transfer of underwriting and claim assets and liabilities. The use of market value for the transfer of bonds in the same transaction would create an inconsistency with the use of historical cost on the transfer of underwriting and claim assets and liabilities and would also create the opportunity for recognizing a gain in surplus, just the opposite of what the INT intended to prevent. Currently, many companies will net the amount of underwriting and claim assets and liabilities with the amount of supporting assets to minimize the movement of invested assets.

- GAAP requires that transfers among entities under common control be reflected at historical cost. The proposed nullification of INT 03-02 would result in accounting that is less conservative than GAAP for bonds with fair values in excess of amortized cost. GAAP treats the transfer of assets and liabilities between entities under common control as non-economic transactions. This same concept is contained in the guidance for intercompany or statutory mergers in SSAP No. 68. While the guidance in SSAP No. 25 is focused on legal entity reporting, the guidance in INT 03-02 is focused on the accounting for the group comprising an intercompany pooling arrangement.

- Intercompany pooling arrangements have the characteristics of a single entity, and in many ways are treated as such. Intercompany pools qualify for combined reporting, upon approval from the domiciliary regulator, for purposes of complying with the NAIC Model Audit Rule and an audit opinion may be obtained on the pool rather than individual legal entities. Additionally, intercompany pools are rated as a group by external rating agencies, the actuarial opinions are prepared on a group basis, and internal controls and governance is usually evaluated on a group rather than individual legal entity basis.

- The generation of internal gains/losses on the transfer of bonds used to settle changes in intercompany pooling arrangements, in the context of a combined group operating as a single entity, would be contrary to the concept of an economic transaction with an independent third party.

    - Since property-casualty companies do not maintain dedicated bond portfolios that are matched to particular property-casualty insurance products, nullification of the INT creates the opportunity to move gross investment assets and cherry-pick the assets used in the transaction to create a gain in surplus.

- If bonds are transferred at market value in order to settle amounts due from/to affiliates as a result of a modification of an intercompany pooling arrangement, any realized investment gains resulting from the transfer would have to be deferred at the common parent reporting entity level until such time as the security either matures or is sold to an outside party by recording a deferred gain and an unrealized loss at every common parent level of reporting within the intercompany pool. For an intercompany pool which files combined audited statutory basis financial statements, realized gains would be eliminated in the presentation of the financial statements of the intercompany pool. This would require the common parent reporting entities to reverse all gain/loss transactions resulting from the transfer of bonds at market value within the group and establish deferred gain liabilities.

- As previously noted, the exception to retroactive reinsurance accounting in SSAP No. 62R paragraph 36.d specifically applies to intercompany reinsurance arrangements: "The accounting principles for retroactive reinsurance agreements in paragraph 34 shall not apply to the following types of agreements (which shall be accounted for as prospective reinsurance agreements unless otherwise provided in this statement)… Intercompany reinsurance agreements, and any amendments thereto, among companies 100% owned by a common parent or ultimate controlling person *provided there is no gain in surplus as a result of the transaction*." Under the proposal to nullify the INT, legal entity intercompany pool participants which are not common parent entities will likely recognize a gain upon the transfer of bonds at market value (as payment consideration) in the modification of an intercompany pooling arrangement. A reasonable interpretation of paragraph 36.d of SSAP No. 62R would be that the totality of the intercompany pooling modification transaction should be taken into account when evaluating whether the intercompany transaction results in a surplus gain. As a result, the modification of the intercompany pooling arrangement would result in a gain in surplus and would not qualify for prospective reinsurance accounting. We do not believe this is the intent of the Working Group, nor is it desired by interested parties.

- The majority of bond investments owned by property-casualty insurers are generally held until maturity and are usually comprised of bonds that are rated NAIC 1 or 2. The use of market value for bonds still held within the combined intercompany pool would be inconsistent with the statutory accounting valuation guidance for such bonds.

Interested parties recommend that the Working Group retain INT 03-02. We believe that there are valid reasons for the inconsistency noted by NAIC staff between INT 03-02 and SSAP No. 25 given the unique nature of intercompany reinsurance pooling agreements as noted above. Interested parties also believe that the risk that a company can manipulate economic results by transferring bonds at book value is mitigated by the regulatory scrutiny over modifications to intercompany reinsurance pooling agreements (including the transfer of assets and liabilities that comprise the modification transaction), as changes to such agreements are subject to prior regulatory approval.

<u>*Recommendation:*</u>
NAIC staff continues to recommend nullifying *Interpretation 03-02: Modifications to an Existing Intercompany Pooling Arrangement*. NAIC staff recommends that the Working Group re-expose the intent to nullify INT 03-02 to allow for further discussion. With the re-exposure, the Working Group should also request comments on the effective date.

Staff provides the following regarding some of the key points from industry, which could be considered in the re-exposure period:

1. In the current interest rate environment, the fair value of many bonds is below book value. For example, a bond with an amortized cost of 100 with a fair value of 85. The way INT 03-02 is written a bond with a fair value of 85 could be used to settle an intercompany reinsurance pooling obligation of 100. If the reporting entity paid with cash, they would be required to pay $100. The actual cash value of obligations when they are extinguished is a relevant measure of the transaction.

2. Using book value for measurement of payments between affiliates can result in either unrecognized of in effect dividend or losses. SSAP No. 25 requires such transfers of assets between affiliates to use fair value. If a subsidiary can pay the parent with assets that have a lower fair value than book value (ex, owes $100 but pays with a bond of 85), this has a similar effect as an unrecognized capital contribution to the subsidiary. SSAP No. 72 requires a capital contribution to be valued using fair value.

3. Staff agrees that at the ultimate parent level such transfer of assets (in accordance with SSAP No. 25 guidance) may be noneconomic in that the parent continues to hold an interest in the same assets. Therefore, at the parent level, such transfers of assets may result in the deferral of gains. Staff believes that losses would not be deferred at the ultimate parent level.

4. Staff notes that while it may be more expedient to pay intercompany reinsurance pooling transactions with assets, the valuation used should be similar to if the obligation was extinguished with cash. Therefore, an entity can still choose to pay with assets, they just need to be valued consistently with SSAP No. 25 guidance.

5. SSAP No. 62R, paragraph 36d provides an exception to retroactive reinsurance accounting guidance which allows for prospective accounting treatment for intercompany reinsurance among 100% owned affiliated provided there is no gain to the ceding entity. If there is again to the ceding entity, there is guidance in SSAP No. 62R, paragraph 37 which requires a more punitive method of accounting than either prospective or retroactive reinsurance accounting. Therefore, NAIC staff comment is that the statutory accounting objective is to provide different treatment for retroactive reinsurance contracts if there is a gain to the ceding entity. This is another reason that the guidance in INT 03-02 is problematic. The object is to correctly measure the effects of the contract, which drives the accounting. The objective is not to obscure whether there is a gain to the ceding entity, which can happen in the event that the assets used in payment are not measured correctly.

6. Interested parties noted that modifications to intercompany pooling arrangements are typically effective retroactive to the beginning of the year. Staff notes that the payment value when the transaction is settled should be equivalent to the cash value of what is owed on the date of extinguishment of the liability.

7. Many of the interested parties' comments regarding GAAP use of book value are more relevant to consolidated basis accounting which is not consistent with the legal entity basis of statutory accounting.

8. Interested parties' comments noted that there is a difference in treatment for intercompany pooling participants who are not 100% owned by a common parent. NAIC staff notes that retroactive pooling agreement changes with participants that are not 100% under common control do not meet the exception to retroactive accounting provided in SSAP No. 62R, paragraph 36d. NAIC staff notes that SSAP No. 62R, paragraph 37 provides guidance for retroactive reinsurance agreements among affiliates where there is a gain to the ceding entity.

Ref #	Title	Attachment #	Agreement with Exposed Document?	Comment Letter Page Number
2021-25 SSAP No. 19 SSAP No. 73 (Jake)	**Leasehold Improvements after Lease Termination**	**12 – Agenda Item**	**Comments Received**	**IP - 3**

<u>*Summary:*</u>
On August 10, the Working Group exposed revisions to SSAP No. 19 and SSAP No. 73 to ensure that the guidance for the leasehold improvements matches the treatment provided in *SSAP No. 40R—Real Estate Investments.* These edits clarify that amortization of leasehold improvements will immediately end when a lease is terminated and will require that any remaining, unamortized leasehold improvement balance be immediately expensed. This includes scenarios where the lease terminates naturally or when the lessee purchases a property it was leasing but **<u>proposes a limited, specific exclusion in SSAP No. 73 that allows leasehold improvements necessary for the functionality of specific health care delivery assets to be excluded in some cases from the purchase cost of the real estate</u>**. It is presumed that the purchase of a property from a third party would normally include the leasehold improvements as part of the full purchase price.

Interested Parties' Comments:
The Working Group exposed this agenda item, incorporating proposed revisions after considering comments from interested parties shown highlighted in italics below. The changes provide an explicit exception to companies that provide direct healthcare. It is limited to situations where the real estate lease agreement has a purchase option that contains language that allows leasehold improvements necessary for the functionality of specific health care delivery assets to be excluded from the purchase cost of the real estate.

SSAP No. 19:

> 5. Leasehold improvements that increase the value and enhance the usefulness of the leased asset meet the definition of assets established in SSAP No. 4. Within that definition, such items also meet the criteria defining nonadmitted assets. Accordingly, such assets shall be reported as nonadmitted assets and charged against surplus. These nonadmitted assets shall be amortized against net income over the shorter of their estimated useful life or the remaining lease term, as defined in SSAP No. 22R. Leasehold improvements that do not meet the definition of assets shall be charged to expense when acquired. The amortization of leasehold improvements (including property improvements and integral equipment) shall cease, with any remaining amount immediately expensed, in any event in which the lease is terminated in advance of the lease term. This includes situations in which leased real estate is acquired by the reporting entity *lessee. Such improvements related to the functionality of health care delivery assets shall follow the accounting, reporting and impairment guidance in SSAP No. 73—Health Care Delivery Assets and Leasehold Improvements in Health Care Facilities, and an exception to the application of this guidance to leasehold improvements necessary for the functionality of health care delivery assets is included in SSAP No. 73*. If leased real estate is acquired, recognition of the real estate shall follow the provisions in *SSAP No. 40R—Real Estate Investments*.

SSAP No. 73:

> 9. Furniture, medical equipment and fixtures, and leasehold improvements shall be depreciated over their estimated useful lives but for a period not to exceed three years, except for a leasehold improvement which shall be amortized against net income over the shorter of its estimated useful life or the remaining lease term, using methods detailed in SSAP No. 19. The amortization of leasehold improvements (including property improvements and integral equipment) shall cease, with any remaining amount immediately expensed, in any event in which the lease is terminated in advance of the lease term. This includes situations in which leased real estate is acquired by the reporting entity *lessee but excludes situations where the real estate lease agreement has a purchase option that contains language that allows leasehold improvements necessary for the functionality of specific health care delivery assets*[1] *to be excluded from the purchase cost of the real estate. Upon acquisition, such leasehold improvements necessary for the functionality of healthcare delivery assets shall follow the guidance for health care delivery assets in this statement*. If leased real estate is acquired, recognition of the real estate shall follow the provisions in *SSAP No. 40R—Real Estate Investments*.
>
> [1] The application of this exception is limited to leasehold improvements necessary for the functionality of health care delivery assets that qualified for admittance under SSAP No. 73.

Interested parties continue to agree that, in most cases, unamortized lessee owned leasehold improvements should be immediately expensed if the lease is terminated. However, in the situation where the reporting entity purchases a property that it was previously leasing, immediate expensing may not be appropriate in all circumstances as leasing and purchasing of assets is a complex business activity and takes many forms and structures.

General Concerns

The NAIC appears to have based the accounting conclusions on the premise that in all circumstances the purchase price of the leased asset includes the *lessee* purchased and owned leasehold improvements. However, interested parties (who engage in these transactions directly) continue to emphasize that they have not seen this in practice. These transactions, when material, have been audited by external auditors and State Departments of Insurance and no double counting of assets has been identified. It would be helpful to interested parties if the NAIC could share examples where they are seeing double counting of assets in these transactions by reporting entities.

Additionally, the NAIC has noted concerns of entities being able to admit leasehold improvements that were previously non-admitted under SSAP No 19. However, we note there are several instances where an asset can be non-admitted in one period, and subsequently admitted in another upon conforming to the requirements of certain SSAP's (e.g., certain affiliate receivables that were non-admitted due to lack of written agreement as to due date pursuant to SSAP No 25, or certain healthcare receivables that do not immediately conform to the requirements under SSAP No 84, among others). Moving from leasing to owning the underlying asset that the leasehold improvements are attached to changes the overall economics (i.e., the leasehold improvement can now be utilized in a liquidation event given the utility it provides with the building, whereas in a lease situation, given the limited control over the leased facility, the leasehold improvement may not be useful in a liquidation event on a standalone basis and non-admission would be appropriate).

Healthcare Delivery Assets Exception

While interested parties appreciate the exception for leasehold improvements that are accounted for in the scope of SSAP No 73 for health care delivery assets, interested parties note that the requirement that contracts include explicit provisions about the exclusion of the leasehold improvements in a purchase situation is not practical and will be onerous particularly for entities that have a high volume of lease activity. Additionally, it is not clear why there would be a difference in accounting treatment between sectors of the insurance industry when the overall economics of leasing is generally the same. This difference adds an unusual layer of complexity.

Recommendation

For the reasons noted above and to have guidance that more faithfully represents what is occurring in situations where the underlying leased real estate is purchased, interested parties recommend the following language be considered in both SSAP No 19 and SSAP No 73:

SSAP No. 19:

5. Leasehold improvements that increase the value and enhance the usefulness of the leased asset meet the definition of assets established in SSAP No. 4. Within that definition, such items also meet the criteria defining nonadmitted assets. Accordingly, such assets shall be reported as nonadmitted assets and charged against surplus. These nonadmitted assets shall be amortized against net income over the shorter of their estimated useful life or the remaining lease term, as defined in SSAP No. 22R. Leasehold improvements that do not meet the definition of assets shall be charged to expense when acquired. The amortization of leasehold improvements (including property improvements and integral equipment) shall cease, with any remaining amount immediately expensed, in any event in which the lease is terminated in advance of the lease term. This includes situations in which leased real estate is acquired by the reporting entity lessee. ~~Such improvements related to the functionality of health care delivery assets shall follow the accounting, reporting and impairment guidance in *SSAP No. 73—Health Care Delivery Assets and Leasehold Improvements in Health Care Facilities*, and an exception to the application of this guidance to leasehold improvements necessary for the functionality of health care delivery assets is included in SSAP No. 73.~~ If leased real estate is acquired, recognition of the real estate shall follow the provisions in *SSAP No. 40R—Real Estate Investments*. In situations where the reporting entity lessee can demonstrate through appraisals or other means that the lessee owned leasehold improvements are not included in the purchase price of the

acquired leased real estate, the unamortized leasehold improvements shall be added to the cost basis of the acquired real estate.

SSAP No. 73:

9. Furniture, medical equipment and fixtures, and leasehold improvements shall be depreciated over their estimated useful lives but for a period not to exceed three years, except for a leasehold improvement which shall be amortized against net income over the shorter of its estimated useful life or the remaining lease term, using methods detailed in SSAP No. 19. The amortization of leasehold improvements (including property improvements and integral equipment) shall cease, with any remaining amount immediately expensed, in any event in which the lease is terminated in advance of the lease term. This includes situations in which leased real estate is acquired by the reporting entity lessee. ~~but excludes situations where the real estate lease agreement has a purchase option that contains language that allows leasehold improvements necessary for the functionality of specific health care delivery assets[2] to be excluded from the purchase cost of the real estate. Upon acquisition, such leasehold improvements necessary for the functionality of healthcare delivery assets shall follow the guidance for health care delivery assets in this statement.~~ If leased real estate is acquired, recognition of the real estate shall follow the provisions in *SSAP No. 40R—Real Estate Investments*. In situations where the reporting entity lessee can demonstrate through appraisals or other means that the lessee owned leasehold improvements are not included in the purchase price of the acquired leased real estate, the unamortized leasehold improvements shall be added to the cost basis of the acquired real estate.

Other Matters
Interested parties want to highlight that there is an editorial modification needed to SSAP No 19, paragraph 9. It references the legacy guidance and needs to be updated to reflect how the lease term is defined in SSAP No 22R. Accordingly, we recommend the following:

SSAP No. 19, paragraph 9:

9. The acquisition cost of depreciable assets, net of salvage, shall be depreciated against net income over the estimated useful lives of the assets in a systematic and rational manner. The acquisition cost of a leasehold improvement shall be amortized against net income over the shorter of its estimated useful life or the ~~original~~ lease term as defined in SSAP 22R~~excluding options or renewal periods~~. For leasehold improvements capitalized subsequent to inception of the lease, the cost shall be amortized over the shorter of its estimated useful life or the remaining ~~original~~ lease term ~~excluding options or renewal periods~~. Amounts capitalized for leasehold improvements in periods subsequent to the original lease term (i.e., during renewal periods), are amortized utilizing the shorter of the estimated useful life of the asset or the remaining ~~term of the renewal period~~ lease term.

Recommendation:
NAIC staff recommends that the Working Group adopt the exposed revisions clarifying that, except for limited exclusions provided in *SSAP No. 73—Health Care Delivery Assets and Leasehold Improvements in Health Care Facilities*, all remaining leasehold improvements shall be immediately expensed at the termination of a lease. NAIC staff also recommend incorporating the consistency edits to SSAP No. 19, paragraph 9, that was suggested by the interested parties, which addresses an item that was missed during a prior agenda item for leasehold improvements. Staff recommend that this revision be included in the adoption as illustrated in the interested parties' comments above.

NAIC staff does not recommend incorporating the other revisions proposed by interested parties. NAIC staff note that in an arm's length real estate transaction, the seller of the property (with its brokers and representatives) is obligated to get the best sales price possible based on the true condition of the asset,

including all enhancements added by the lessee that are fixed to the structure. In a scenario suggested by some of the interested parties' comments where leasehold improvements remain as assets after a lessee has purchased the real estate, the book value of real estate would be the fair market value of the real estate <u>plus</u> the leasehold improvements, which would result in a fundamental overstatement of the value of the assets reported. Additionally, to address the comment on page 12 regarding a concern about the leasehold improvements moving from nonadmitted to admitted because of the purchase of the real estate, NAIC staff believe that this transaction does not change the fact that leasehold improvements are not separate assets that can be used to meet policyholder obligations and should not meet the definition of an admitted asset.

The comment letters are included in Attachment 13 (12 pages).

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NAIC | NATIONAL MEETING FALL 2022

Hearing Agenda #2

Statutory Accounting Principles (E) Working Group
Hearing Agenda #2
December 13, 2022
10:00 a.m. – 12:00 p.m. (ET)

ROLL CALL

Dale Bruggeman, Chair	Ohio	Judy Weaver	Michigan
Kevin Clark, Vice Chair	Iowa	Doug Bartlett	New Hampshire
Sheila Travis	Alabama	Bob Kasinow	New York
Kim Hudson	California	Melissa Greiner/Matt Milford	Pennsylvania
William Arfanis/Michael Estabrook	Connecticut	Jamie Walker	Texas
Rylynn Brown	Delaware	Doug Stolte/David Smith	Virginia
Eric Moser	Illinois	Amy Malm/Elena Vetrina	Wisconsin
Melissa Gibson/Stewart Guerin	Louisiana		

NAIC Support Staff: Julie Gann, Robin Marcotte, Jake Stultz, Jason Farr

Note: This meeting will be recorded for subsequent use.

REVIEW of COMMENTS on INT 22-02

Ref #	Title	Attachment #	Agreement with Exposed Document?	Comment Letter Page Number
INT 22-02 SSAP No. 9 SSAP No. 101 (Robin)	**INT 22-02: Third Quarter 2022 through First Quarter 2023 Reporting of the Inflation Reduction Act - Corporate Alternative Minimum Tax**	**14 – INT 22-02**	**Yes**	**1**

Summary:
On November 16, the Working Group exposed revisions *to INT 22-02: Third Quarter 2022 through First Quarter 2023 Reporting of the Inflation Reduction Act - Corporate Alternative Minimum Tax* to extend INT 22-02 for December 31, 2022, and first quarter 2023 statutory financial statements. Key provisions include:

- An extension of the effective date to encompass year-end 2022 and March 31, 2023, financial statements to indicate that no reasonable estimate can be made, therefore recognition is not required. With this extension, the INT reflects updated name.

- An extension of the disclosures previously included in INT 22-02, with a new disclosure to identify whether a reporting entity (or the controlled group of corporations for which the reporting is a member) has determined that they expect to be required to perform calculations to determine if they will owe the CAMT.)

- Expansion of the subsequent event exception to include events identified after December 31, 2022, through when the audited financial statements are issued, or available to be issued.

- Inclusion of a nullification date of March 15, 2023, to be clear that the INT does not pertain to first quarter 2023 financial statements, with clarification that the nullification date does not impact the subsequent event exception for audited financials issued or available to be issued between March 15 and June 1, 2023.

The primary revisions to the exposed consensus are shown below.

17. On November 16, 2022, the Working Group exposed a tentative consensus to extend this interpretation for December 31, 2022, and first quarter 2023 statutory financial statements. For application as of year-end 2022 and first quarter 2023:

a. Consistent with paragraphs 12 and 13, the Working Group has concluded that a reasonable estimate is not determinable for December 31, 2022, and March 31, 2023, therefore impacts related to the CAMT in the year-end 2022 and March 31, 2023, financial statements are not required.

b. The reporting entity shall include disclosures in paragraph 13 in the year-end 2022 and March 31, 2023, financial statements. In addition, the reporting entity shall disclose the following:

i. If, based on information regarding the projected adjusted financial statement income for 2023, the entity or the controlled group of corporations of which the reporting entity is a member has determined if it is an "applicable corporation" to determine if CAMT exceeds the regular federal income tax payable. That is, disclose if the reporting entity (or the controlled group of corporations of which the reporting entity is a member) has determined if average "adjusted financial statement income" is above the thresholds for 2023 tax year that they expect to be required to perform the CAMT calculations. This disclosure is about being applicable corporation, not if the entity is required to pay.

c. Consistent with paragraph 14, CAMT updated estimates or other calculations affected by the Act determined subsequent to filing the December 31, 2022, and March 31, 2023, financial statements shall not be recognized as Type I subsequent events.

d. For year-end 2022 financial statements, the subsequent event exception is expanded to encompass events that occur prior to the issuance of statutory financial statements as well as events that occur before the date the audited financial statements are issued, or available to be issued. This provision intends to prevent reporting entities from having to amend statutory financial statements from material Type I subsequent events as a result of updated information / estimates received after the reporting date of year-end 2022 statutory financial statements pertaining to the accounting for the enactment of the Act.

18. With the extension, this interpretation will be automatically nullified on June 15, 2023.

Interested Parties' Comments:

Interested parties appreciates the opportunity to comment on INT 22-02: Third Quarter 2022 through First Quarter 2023 Reporting of the Inflation Reduction Act – Corporate Alternative Minimum Tax (CAMT), exposed by the Statutory Accounting Principles Working Group (Working Group) on November 16, 2022. As noted in connection with the exposure, this INT does not require financial reporting changes for third quarter 2022 through the first quarter of 2023 because a reasonable estimate of the CAMT cannot be made. It requires disclosure and allows a subsequent event exception.

Prior submissions to the Working Group by interested parties in connection with the CAMT have advocated a deferral of statutory financial reporting for the CAMT. Accordingly, interested parties is supportive of the provisions of this currently exposed version of INT 22-02. We are appreciative of the Working Group's consideration of our prior comments.

We note that the following considerations also are supportive of the extension of INT 22-02's reporting deferral through the first quarter of 2023:

- The delay increases the possibility that the U.S. Treasury will provide general guidance on some tax return-related issues pertaining to the CAMT, although guidance on certain insurance company-specific issues by that time is less likely.
- It is not until the second quarter of 2023 that corporations generally will be required to take the CAMT into account for purposes of making Federal income tax estimated payments for the 2023 taxable year.

Interested Parties looks forward to continued discussions with the Working Group and NAIC staff on CAMT guidance for reporting periods after the first quarter of 2023.

Recommendation:
NAIC Staff recommends that the Working Group adopt the exposed revisions to *INT 22-02: Third Quarter 2022 through First Quarter 2023 Reporting of the Inflation Reduction Act - Corporate Alternative Minimum Tax* as exposed. NAIC staff will continue to coordinate the development of CAMT guidance for after first quarter 2023.

Because INT 22-02 provides temporary overrides to SSAP No. 9 and SSAP No. 101, the Working Group would need to adopt this interpretation with a 2/3 super majority vote and must have 67% of members present. (These requirements are detailed in the *NAIC Policy Statement on Maintenance of Statutory Accounting Principles.*).

The comment letters are included in Attachment 15 (2 pages).

https://naiconline.sharepoint.com/teams/FRSStatutoryAccounting/National Meetings/A. National Meeting Materials/2022/Fall - December/Hearing/0.1 - 12-2022 - SAPWG Hearing - INT 22-02.docx

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Meeting Agenda

Statutory Accounting Principles (E) Working Group
Meeting Agenda
December 13, 2022
10:00 a.m. – 12:00 p.m. (ET)

A. Consideration of Maintenance Agenda – Pending List

1. Ref #2022-14: New Market Tax Credits / Tax Equity Investments
2. Ref #2022-15: Affiliate Reporting Clarification
3. Ref #2022-16: ASU 2022-03, Fair Value Measurement of Restricted Securities
4. Ref #2022-17: Interest Income Disclosure Update
5. Ref #2022-18: *ASU 2022-04, Disclosure of Supplier Finance Program Obligations*
6. Ref #2022-19: SSAP No. 7 - IMR

Ref #	Title	Attachment #
2022-14 (Julie)	**New Market Tax Credits / Tax Equity Investments**	**A - Form A** **B - Discussion Document**

Summary:
The New Market Tax Credits (NMTC) Program was established by Congress in December 2000 and permits individual and corporate taxpayers to receive a non-refundable tax credit against federal income taxes for making equity investments in financial intermediaries known as Community Development Entities (CDEs). CDEs that receive the tax credit allocation authority under the program are domestic corporations or partnerships that provide loans, investments, or financial counseling in low-income urban and rural communities. The tax credit provided to the investors total 39% of the total cost of the investment and is claimed over a seven-year period. The CDEs in turn use the capital raised to make investments in low-income communities. CDEs must apply annually to the Community Development Financial Institutions Fund (CDFI Fund) to compete for NMTC allocation authority. The NMTC program is currently subject to expiration but has been extended to Dec. 31, 2025. The NMTC Extension Act of 2021 (introduced February 2021) would make the NMTC program permanent, modify the credit to provide for an inflation adjustment to the limitation amount for the credit after 2021, and allow an offset against the alternative minimum tax for the credit.

The success of the federal NMTC program has led to states adopting their own NMTC legislation. Per one noted article, the majority of state NMTC programs follow the federal rules with some modifications that vary from state to state. State modifications have been noted to specifically target smaller business, simplifying the application process, prohibiting the use of real estate business, and capping the amount of tax credits that can be allocated to one project. The economic impact of the state NMTC programs is typically less than the impact of federal NMTC programs because the economic return to investors for state tax credits is generally lower than what they receive for federal credits. Some states require that state tax credits can only be used in conjunction with federal credits. Pairing federal and state programs is beneficial to the qualifying business as they keep more of the investment without an obligation to return as the investors receive more tax credits.

The FASB has a current Emerging Issues Task Force project to assess whether the proportional amortization method of accounting, which is used for Low-Income Housing Tax Credits (LIHTC), should be expanded to investments in tax credit structures beyond LIHTC. The proportional amortization method results in the tax credit investment being amortized in proportion to the allocation of tax credits in each period and allows the investment amortization and tax credits to be presented on a net basis within the income tax line item. Currently, investments in other tax credit structures are typically accounted for using the equity method or the cost method. Under the equity and cost methods, investment gains/losses and tax credits are presented on a gross basis on an entity's income statement. The FASB has received two requests asking that the proportional amortization method be made applicable to New Market Tax Credit Structures as well as other investment structures that are made primarily for the purpose of receiving tax credits and other tax benefits. The FASB added a project to the Emerging Issues Task Force agenda on Sept. 22, 2021. The FASB Task Force reached a consensus-for-exposure on June 16, 2022, that the proportional amortization method can be elected on a tax credit program by tax credit program basis. This proposed ASU was exposed in August 2022, with comments due Oct. 6, 2022. A final ASU is expected later in 2022 or early in 2023.

<u>IRS Provisions</u> – The NMTC is captured as a nonrefundable "general business credit" and is limited to the tax liability. If the tax liability is not sufficient to use the credit, then the tax credit is subject to carryforward / carryback provisions. Per instructions from the *2021 Instructions for Form 3800 – General Business Credit*, general business credits that cannot be used because of a tax liability limit are first carried-back 1 year through an amended return. If there are unused credits after carrying back 1 year, the tax credit can be carried forward to each of the 20 tax years after the year of the credit.

<u>Inflation Reduction Act Provisions</u> – The Inflation Reduction Act was signed by President Biden on Aug. 16, 2022. Although there are several elements within the Act, it includes a 15% corporate alternative minimum tax rate for corporations with at least $1 billion in income and includes numerous investments in climate protection, clean energy production and tax credits aimed at reducing carbon emissions. Although the Act has been signed, several elements are pending further application guidance. From preliminary information, the act allows for general business credits, such as the low-income housing tax credit (LIHTC), new markets tax credit (NMTC), historic tax credit (HTC) and renewable energy tax credits (RETCs) to be taken against the minimum tax. However, further monitoring of application / interpretation guidance that is still forthcoming is required to assess the actual application and impact of tax credits on companies subject to the minimum tax.

<u>Statutory Accounting Considerations:</u>

- Although the design is an equity investment of stock or interest in a corporation or partnership, which would normally be subject to *SSAP No. 48—Joint Ventures, Partnerships and Limited Liability Companies*, the intent of NMTC investments is for tax credits and not equity returns. As such, this structure is closer to the existing low-income housing tax credits guidance in SSAP No. 93 than the partnership / LLC guidance in SSAP No. 48.

- Although *SSAP No. 93—Low Income Housing Tax Credit Property Investments* provides guidance for an equity investment, that provides tax credits with a limited (or zero) residual investment value, the guidance in SSAP No. 93 is specific to LIHTC programs.

- It has been identified that there are structures that have been designed to resemble fixed-income notes that do not pay regular cash interest, but rather provide NMTC tax credits as interest returns. These structures are in substance the same as other investments in NMTC, with an underlying equity interest in the CDE that generates tax credits. However, they have been structured with a guarantee for compensatory interest in the form of cash for the amount of the tax credit expected to have been received that year (the guarantee would only apply if the tax credit were not received). These structures are also being considered within scope of this agenda item. Such structures have to meet specific criteria to qualify for tax credits under the IRS rules.

Recommendation:

NAIC staff recommends that the Working Group move this item to maintenance agenda as a new SAP concept and expose the discussion document which details potential statutory accounting concepts for tax equity investments (as an expansion of SSAP No. 93) along with potential discussion elements and questions.

Although the agenda item is focusing on NMTC, the discussion document recommends that consideration be given to guidance that does not name specific designs, such as NMTC, LIHTC or other specific tax credits, so that it can be applicable for all qualifying tax equity investments. This guidance will consider the proposed FASB guidance as well as admittance and impairment provisions, recognizing that tax credits cannot be used

to provide direct payment to policyholders, but rather are utilized to impact a reporting entity's tax liability. With these recommendations, it would be anticipated that SSAP No. 93 will be renamed to *"SSAP No. 93—Equity Investments in Tax Credits."*

Along with statutory accounting revisions, a resulting blanks proposal and a potential RBC referral are subsequently anticipated to update blanks reporting and RBC references accordingly. As detailed within, all Schedule BA reporting lines and RBC instructions (for both federal and state) only reference Low-Income Housing Tax Credits. The BA instructions also need to be updated as the concept for 'guaranteed' provisions from a CRP-rated entity seems to only be applicable to limited NMTC designs, as a guarantee may disqualify an entity from being able to use tax credits under IRS provisions. These proposals will be drafted once the proposed revisions are further developed.

This agenda item also recommends a review of *SSAP No. 94R—Transferable and Non-Transferable State Tax Credits* to ensure the guidance reflects items that should be captured in scope and admittance provisions. NAIC staff will be working to propose edits for potential exposure early in 2023 to allow for a collective review of statutory accounting guidance to address tax credits.

Ref #	Title	Attachment #
2022-15 (Jake)	**Affiliate Reporting Clarification**	**C - Form A**

Summary:
At its May 24, 2022, meeting, the Working Group adopted agenda item *2021-21: Related Party Reporting*, which included revisions to clarify application of the existing affiliate definition as well as to incorporate new disclosure requirements for investments acquired through, or in, related parties, regardless of if they meet the affiliate definition. During the discussion on the call, it was suggested that there needs to be a clarification of when an investment is considered to be an affiliated investment and reported on the "parent, subsidiaries and affiliates" reporting lines (as referred to as the "affiliated" lines) in the investment schedules. When agenda item 2021-21 was adopted, it included a recommendation that NAIC staff look to further clarify when investments should be classified as affiliated in the reporting schedules. This agenda item intends to clarify that an investment held from an affiliate is considered an affiliated investment.

Recommendation:
NAIC staff recommends that the Working Group move this item to the active listing, categorized as a SAP clarification, and expose revisions to SSAP No. 25 to clarify that "any invested asset held by a reporting entity which is issued by an affiliated entity, or which includes the obligations of an affiliated entity is an affiliated investment." Staff also recommend that Working Group direct the Blanks (E) Working Group to modify the Annual Statement Instructions as illustrated in the attached agenda item.

Ref #	Title	Attachment #
2022-16 (Jake)	**ASU 2022-03, Fair Value Measurement of Restricted Securities**	**D - Form A**

Summary:
In June 2022, the Financial Accounting Standards Board (FASB) issued *ASU 2022-03, Fair Value Measurement of Equity Securities Subject to Contractual Sale Restrictions* to 1) clarify the guidance in Topic 820, Fair Value Measurement, when measuring the fair value of an equity security subject to contractual restrictions that prohibit the sale of an equity security, 2) amend a related illustrative example, and 3) add a new disclosure of the fair value

of equity securities subject to contractual sale restrictions, nature and remaining duration of the restrictions, and circumstances that could cause a lapse in the restrictions, in accordance with Topic 820.

These amendments do not change the principles of fair value measurement. They provide clarity in situations involving equity securities that have restrictions related to the sale of the asset. This ASU provides updated guidance for two specific scenarios, one where the restriction is based on the entity holding the equity security and one where the restriction is a characteristic of the equity security.

- First, it clarifies situations where an equity security cannot be sold on the measurement date because of a contractual sale restriction where the entity is not allowed to sell an asset. An example of this would be lock-up periods, where the assets cannot be sold for a set period but can be readily priced based on a public security exchange.

- Second, it provides guidance for situations where the restriction is based on characteristics of the asset that limits if it can be sold in regular markets. An example would be an equity security issued through a private placement and not SEC registered and are legally restricted from being sold on a national securities exchange or an over-the-counter market. These assets would be available to be sold on an existing market (not on the public exchange) but would have a fair value based on the market price of the similar unrestricted equity security adjusted to reflect the effect of the restriction.

Recommendation:
NAIC staff recommends that the Working Group move this item to the active listing, categorized as a SAP clarification, and expose revisions to *SSAP No. 100R—Fair Value* to adopt *ASU 2022-03, Fair Value Measurement of Equity Securities Subject to Contractual Sale Restrictions* with modification to be consistent with statutory language in the respective statutory accounting statements. Note that this agenda item does not recommend incorporating the new proposed GAAP disclosures on sales restrictions, but identifies that items restricted as to sale would be captured as restricted assets per SSAP No. 1 and subject to admittance considerations under SSAP No. 4.

Ref #	Title	Attachment #
2022-17 (Jake)	**Interest Income Disclosure Update**	**E - Form A**

Summary:
This agenda item is the result of comments received from interested parties from the Principles-Based Bond Project. In the Oct. 7, 2022, comment letter, which provided comments on the Aug. 10 exposure by the Working Group, interested parties suggested some revisions to further enhance reporting of interest income on Schedule D-1-1 Bonds, and recommended that NAIC staff look further at if this should be added to any of the other reporting schedules where interest income is reported in accordance with *SSAP No. 34—Investment Income Due and Accrued*.

There were two distinct items noted in the interested parties' comments that are addressed by this agenda item. First, they suggested data capturing the gross, nonadmitted and admitted amounts for interest income due and accrued. Second, they suggested that a data element that is included in the bond proposal project be changed to reflect the cumulative amount of paid-in-kind (PIK) interest included in the current principal balance.

This agenda item proposes to expand disclosures, with data capturing, to include gross, nonadmitted and admitted amounts for interest income due and accrued. The blanks proposal will also include cumulative amounts of paid-in-kind (PIK) interest included in the current principal balances.

Recommendation:
NAIC staff recommends that the Working Group move this item to the active listing, categorized as a SAP clarification, and expose revisions to *SSAP No. 34—Investment Income Due and Accrued* to add additional disclosures to data capture the gross, nonadmitted and admitted amounts for interest income due and to add disclosure of the cumulative amount of paid-in-kind (PIK) interest included in the current principal balance and sponsor a blanks proposal to data-capture the disclosure in Note 7 of the statutory financial statements. It is recommended that consideration of the blanks disclosures to occur concurrently with the exposure of this item to allow for adoption consideration in time for year-end 2023 financial statements.

Ref #	Title	Attachment #
2022-18 (Robin)	***ASU 2022-04, Disclosure of Supplier Finance Program Obligations***	**F - Form A**

Summary:
In September 2022, the Financial Accounting Standards Board (FASB) issued *ASU 2022-04, Liabilities—Supplier Finance Programs* (Subtopic 405-50) Disclosure of Supplier Finance Program Obligations to enhance the transparency of supplier finance programs. ASU 2022-04 is effective for fiscal years beginning after December 15, 2022.

The amendments in ASU 2022-04 apply to all entities that use supplier finance programs in connection with the purchase of goods and services (described as buyer parties). Supplier finance programs, which also may be referred to as reverse factoring, payables finance, or structured payables arrangements, allow a buyer to offer its suppliers the option to access payment in advance of an invoice due date through a third-party finance provider or intermediary on the basis of invoices that the buyer has confirmed as valid.

Typically, a buyer in a program (1) enters into an agreement with a finance provider or an intermediary to establish the program, (2) purchases goods and services from suppliers with a promise to pay at a later date, and (3) notifies the finance provider or intermediary of the supplier invoices that it has confirmed as valid. Suppliers may then request early payment from the finance provider or intermediary for those confirmed invoices. Suppliers generally agree to accept an amount less than owed to receive payment from the intermediary timelier than the invoice due date. The full amount owed by the buyer is then paid to the intermediary, resulting in a spread income to the financing intermediary.

The ASU amendments require that a buyer in a supplier finance program disclose sufficient information about the program to allow a user of financial statements to understand the program's nature, activity during the period, changes from period to period, and potential magnitude. These disclosures were supported as buyers who utilize these programs are getting a form of financing, but the amounts owed to the financial intermediaries have been reported differently, with some entities reporting as trade payables and others reporting as debt. ASU 2022-04 requires the buyer to make the annual disclosures of qualitative and quantitative information about its supplier finance programs including key terms obligations, where they are reported and a rollforward of the obligations. In addition, there are interim disclosures.

SSAP No. 105R—Working Capital Finance Investments addresses programs similar to some of the ones described in ASU 2022-04, however it addresses such programs from the perspective of evaluating investments in such programs for admissibility for the investor in such programs. That is, the insurers tend to act as a finance provider or an investor in the supplier chain finance program, not the "buyer." Insurers are not typically "buyers" in such programs as they are described in ASU 2022-04. The guidance in SSAP No. 105R would describe the "buyer" in the ASU 2022-04 as an obligor of the working capital finance program. Therefore, since the disclosures in ASU 2022-04 are for buyers/obligors of supplier finance programs, not for providers of liquidity – the investors, the disclosures do not seem relevant to require of the investors in such programs for statutory accounting.

Note that if an insurer were to sell its premium receivables, existing guidance in *SSAP No. 42—Sale of Premium Receivables* and *SSAP No. 103R—Transfers and Servicing of Financial Assets and Extinguishment of Liabilities* provide guidance which distinguishes sales from financing transactions. Therefore, the new GAAP disclosures in ASU 2022-04 are not recommended for incorporation into statutory accounting.

Recommendation:
NAIC staff recommends that the Working Group move this item to the active listing, categorized as a SAP clarification, and expose revisions to SSAP No. 105R to reject ASU 2022-04. As insurance reporting entities are not the buyers (obligors) of supplier chain finance programs, the disclosures in ASU 2022-04 are not relevant. Reporting entities that invest in working capital finance programs are the providers of capital (investors) not the buyers (obligors) of such programs.

Ref #	Title	Attachment #
2022-19 (Julie)	**SSAP No. 7 - IMR**	**G - Agenda Item H - ACLI Letter**

Summary:
This agenda item has been developed to discuss the interest maintenance reserve (IMR) within statutory accounting, specifically the current guidance for the nonadmittance of disallowed negative IMR. Although the statutory accounting guidance has been in place for several years, the rising interest rate environment has created an increased likelihood for reporting entities to move to a negative IMR position. This agenda item intends to provide information on the background of IMR, current accounting guidance, recent discussions of the Life Actuarial (A) Task Force and some broad financial results from year-end 2021 and interim 2022 financial statements. The intent is to provide this information to facilitate Working Group discussion.

The following provides a high-level overview of the use of the terms positive IMR and negative IMR for entities filing the Life, Accident & Health / Fraternal annual statement blank:

- A positive IMR means that the net realized interest related gains which are amortized in the IMR calculation are greater than net realized interest related losses which are being amortized in the IMR calculation. A positive IMR is reported as a statutory liability and amortized to income over time.

- A negative IMR means that net realized interest related losses which are amortized in the IMR calculation are greater than net realized interested related gains which are amortized in the IMR calculation. A disallowed negative IMR is reported as a nonadmitted asset and amortized to income as a loss over time.

As IMR occurs in the general and separate account, there are specific guidelines in determining whether the IMR reflects a net disallowed negative or position in the annual statement instructions. These are on page 5.

A letter from the American Council of Life Insurers (ACLI) dated Oct. 31, 2022, raised concerns with existing statutory accounting requirements on the nonadmittance of disallowed negative IMR noting negative ramifications for insurers. Key summarized positions from this ACLI letter include:

- In general, rising interest rates are favorable to the financial health of the insurance industry and policyholders. However, with negative IMR, there is an inappropriate perception of decreased financial strength through lower surplus and risk-based capital.

- Negative IMR could impact the rating agency view of the industry or incentivize companies to avoid prudent investment transactions that are necessary to avoid mismatches between assets and liabilities. In either scenario, negative IMR encourages short-term non-economic activity that is not in the best long-term interest of a reporting entity's financial health or its policyholders.

Recommendation:
NAIC staff recommend that the Working Group include this item on their maintenance agenda as a New SAP Concept for discussion to assess the current guidance for negative IMR. NAIC staff recommend that at the Working Group's conclusion, documentation of the discussion, and resulting decisions, be captured for historical purposes in an Issue Paper.

B. Consideration of Maintenance Agenda – Active Listing

1. Ref #2017-33: ASU 2017-12 – Derivatives and Hedging
2. Ref #2019-12: Proposed Bond Definition

Ref #	Title	Attachment #
2017-33 (Julie)	**ASU 2017-12 – Derivatives and Hedging**	**I - Issue Paper**

Summary:
The Working Group has considered the revised U.S. GAAP guidance for derivatives detailed in ASU 2017-12 in three separate agenda items:

- Ref #2018-30: This agenda item incorporated revisions, effective January 1, 2019, with early application permitted, limited to specific provisions, and related transition guidance, pertaining to the documentation and assessment of hedge effectiveness: 1) provisions allowing more time to perform the initial qualitative hedge effectiveness assessment; 2) provisions allowing subsequent assessments of hedge effectiveness to be performed qualitatively if certain conditions are met; and 3) revisions regarding use of the critical terms and short-cut method for assessing hedge effectiveness. With the adoption of the limited provisions, it was identified that the remaining provisions of ASU 2017-12 would be subsequently assessed for statutory accounting and shall not be considered adopted for statutory accounting until that assessment is completed, with a conclusion to adopt the U.S. GAAP guidance.

- Ref #2021-20: This agenda item resulted with both the new Exhibit A that adopts with modification U.S. GAAP guidance in determining hedge effectiveness and the revisions to SSAP No. 86 to incorporate measurement method guidance for excluded components. These revisions were adopted with a January 1, 2023, effective date, with early adoption permitted. Additionally, the revisions resulted with new Schedule DB reporting fields and templates to capture the new disclosures for excluded components. These disclosure and investment schedule changes will be in effect for year-end 2023. Companies that early adopt the revisions are directly to complete the required disclosures in a narrative format for year-end 2022.

- Ref #2022-09: The revisions incorporate the U.S. GAAP portfolio layer method and the partial-term hedging method, with modifications to limit application of the partial-term hedging method to recognized assets. This is different than U.S. GAAP, which permits the partial term method for hedged liabilities. The statutory limitation is established to prevent interim basis adjustments to hedged liabilities that could present a reduction of reported liabilities on the financial statements when the actual liability has not been reduced. Reconsideration of this statutory limitation may occur after a broader project to consider how derivative basis adjustments to hedged liabilities shall be reflected in the financial statements. These revisions were adopted with a January 1, 2023, effective date, with early adoption permitted.

Pursuant to the discussion for each of these agenda items, it was identified that an issue paper would be presented that detailed key elements and the revisions for historical retention purposes. This issue paper has been prepared for exposure consideration.

Recommendation:
NAIC staff recommend that the Working Group expose the prepared issue paper that details the consideration of ASU 2017-12 within the three agenda items and the adopted statutory revisions. Upon adoption of this issue paper, NAIC staff recommend the Working Group dispose this agenda item (Ref 2017-33) as the review of ASU 2017-12 is considered complete. If further discussion is warranted on derivatives, either from an element within the ASU or new GAAP guidance, a new agenda item will be drafted. (No adopted guidance is within the agenda item, so it will not be posted on the website with the issue paper. It will just be noted as complete within the maintenance agenda with reference to the agenda items with adopted guidance.)

Ref #	Title	Attachment #
2019-21 (Julie)	**Proposed Bond Definition**	**J - Issue Paper** **<u>K – Reporting Docs:</u>** **K.1 – General Inst.** **K.2 – Schedule D** **K.3 – Other A/S**

<u>*Summary:*</u>
Pursuant to direction in October 2020, state insurance regulators and key industry representatives, have been working dedicatedly on the bond project to principally define a bond for reporting on Schedule D-1 and to improve accounting and reporting. The intent of this project is to establish principle-based guidance for determining bonds, with a focus of substance over form, in such a manner so that the framework and principles established will be able to work for an increasingly innovative market and will provide regulators and other financial statement users with the transparency for understanding the risks present in an insurer's investment portfolio.

On a November 16, 2022, conference call, the Working Group considered comments revisions and exposed updated versions of *SSAP No. 26R—Bonds* and *SSAP No. 43R—Asset-Backed Securities* to reflect authoritative guidance to reflect the principles-based bond definition and revised statutory accounting guidance. This exposure also included proposed revisions to other SSAPs to update other areas for the updated bond guidance. This exposure included revisions to *SSAP No. 2R—Cash, Cash Equivalents, Drafts and Short-Term Investments* to exclude ABS from being reported as a cash equivalent or short-term investment, as well as revisions to *SSAP No. 21R—Other Admitted Assets* to detail the accounting and reporting guidance for debt securities that do not qualify as bonds.

As part of the discussion during the Nov. 16 call, the Working Group noted that an updated issue paper as well as updated documents to detail the bond reporting changes would be presented for exposure during the 2022 Fall National Meeting. These documents have been prepared for review and consideration:

- Issue Paper – This document has been revised to detail the revisions reflected from the last exposure period as well as to incorporate the updated SSAP guidance into the issue paper. The issue paper has also been revised to update the guidance for feeder funds pursuant to interim discussions with industry reps.

- Reporting Changes – 1) NAIC staff has reviewed the full blank and annual statement instructions and has identified all areas that may need to be revised to reflect the more granular reporting under the bond project. The document identifies all areas and an NAIC staff recommendation. Comments are requested on whether any aspects have been missed and if a different approach should be considered. 2) NAIC staff has updated the proposal for the general instructions and schedule D-1-1 and D-1-2 to reflect consideration of industry comments. Comments are requested on whether additional edits are needed.

Recommendation:
NAIC staff recommend that the Working Group expose the updated issue paper as well as the reporting changes document to exposure. NAIC staff recommends that the Working Group sponsor a blanks proposal to incorporate the blanks reporting changes with an effective date of Jan. 1, 2025. (Although the reporting changes document will be exposed for comment, NAIC staff recommend that we proceed with sharing this information with the staff of the Blanks (E) Working Group so they can provide comments and assessments on the proposed changes as they develop the blanks proposal.)

ANY OTHER MATTERS

a. Update on the Macroprudential Referral – (Robin) – (Attachment L)

The attachment provides an update on the status of completed and ongoing items noted in the referral from the Macroprudential (E) Working Group received by the Working Group at the Summer National Meeting.

b. Review of U.S. GAAP Exposures – (Jake) – (Attachment M)

The attachment details the items currently exposed by the FASB. NAIC staff recommends reviewing the issued ASUs under the standard SAP maintenance process. Comments are not recommended at this time – NAIC staff recommend review of the final issued ASU under the SAP Maintenance Process as detailed in *Appendix F—Policy Statements.*

Comment Deadline for all Exposures is February 10, 2023.

https://naiconline.sharepoint.com/teams/FRSStatutoryAccounting/National Meetings/A. National Meeting Materials/2022/Fall - December/Meeting/0-12-2022 SAPWG Meeting Agenda.docx

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