FINANCIAL REGULATION STANDARDS AND ACCREDITATION (F) COMMITTEE

Financial Regulation Standards and Accreditation (F) Committee Dec. 7, 2019, Minutes

Memorandum Regarding Company Licensing Accreditation Standards – Self Evaluation Guide and SEG/IAR Form Part D (Attachment One)

Referral Regarding Recommendations for Updated Part B.3 Procedures for Troubled Companies (Attachment Two)

Referral Regarding 2019 Revisions to Credit for Reinsurance Model Law (#785) and Credit for Reinsurance Model Regulation (#786) (Attachment Three)

Referral Regarding the 2016 Revisions to the Credit for Reinsurance Model Law (#785) and Term and Universal Life Insurance Reserve Financing Model Regulation (#787) (Attachment Four)

Comment Letter from Northwestern Mutual and New York Life Regarding Credit for Reinsurance Model Accreditation Decisions (Attachment Five)
Draft Pending Adoption

Date: 12/16/19

Financial Regulation Standards and Accreditation (F) Committee
Austin, Texas
December 7, 2019

The Financial Regulation Standards and Accreditation (F) Committee met in Austin, TX, Dec. 7, 2019. The following Committee members participated: Todd E. Kiser, Chair (UT); Jillian Froment, Vice Chair, (OH); Lori K. Wing-Heier represented by David Phifer (AK); Allen W. Kerr represented by Mel Anderson (AR); Andrew N. Mais represented by Kathy Belfi (CT); Nancy G. Atkins (KY); Gary Anderson represented by Rachel M. Davison (MA); Mike Causey (NC); Bruce R. Ramge and Justin Schrader (NE); Elizabeth Kelleher Dwyer (RI); Larry Deiter (SD); Scott A. White represented by Doug Stolte (VA); Michael S. Pieciak represented by David Provost (VT); and Jeff Rude (WY). Also participating was: Chlora Lindley-Myers (MO).

1. Adopted its Summer National Meeting Minutes

 Commissioner Kiser said the Committee met Dec. 6 and Aug. 3. During its Dec. 6 meeting, the Committee met in regulator-to-regulator session, pursuant to paragraph 7 (consideration of individual state insurance department’s compliance with NAIC financial regulation standards) of the NAIC Policy Statement on Open Meetings, to: 1) discuss state-specific accreditation issues; and 2) vote to award continued accreditation to the insurance departments of Connecticut, Massachusetts, New York and for the first time, the U.S. Virgin Islands.

 Director Ramage made a motion, seconded by Director Dieter, to adopt the Committee’s Aug. 3 minutes (see NAIC Proceedings – Summer 2019, Financial Regulation Standards and Accreditation (F) Committee). The motion passed unanimously.

2. Adopted Revisions to the SEG/IAR for Consistency with Revisions to Part D of the Accreditation Standards

 Commissioner Kiser stated that at the Summer National Meeting, the Committee adopted changes to Part D: Organizational, Redomestications and Change of Control of the Review Team Guidelines, which included updates to the standards for primary applications for new companies and Form A filings, and the addition of a new standard related to redomestications. When changes are made to the Review Team Guidelines, the related questions in the Self-Evaluation Guide (Attachment One) must also be updated for consistency. The Review Team Guidelines represent the requirements for accreditation. The SEG is the means through which the states report on compliance with those guidelines. These related changes to the SEG were exposed at the Summer National Meeting, and no formal comments were received.

 Becky Meyer (NAIC) summarized a suggestion to remove duplicative language from (b)1 in the SEG/Interim Annual Review (IAR) for Part D. When the Review Team Guidelines were changed, the section was moved, so number two is where that information should reside. It is recommended that the highlighted portion be removed.

Ms. Belfi made a motion, seconded by Mr. Provost, to adopt the revisions to Part D of the SEG, including the change to remove the duplicative language from standard (b)1, effective Jan. 1, 2020. The motion passed unanimously.

3. Adopted a Referral from the Financial Analysis (E) Working Group Regarding Updates to the Troubled Company Accreditation Guidelines

 Commissioner Kiser stated that earlier this year, updates were made to the Troubled Insurance Company Handbook to clarify expectations regarding timely and effective communication between domiciliary and non-domiciliary state insurance departments. In situations when a company becomes troubled, communication between affected states is very important. Therefore, these concepts are incorporated into the accreditation guidelines. The referral (Attachment Two) was exposed for a 30-day public comment period and no comments were received.

Ms. Belfi made a motion, seconded by Mr. Provost, to adopt the changes to the Review Team Guidelines—Procedures for Troubled Companies effective Jan. 1, 2020. The motion massed unanimously.

4. Adopted the 2019 Revisions to Model #785 and Model #786 as an Update to the Accreditation Standards

 Commissioner Kiser stated that on June 25, the Executive (EX) Committee and Plenary unanimously adopted revisions to the Credit for Reinsurance Model Law (#785) and Credit for Reinsurance Model Regulation (#786), which incorporate relevant provisions in the “Bilateral Agreement Between the United States of America and the European Union on Prudential Measures
Significant elements were then developed, exposed and up for adoption at the 2017 Fall National Meeting. However, the standards, along with the 2016 revisions to Model #785, which provided enabling language related to adoption of Model #785. #787 was first referred to the Committee at the 2017 Spring National Meeting for consideration for inclusion in the accreditation Director Lindley-Myers summarized the referral memorandum from the Reinsurance Task (E) Force (Attachment Three) with part of the accreditation standards, the impact on accreditation must be considered. respect to the 2019 revisions to Model #785 and Model #786. The 2019 revisions to Model #785 and Model #786 were intended to incorporate the relevant provisions of the Covered Agreements signed with the European Union (EU) and United Kingdom (U.K.) with respect to reinsurance collateral requirements. The 2019 revisions also extend similar treatment to qualified jurisdictions and accredited NAIC jurisdictions. At its meeting on Oct. 22, the Reinsurance (E) Task Force agreed to submit the following recommendations to the Committee: 1) the 2019 revisions to Model #785 and Model #786 for reciprocal jurisdictions should be adopted as an update to the Reinsurance Ceded accreditation standard with significant elements as outlined in the attached memorandum; and 2) the Committee should consider a waiver of procedure, as provided for in the Accreditation Program Manual, and expeditiously consider adoption of this standard. The Task Force recommends that the accreditation standard become effective Sept. 1, 2022, the end of the 60-month period when federal preemption determinations must be completed, with enforcement of the standard to commence on Jan. 1, 2023. After the Oct. 22 conference call, NAIC staff had conversations with representatives of the Federal Insurance Office (FIO), who advised us that the end of the 60-month period when federal preemption determinations must be completed is Sept. 1, 2022, and not Oct. 1, 2022, as originally thought. The key aspect of a Covered Agreement under the federal Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) is that it can preempt a state insurance measure that is inconsistent with the Covered Agreement. Another important element of federal preemption is the effective date of implementation of the Covered Agreement. The Covered Agreement with the EU was signed on Sept. 22, 2017, and it says, “42 months after the date of signature of this Agreement, the United States shall begin evaluating a potential preemption determination” with respect to any state insurance measure that is determined to be inconsistent with the Covered Agreement. The 42-month date is March 1, 2021. The Covered Agreement goes on to say, “60 months after the date of signature of this Agreement, the United States shall complete any necessary preemption determinations.” This date would be Sept. 1, 2022. So, 42 months after the date of signature the FIO shall begin its preemption determinations on inconsistent state laws, which must be completed no later than 60 months after the date of signature. Finally, the Reinsurance (E) Task Force recommends that the accreditation standard be adopted on a “substantially similar” basis. However, it should be noted that the Dodd-Frank Act requires the state insurance measure to be “consistent” with the Covered Agreement in order to avoid federal preemption, which may be interpreted as a higher standard than “substantially similar.” Therefore, it is the recommendation of the Task Force that the states adopt the 2019 revisions in close to identical form to the models in order to best avoid the possibility of federal preemption. Director Ramge suggested that while he is in favor of exposing items for comment, it would be more expeditious to take the matter up for adoption immediately due to the states’ legislatures resuming session in January. Dan Schelp (NAIC) stated that it was exposed at the Reinsurance (E) Task Force for a 30-day public comment period and did not receive any negative feedback. Considering the waiver of procedure requested per the Accreditation Program Manual, he stated that he knew of no procedural timelines that would prevent adoption without a public comment period. Ms. Meyer stated that the decision would be presented to the Executive (EX) Committee and Plenary and require a 60% majority of members to adopt the proposal. Director Ramage made a motion, seconded by Superintendent Dwyer, to adopt the referral, including the recommended significant elements, the waiver of procedure to expeditiously adopt the standard, and an effective date of Sept. 1, 2022. The motion massed unanimously.

5. **Adopted the Referral from the Reinsurance (E) Task Force Regarding Model #787 and the 2016 Revisions to Model #785**

Commissioner Kiser stated that the *Term and Universal Life Insurance Reserve Financing Model Regulation (#787)*, more commonly referred to as the XXX/AXXX Model Regulation, was adopted by the NAIC in 2016. This model establishes uniform, national standards governing reserve financing arrangements pertaining to term life and universal life insurance policies with secondary guarantees. Model #787 also includes provisions to ensure that funds backing these captive reinsurance transactions, which consist of primary security and other security, are held in the forms and amounts that are appropriate. Model #787 was first referred to the Committee at the 2017 Spring National Meeting for consideration for inclusion in the accreditation standards, along with the 2016 revisions to Model #785, which provided enabling language related to adoption of Model #785. Significant elements were then developed, exposed and up for adoption at the 2017 Fall National Meeting. However, the...
Covered Agreement had recently been signed and the Committee agreed to defer a decision on Model #787 until the effect of the Covered Agreement was known. With the adoption of the 2019 revisions to Model #785 and Model #786, it is now time to re-address this issue. Commissioner Kiser prompted the Committee to consider if there is still strong support to make Model #787 an accreditation standard. He raised the question of whether the general acceptance of *Actuarial Guideline XLVIII—Actuarial Opinion and Memorandum Requirements for the Reinsurance of Policies Required to be Valued under Sections 6 and 7 of the NAIC Valuation of Life Insurance Policies Model Regulation* (AG 48) has alleviated the issues that drove development of Model #787.

Andrew T. Vedder (Northwestern Mutual Life Insurance Company) commented on the joint letter from Northwestern Mutual and New York Life (Attachment Five), and he stated that he believes it is necessary to adopt Model #787; and he urges the NAIC to follow through on prior recommendations to make Model #787 an accreditation standard in parallel with the Covered Agreement revisions. He stated that companies have long advocated that Model #787 should be an accreditation requirement, which is consistent with the prior recommendation by the Reinsurance (E) Task Force.

Douglas Wheeler (New York Life Insurance Company) stated that there is no longer any reason for delay in the NAIC’s action to make Model #787 an accreditation requirement, and he urged the Committee to move forward today with adoption. Doing so will allow the NAIC to finally complete the important work of uniformly implementing its XXX/AXXX Reinsurance Framework.

Mr. Schrader stated that he did not see a reason to delay the recommendation.

Ms. Belfi agreed that there is no reason to delay, and she stated that consistency among the states is key.

Director Ramge made a motion, seconded by Ms. Belfi, to adopt Model #787 as an accreditation standard consistent with the referral from the Reinsurance (E) Task Force (Attachment Four) with an effective date of Sept. 1, 2022. The motion massed unanimously.

Having no further business, the Financial Regulation Standards and Accreditation (F) Committee adjourned.
At the Spring National Meeting, the Financial Regulation Standards and Accreditation (F) Committee exposed revisions to the Part D: Organization, Licensing and Change of Control of Domestic Insurers standards and Review Team Guidelines. The National Treatment and Coordination (E) Working Group’s recommended revisions include: 1) updating the Guidelines to reflect current practices; 2) expanding the scope to include redomestications; and 3) including Part D in the review team’s recommendation with the result that the outcome can affect a state’s accredited status. The Working Group recommended that the revisions be adopted with an effective date of Jan. 1, 2020; however, the recommended effective date for subjecting Part D to Recommendation A or B, and thus impacting a state’s accredited status, is Jan. 1, 2022.

The proposed revisions to the Part D standards and Guidelines will require the Self-Evaluation Guide (SEG) to be updated. The SEG facilitates the state’s reporting of compliance with the Guidelines; therefore, any change to the Guidelines must be accounted for in the SEG.

In addition, as a result of these revisions, the Accreditation Program Manual’s references to Part D will need to be updated. NAIC staff will ensure that these non-substantive changes will be made accordingly.

The proposed SEG revisions for Part D to ensure consistency with the Guidelines are attached.
PART D: ORGANIZATION, PRIMARY LICENSING, REDOMESTICATION AND CHANGE OF CONTROL OF DOMESTIC INSURERS

a) Sufficient Qualified Staff and Resources

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

1. Does the department staff have the capacity to effectively review applications for primary licensure of new companies, redomestications applications and Form A filings in a timely manner? YES NO

2. Does the department have established minimum educational and experience requirements for staff positions in the company licensing area which are commensurate with the duties and responsibilities of the position? YES NO

3. As a separate attachment, provide a current year list of staff responsible for analyzing company applications. With that list, please include the following:
   - Name,
   - Title,
   - Years employed by the department (include functional area),
   - Type of college degree, including major areas of concentration,
   - Prior regulatory or insurance experience, and
   - Indicate whether the individual is a department employee (full/part time) or a contractual employee (exclusive to the department/not exclusive to the department).

4. As a separate attachment, provide a listing of any L/H and P/C primary licensure applications and any multi-state L/H and P/C Form A filings (whether approved or denied) received since the department’s last full review. Also include any multi-state L/H and P/C primary redomestication applications received Jan. 1, 2020 and after. With that list, please include the following:
   - Name of person responsible for reviewing the filing,
   - Type of filing,
   - Date the filing was received,
   - Date the filing was reviewed for completeness,
   - Date(s) the department contacted the company for additional or supplementary information (if applicable), and
   - Date the company was informed of licensure, approval/denial of the filing.
   - Whether the filing review was completed timely per department procedures, and
   - If the review was not completed timely, provide the reason.
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<td><strong>5.</strong> If the department has developed timing requirements that differ from the NAIC Company Licensing Best Practices Handbook, please attach a copy of the timing requirements policy, be sure to include timing expectations for initial review from date of receipt, notification to the insurer, and completion of the review.</td>
<td>YES</td>
<td>NO</td>
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<td><strong>6.</strong> If there are extenuating circumstances and the required timing guidelines cannot be met for a particular application, are such circumstances clearly documented in the application file?</td>
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<td><strong>76.</strong> Do the department’s statutes or regulations specify timing requirements for the completion of primary licensure applications?</td>
<td>YES</td>
<td>NO</td>
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| **87.** If the answer to #7 above is yes, please attach a copy of the department’s authority discussing such requirement.  
*If this is an interim annual review, only provide the department’s timing requirements if there has been a change from the previous submission of this information, otherwise indicate “no changes”.* |   |   |
| **9.** If the answer to #7 above is no, does the department follow the timing requirements set forth in the Review Team Guidelines, which state the review should be completed within 90 calendar days of receipt (barring exceptions for when information is requested). |   |   |
Primary Licensing, Redomestications and Change of Control – continued

b) Scope and Performance of Procedures for Primary Applications

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

1. Does the department have documented licensing procedures that require a review and/or analysis of the following:

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<th>A review and analysis of:</th>
<th>YES</th>
<th>NO</th>
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<td>Identification and evaluation of the business and strategic plans of the applicant, including pro forma financial projections?</td>
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<td>Pro forma financial projections?</td>
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<td>Biographical Affidavits?</td>
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<td>Adequacy of proposed reinsurance program?</td>
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<td>Adequacy of investment policy?</td>
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<td>Adequacy of short-term and long-term financing agreements:</td>
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<td>Initial financing of proposed operations or transaction?</td>
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<td>Maintenance of adequate capital and surplus levels?</td>
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An assessment of the quality and expertise of:

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2. Do department procedures require a review of the Form A and Market Action Tracking System (MATS) databases for related information about the primary applicant and other key persons?

23. In a separate attachment, provide such licensing procedures and discuss any additional processes developed to review/analyze a primary licensure application.

*If this is an interim annual review, only provide the department’s procedures for reviewing primary applications if there has been a substantial change from the previous submission of this information, otherwise indicate “no changes”.

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Primary Licensing, Redomestications and Change of Control – continued

34. Do the department’s files contain evidence, including whether the applicant meets licensure requirements (i.e. approve or deny), and adequately demonstrate licensing procedures for primary applications were followed?

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<th>YES</th>
<th>NO</th>
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Primary Licensing, Redomestications and Change of Control – continued

c) **Scope and Performance of Procedures for Redomestication**

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

1. **Does the department have documented procedures for the review of redomestication applications that require the following:**

   - A review and analysis of:
     - Business and strategic plans?
     - Actuarial opinion?
     - Annual and quarterly statements?
     - Risk-based capital (RBC) report?
     - Independent CPA audit report?
     - Insurance Holding Company System Annual Registration Statement and Exhibits (Form B)?

   - An assessment of:
     - Senior management?
     - Board of directors?
     - Corporate governance?

2. **Do department procedures require, at a minimum, a conference call with the domestic regulator to obtain, discuss and conclude on the following:**

   - Most recent IPS and supervisory plan, including supporting analysis detail for significant risks?
   - Reason for redomestication?
   - Concerns identified with the insurer/group?
   - History of communication with the insurer/group?
   - History of regulatory actions?
   - Results of recent examinations (financial and market conduct), including findings and resolutions?
   - Status of and responsibilities for annual financial analysis and group analysis, if applicable?
   - Status of and responsibilities for the financial examinations?

3. **Do department procedures require upon receipt of a primary application for redomestication that notification be sent to the lead state of the insurance holding company group and a copy of the most recent GPS be obtained, if applicable?**
4. In a separate attachment, provide procedures and discuss any additional processes developed to review/analyze a redomestication application.
Primary Licensing, Redomestications and Change of Control – continued

d) Scope and Performance of Procedures for Form A Filings

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

1. Does the department have documented procedures for the review of Form A filings that include at least the following:

- Business and strategic plans of the insurer?
- Identity and background of the applicant and individuals associated with the applicant, including use of biographical affidavits to assess the quality and expertise of the following:
  - Ultimate controlling person?
  - Proposed officers and directors (as listed on the Jurat page of the most recent or upcoming financial statement)?
  - Other owners of 10% or more of voting securities?
- The source, nature and amount of the consideration used or to be used in effecting the merger or other acquisition of control?
- Fully audited financial information regarding the earnings and financial condition of the ultimate controlling person(s) for the preceding five years? (If fully audited financial information is not available, substantially similar information such as compiled financial statements or tax returns, as deemed acceptable to the commissioner, may be reviewed in lieu of fully audited financial information.)
- Unaudited financial information regarding the earnings and financial condition of the ultimate controlling person(s) as of a date not earlier than 90 days prior to the filing of each statementthe Form A?

2. In a separate attachment, provide such procedures and discuss any additional processes developed for the review of Form A filings. *If this is an interim annual review, only provide the department’s procedures for reviewing Form A filings if there has been a substantial change from the previous submission of this information, otherwise indicate “no changes”.

3. Is it the department’s policy to utilize the Form A database to obtain information on prior filings made by an applicant and the ultimate outcome of such filings to inform other states of the receipt and status of Form A filings?

4. If the answer to #3 above is yes, do the department’s procedures for utilization of the Form A database include the following:

- Review the Form A database for any prior filings made by the Form A applicant and the ultimate outcome of such filing(s)?
Primary Licensing, Redomestications and Change of Control – continued

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5. If the answer to #3 above is no, please provide the department’s policy and procedures on utilizing the Form A Database or any other independently developed procedures followed to obtain information on an applicant’s filings and to inform other states of the receipt and status of Form A filings in a timely manner.

*If this is an interim annual review, only provide the department’s policy and/or procedures if there has been a substantial change from the previous submission of this information, otherwise indicate “no changes”.

65. Do the department’s files contain evidence of conclusions regarding whether the Form A filing was approved or denied, and sufficient documentation that its procedures for Form A filings were adequately performed?  

8. **Attachment One**

Financial Regulation Standards and Accreditation (F) Committee
12/7/19

© 2019 National Association of Insurance Commissioners
To: Financial Regulation Standards and Accreditation (F) Committee  
From: Financial Analysis (E) Working Group (FAWG)  
Date: April 5, 2019  
Re: Recommendation for Updated Part B.3 Procedures for Troubled Companies

On February 27, 2019, the Financial Analysis (E) Working Group (FAWG) adopted revisions to the Troubled Insurance Company Handbook, a regulator only publication. Specifically, the revisions included updated guidance for timely and effective communication between the domiciliary and non-domiciliary state departments of insurance of necessary information on troubled or potentially troubled insurance companies that may impact other jurisdictions. A cooperative communication system between states’ insurance departments promotes coordinated efforts in identifying troubled company situations and coordinating regulatory actions.

Part B.3 Procedures for Troubled Companies states that departments should generally follow and observe procedures set forth in the Troubled Insurance Company Handbook. To align the Part B.3 guidelines with the recently adopted revisions to the Handbook, the FAWG recommends the attached revisions which define more specifically which states should be included in the communication of troubled or potentially troubled insurance companies.

If you have any questions regarding his referral, please contact NAIC staff (Jane Koenigsman, jkoenigsman@naic.org).
NAIC FINANCIAL REGULATION STANDARDS
AND ACCREDITATION PROGRAM

REVIEW TEAM GUIDELINES

Part B3: Department Procedures and Oversight

b. Procedures for Troubled Companies

**Standard:** The department should generally follow and observe procedures set forth in the NAIC *Troubled Insurance Company Handbook*. Appropriate variations in application of procedures and regulatory requirements should be commensurate with the identified financial concerns and operational problems of the insurer.

**Results-Oriented Guidelines:**

1. The department should demonstrate that application of procedures and regulatory requirements are commensurate with the identified financial concerns and operational problems of the insurer. When assessing compliance with this guideline, consideration should be given to the following:
   - Whether identified concerns are adequately addressed.
   - Appropriate consideration and execution of more frequent examinations, including appropriateness of the scope of the examination.
   - Timing, quality and reasonableness of communication with other states where the insurance company is licensed, has a significant amount of written, assumed or ceded insurance business, has a significant market share, or has an impacted affiliate domiciled in that state, has pooled companies, or utilizes fronting entities, or where the domestic state is aware the company is either seeking to write business or is seeking a license.

**Process-Oriented Guidelines:**

1. Once the department has identified an insurance company as troubled or potentially troubled, the department should take steps, such as those set forth in the NAIC *Troubled Insurance Company Handbook*, to address the identified concerns. This shall apply from the point the department identifies the insurance company as troubled, or potentially troubled, to the point the company has been placed into receivership.

2. The department should examine those insurance companies that the department has identified as troubled or potentially troubled more frequently than once every five years as outlined in the NAIC *Model Law on Examinations* (#390) or provide rationale for not conducting more frequent examinations. Limited scope examinations are acceptable in meeting this guideline; however, the department is still required to complete a full-scope examination in compliance with statutory requirements.

3. Once the department has identified an insurance company as troubled or potentially troubled, the department should, **within an appropriate time consistent with the severity of the event**, make efforts to communicate proactively with other state insurance regulators where the insurance company is licensed, has a significant amount of written, assumed or ceded insurance business, has a significant market share, has an affiliate domiciled in that state, has pooled companies, or utilizes fronting entities, or where the domestic state is aware the company is either seeking to write business or is seeking a license in which affiliates of the troubled company are domiciled or those states where the troubled company has significant market share. Department files should contain written evidence of such communication(s). To a lesser extent, oral verification may provide such evidence.
MEMORANDUM

To: Financial Regulation Standards and Accreditation (F) Committee

From: Reinsurance (E) Task Force

Date: November 15, 2019

Re: 2019 Revisions to Credit for Reinsurance Model Law (#785) and Credit for Reinsurance Model Regulation (#786)

Executive Summary

On June 25, 2019, the NAIC Executive (EX) Committee and Plenary unanimously adopted revisions to the NAIC Credit for Reinsurance Model Law (#785) and Credit for Reinsurance Model Regulation (#786). These revisions were intended to incorporate the relevant provisions of the “Bilateral Agreement Between the United States of America and the European Union on Prudential Measures Regarding Insurance and Reinsurance” (Covered Agreement), which was signed on Sept. 22, 2017. The Covered Agreement would eliminate reinsurance collateral and local presence requirements for European Union (EU) reinsurers that maintain a minimum amount of own funds equivalent to $250 million and a solvency capital requirement (SCR) of 100% under Solvency II. Conversely, U.S. reinsurers that maintain capital and surplus equivalent to 226 million euros with a risk-based capital (RBC) of 300% of authorized control level would not be required to maintain a local presence in order to do business in the EU or post collateral in any EU jurisdiction. On Dec. 18, 2018, a similar Covered Agreement was signed with the United Kingdom (UK). In addition, the 2019 revisions extend similar treatment to Qualified Jurisdictions and accredited NAIC jurisdictions.

At the 2019 Summer National Meeting, Director Chlora Lindley-Myers (MO), Chair of the NAIC Reinsurance (E) Task Force, made the following recommendation to the Financial Regulation Standards and Accreditation (F) Committee: 1) the Committee recognize that states may begin adoption of provisions that are substantially similar to the 2019 revisions to Model #785 and Model #786 and remain in compliance with the Reinsurance Ceded accreditation standard; 2) the accreditation standard be modified in accordance with the normal processes and procedures outlined in the Accreditation Program Manual, and that the Task Force and Financial Condition (E) Committee prepare a formal recommendation to the Financial Regulation Standards and Accreditation (F) Committee for consideration at the 2020 Spring National Meeting; and 3) in the interim, states should be encouraged to adopt the 2019 revisions in the form adopted by Plenary within the 60-month timeframe set forth in the Covered Agreement to best avoid potential federal preemption. Committee Chair Commissioner Todd E. Kiser (UT) asked if there were any objections to the approach proposed in the referral from the Reinsurance (E) Task Force, and none were noted.

At its meeting on October 22, the Reinsurance (E) Task Force agreed to submit the following new recommendations to the Financial Regulation Standards and Accreditation (F) Committee:

1. The 2019 revisions to Model #785 and Model #786 should be adopted as a new accreditation standard by the NAIC, Reciprocal Jurisdictions, with significant elements as outlined in Attachment A.
2. The Financial Regulation Standards and Accreditation (F) Committee should consider a waiver of procedure as provided for in the Accreditation Program Manual and expeditiously consider adoption of this standard. The Task Force recommends that the accreditation standard become effective Oct. 1, 2022, the end of the 60-month period when federal preemption determinations must be completed, with enforcement of the standard to commence Jan. 1, 2023. [Note: after the Oct. 22 conference call, NAIC staff had conversations with representatives of the Federal Insurance Office (FIO), in which they advised NAIC staff that in their opinion the end of the 60-month period when federal preemption determinations must be completed is Sept. 1, 2022].

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

The current Reinsurance Ceded accreditation standard requires that state law shall contain the significant elements from Model #785 and Model #786. The models serve to provide regulators with an effective method of monitoring the reinsurance activities of U.S. companies. U.S. primary insurance companies may be given reinsurance credit on their statutory financial statements for insurance risk they transfer via reinsurance that meets the legal and accounting risk transfer requirements and other relevant laws. Both the 2011 revisions to the credit for reinsurance models, which served to reduce reinsurance collateral requirements for certified reinsurers domiciled in qualified jurisdictions, and the 2019 revisions with respect to Reciprocal Jurisdictions, address the reinsurance collateral requirements necessary for U.S. ceding companies to take credit for certain reinsurance transactions.

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

The Dodd-Frank Wall Street Reform and Consumer Protection Act provides that a state insurance measure shall be preempted to the extent that the Director of FIO “determines” that the measure is inconsistent with the covered agreement and results in less favorable treatment of a non-U.S. insurer domiciled in a foreign jurisdiction that is subject to a “covered agreement” than a U.S. insurer domiciled, licensed or otherwise admitted in that state. A “covered agreement” under Dodd-Frank is an agreement entered into between the U.S. and foreign government(s) on prudential measures with respect to the business of insurance or reinsurance that achieves a level of protection for consumers that is “substantially equivalent” to the level of protection under state law. The revisions to Model #785 and #786 are considered by the Reinsurance (E) Task Force to be consistent with the requirements of the Covered Agreements entered into with the EU and UK.

Article 9(4) of the Covered Agreements provide, as follows with respect to Implementation of the Agreement:

4. Provided that this Agreement has entered into force, on a date no later than the first day of the month, 42 months after the date of signature of this Agreement [22 September 2017], the United States shall begin evaluating a potential preemption determination under its laws and regulations with respect to any U.S. State insurance measure that the United States determines is inconsistent with this Agreement and results in less favorable treatment of an EU insurer or reinsurer than a U.S. insurer or reinsurer domiciled, licensed, or otherwise admitted in that U.S. State. Provided that this Agreement has entered into force, on a date no later than the first day of the month 60 months after the date of signature of this Agreement [22 September 2017], the United States shall complete any necessary preemption determination under its laws and regulations with respect to any U.S. State insurance measure subject to such evaluation. For the purposes of this paragraph, the United States shall prioritise those States with the highest volume of gross ceded reinsurance for purposes of potential preemption determinations. [Emphasis added].

To summarize, FIO may begin evaluating potential preemption “determinations” 42 months after the signature of the Covered Agreement, or March 1, 2021. FIO must complete any necessary preemption determinations 60 months after signature, which they believe to be Sept. 1, 2022. In order to avoid potential federal preemption determinations by the FIO Director, each state should adopt the 2019 revisions to Model #785 and Model #786 in a timely manner.
A statement as to the number of jurisdictions that have adopted and implemented the proposal or a similar proposal and their experience to date:

The pre-2011 versions of Model #785 and Model #786 are currently part of the Reinsurance Ceded accreditation standard, and the significant elements have been adopted in substantially similar form by all NAIC-accredited jurisdictions. The 2011 revisions to these models implemented reinsurance collateral reduction for Reinsurance Ceded to Certified Reinsurers domiciled in qualified jurisdictions. At the current time, all NAIC accredited jurisdictions have adopted the 2011 revisions to Model #785, and only 5 jurisdictions have not adopted the 2011 revisions to Model #786, which became part of the accreditation standard effective January 1, 2019.

We are not currently aware of any states that have adopted the 2019 revisions to Model #785 and Model #786, although we have been advised that many states have begun their legislative processes for adoption of these revisions. We are not aware of any negative impact to any jurisdiction or its domiciliary ceding insurers that has adopted these revisions, which are similar in function and format to the Reciprocal Jurisdiction requirements of the 2019 revisions.

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

The current accreditation standard for Model #785 and Model #786 requires state adoption on a substantially similar basis. In addition, the Covered Agreements themselves and the Dodd-Frank Act require that the United States cannot impose reinsurance collateral or local presence requirements that result in less favorable treatment for EU or UK reinsurers, and further that any state insurance measures cannot be inconsistent with the Covered Agreements. Therefore, the Reinsurance (E) Task Force recommends that the attached proposed significant elements for Reciprocal Jurisdictions (Attachment A) be adopted by NAIC-accredited jurisdictions in a “substantially similar” manner, as that term is defined in the Accreditation Interlineations of the NAIC Financial Regulation Standards and Accreditation Program. Note: While the Task Force is recommending that the Committee adopt a “substantially similar” standard for accreditation purposes, it should be noted that Dodd-Frank requires the state insurance measure to be “consistent” with the Covered Agreement in order to avoid federal preemption, which may be interpreted as a higher standard. It is the recommendation of the Task Force that states adopt the 2019 revisions in close to identical form to the models in order to best avoid the possibility of federal preemption.

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

The NAIC has not performed a cost/benefit analysis with respect to the 2019 revisions to Model #785 and Model #786, nor do we believe that the specific costs for insurance companies to comply with the proposal and the impact on state insurance departments to enforce it are reasonably quantifiable.

\[31\text{ U.S.C. §313(f)}\text{ provides the process for making a “determination” in this context:}\]

\begin{enumerate}
\item \text{(2) Determination.——}\n\begin{enumerate}
\item \text{(A) Notice of potential inconsistency.——Before making any determination under paragraph (1), the Director shall—}\n\begin{enumerate}
\item \text{notify and consult with the appropriate State regarding any potential inconsistency or preemption;}\n\item \text{notify and consult with the United States Trade Representative regarding any potential inconsistency or preemption;}\n\end{enumerate}
\end{enumerate}
\end{enumerate}
(iii) cause to be published in the Federal Register notice of the issue regarding the potential inconsistency or preemption, including a description of each State insurance measure at issue and any applicable covered agreement;

(iv) provide interested parties a reasonable opportunity to submit written comments to the Office; and

(v) consider any comments received.

***

(C) Notice of determination of inconsistency.—Upon making any determination under paragraph (1), the Director shall—

(i) notify the appropriate State of the determination and the extent of the inconsistency;

(ii) establish a reasonable period of time, which shall not be less than 30 days, before the determination shall become effective; and

(iii) notify the Committees on Financial Services and Ways and Means of the House of Representatives and the Committees on Banking, Housing, and Urban Affairs and Finance of the Senate.

(3) Notice of effectiveness.—Upon the conclusion of the period referred to in paragraph (2)(C)(ii), if the basis for such determination still exists, the determination shall become effective and the Director shall—

(A) cause to be published a notice in the Federal Register that the preemption has become effective, as well as the effective date; and

(B) notify the appropriate State.
Adopted by the Reinsurance (E) Task Force on October 22, 2019

10. Reinsurance Ceded

State law should contain the NAIC Credit for Reinsurance Model Law (#785), the NAIC’s Credit for Reinsurance Model Regulation (#786) and the NAIC Life and Health Reinsurance Agreements Model Regulation (#791) or substantially similar laws.

REFERENCE

Credit for Reinsurance Model Law (#785)

a. Credit allowed for reinsurance ceded to a licensed insurer?

b. Credit allowed for reinsurance ceded to an accredited insurer who meets requirements similar to those in Section 2B and 2I2J of the model law?

c. Credit allowed for reinsurance ceded to an insurer domiciled and licensed in a state which employs substantially similar standards regarding credit for reinsurance and who maintains capital and surplus of at least $20,000,000 and submits to this state’s authority to examine its books and records?

d. Credit allowed for reinsurance ceded to an insurer who maintains a trust fund, established in a form approved by the commissioner, in a qualified U.S. financial institution for the payment of the valid claims of its U.S. policyholders and ceding insurers, their assigns and successors in interest and who reports financial information annually to the commissioner to determine the sufficiency of the trust fund?

e. In instances where reinsurance is ceded to insurers maintaining a trust fund, trustees of the trust required to report to the department annually, on or before February 28, the balance of the trust and a listing of the trust’s assets as of the end of the year and a certification of the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the next following December 31?

f. Credit for reinsurance allowed under c. or d. above only permitted where assuming insurer agrees in the reinsurance agreements: 1) that in the event of a failure of the assuming insurer to perform its obligations, the assuming insurer shall submit to the jurisdiction of any court of competent jurisdiction in any state of the U.S.; and 2) to designate the commissioner or a designated attorney as its true and lawful attorney upon whom may be served any lawful process instituted by or on behalf of the ceding company?
g. Credit allowed for reinsurance ceded to an insurer not meeting the requirements of a., b., c., or d. above, or with respect to a certified reinsurer described below, in an amount not exceeding the liabilities carried by the ceding insurer and only in the amount of funds held by or on behalf of the ceding insurer in the form of cash, securities listed by the Securities Valuation Office of the NAIC, including those deemed exempt from filing as defined by the *Purposes and Procedures Manual of the Securities Valuation Office*, and qualifying as admitted assets, clean, irrevocable, unconditional letters of credit, and other forms of security acceptable to the commissioner?

h. Ceding insurers must be subject to notification requirements with respect to reinsurance concentration risk substantially similar to those in Section 2J2K of Model #785.

<table>
<thead>
<tr>
<th>Life and Health Reinsurance Agreements Model Regulation (#791)</th>
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<tbody>
<tr>
<td>i. Scope similar to Section 3?</td>
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<tr>
<td>j. No insurer, for reinsurance ceded establishes any asset or reduces any liability due to the terms of the reinsurance agreement, in substance or effect if any of the conditions in Section 4A exist?</td>
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<tr>
<td>k. Agreements entered into after the effective date of this regulation which involve the reinsurance of business issued prior to the effective date of agreements, along with subsequent amendments shall be filed by the ceding company with the commissioner within 30 days from the execution date along with attachments noted in Section 4C(1)?</td>
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<tr>
<td>l. Any increase in surplus net of federal income tax resulting from arrangements described in Section 4C(1) to be reported as described in Section 4C(2)?</td>
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<tr>
<td>m. Written agreements with provisions similar to Section 5?</td>
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<tr>
<td>n. Insurers required to reduce to zero any reserve credits or assets established with respect to existing reinsurance agreements entered into prior to the effective date of this regulation which would not be recognized under the provisions of this regulation?</td>
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<tr>
<th>Credit for Reinsurance Model Regulation (#786)</th>
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<tbody>
<tr>
<td>o. Credit for reinsurance allowed for reinsurance ceded by domestic insurers to assuming insurers that were licensed in the state as of the last date of the ceding insurers’ statutory financial statement?</td>
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<tr>
<td>p. Credit for reinsurance provisions for accredited reinsurer similar to Section 5?</td>
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<td>q. Credit for reinsurance provisions for reinsurers licensed and domiciled in other states similar to Section 6?</td>
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<td>r. Credit for reinsurance provisions for reinsurers maintaining trust funds similar to Section 7?</td>
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### Reinsurance Ceded to Certified Reinsurers

z. A state’s laws and regulations shall allow credit for reinsurance ceded to a certified reinsurer, including affiliated reinsurance transactions. Its laws and regulations shall contain provisions that are substantially similar to those applicable to certified reinsurers contained in Section 2E of Model #785 and Section 8 of Model #786.

i. The credit allowed is based upon the security held by or on behalf of the ceding insurer in accordance with the rating assigned to the certified reinsurer by the commissioner? The amount of security required in order for full credit to be allowed shall not be less than that required under Section 8A(1) of Model #786.

ii. The security provided by the certified reinsurer is in a form consistent with the provisions of Section 2E(5) of Model #785 and Section 8A of Model #786?

iii. The commissioner requires the certified reinsurer to post 100% security upon the entry of an order of rehabilitation, liquidation or conservation against the ceding insurer?

iv. A state’s laws or regulations shall include provisions for granting a certified reinsurer a deferral period for posting security applicable to catastrophe recoverables, substantially similar to Section 8A(4) of Model #786. The deferral period shall not exceed one year from the date of the first instance of a liability reserve entry by the ceding company as a result of a loss from a catastrophic occurrence as recognized by the commissioner, and shall not apply to lines of business other than those provided in Section 8A(4) of Model #786.

v. Credit for reinsurance ceded to a certified reinsurer shall apply only to reinsurance contracts meeting requirements substantially similar to Section 8A(5) of Model #786?
aa. In order to be a certified reinsurer, an assuming insurer must be certified by the commissioner in accordance with the process similar to Section 8B of Model #786?

i. The commissioner is required to post notice upon receipt of any application for certification substantially similar to the requirements of Section 8B(1) of Model #786?

ii. The commissioner is required to publish a list of all certified reinsurers and their ratings substantially similar to the requirements in Section 2E(4) of Model #785 and Section 8B(2) of Model #786?

iii. A certified reinsurer must be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the commissioner?

iv. A certified reinsurer must maintain capital and surplus, or its equivalent, of no less than $250,000,000, calculated in accordance with Section 8B(4)(h) of Model #786? This requirement may also be satisfied by an association including incorporated and individual unincorporated underwriters having minimum capital and surplus equivalents (net of liabilities) of at least $250,000,000 and a central fund containing a balance of at least $250,000,000.

v. A certified reinsurer must maintain financial strength ratings from two or more rating agencies deemed acceptable by the commissioner, and the maximum rating that a certified reinsurer may be assigned will correspond to its financial strength rating as set forth in Section 8B(4)(a) of Model #786? These ratings must be based on interactive communication between the rating agency and the assuming insurer and not based solely on publicly available information.

vi. A certified reinsurer is rated by the commissioner on a legal entity basis, with consideration given to the group rating where appropriate (an association including incorporated and individual unincorporated underwriters that have been approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating)? Factors may be considered in the evaluation process similar to those provided under Section 8B(4) and (5) of Model #786.

vii. A certified reinsurer must submit a properly executed Form CR-1 as evidence of its submission to the jurisdiction of the state, appointment of the commissioner as an agent for service of process in the state, and agreement to provide security for one hundred percent (100%) of its liabilities attributable to reinsurance ceded by ceding insurers if it resists enforcement of a final U.S. judgment? The commissioner must not certify any assuming insurer that is domiciled in a jurisdiction that the commissioner has determined does not adequately and promptly enforce final U.S. judgments or arbitration awards.
viii. A certified reinsurer must agree to meet applicable information filing requirements substantially similar to those provided under Section 8B(7) of Model #786, both with respect to an initial application for certification and on an ongoing basis?

ix. Changes in rating or revocation of certification of a certified reinsurer are applied by the commissioner in a manner substantially similar to the provisions of Section 2I2J of Model #785 and Section 8B(8) of Model #786?

x. A certified reinsurer must file audited financial statements, regulatory filings and actuarial opinion (as filed with the certified reinsurer’s supervisor, with a translation into English) consistent with the requirements set forth in Section 8B(4)(h) and Section 8B(7)(d) of Model #786? Upon the initial application for certification, the commissioner will consider audited financial statements for the last two (2) years filed with its non-U.S. jurisdiction supervisor?

bb. The commissioner is required to create and publish a list of qualified jurisdictions, under which an assuming insurer licensed and domiciled in such jurisdiction is eligible to be considered for certification by the commissioner as a certified reinsurer?

i. In determining whether the domiciliary jurisdiction of a non-U.S. assuming insurer is eligible to be recognized as a qualified jurisdiction, the commissioner evaluates the reinsurance supervisory system of the non-U.S. jurisdiction, both initially and on an ongoing basis, under criteria substantially similar to those provided under Section 8C(2) of the model regulation?

ii. The commissioner shall consider the list of qualified jurisdictions published by the NAIC in determining qualified jurisdictions? If the commissioner approves a jurisdiction as qualified that does not appear on the NAIC list of qualified jurisdictions, the commissioner must provide thoroughly documented justification with respect to criteria substantially similar to that provided under Section 8C(2) of Model #786.

iii. U.S. jurisdictions that meet the requirements for accreditation under the NAIC financial standards and accreditation program are recognized as qualified jurisdictions?

cc. A state’s laws and regulations shall allow a commissioner to defer to the certification and rating of a certified reinsurer issued by another NAIC accredited jurisdiction. Recognition of certification is made in accordance with provisions substantially similar to Section 8D of Model #786?

dd. Reinsurance contracts entered into or renewed with a certified reinsurer must include a proper funding clause, which requires the certified reinsurer to provide and maintain security in an amount sufficient to avoid the imposition of any financial statement penalty on the ceding insurer for reinsurance ceded to the certified reinsurer?
Reciprocal Jurisdictions

c. A state’s laws and regulations shall allow credit for reinsurance ceded to an assuming insurer that has its head office or is domiciled in, and is licensed in, a Reciprocal Jurisdiction. Its laws and regulations shall contain provisions that are substantially similar to those contained in Section 2F of Model #785 and Section 9 of Model #786. Its laws and regulations must provide that a Reciprocal Jurisdiction is a jurisdiction that meets one of the following:

i. A non-U.S. jurisdiction that is subject to an in-force covered agreement meeting the requirements of Section 2F(1)(a)(i) of Model #785 and Section 9B(1) of Model #786?

ii. A U.S. jurisdiction that meets the requirements for accreditation under the NAIC Financial Standards and Accreditation Program pursuant to Section 2F(1)(a)(ii) of Model #785 and Section 9B(2) of Model #786?

iii. A Qualified Jurisdiction that meets all of the requirements of Section 2F(1)(a)(iii) of Model #785 and Section 9B(3) of Model #786?

ff. Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is licensed to transact reinsurance by, and has its head office or is domiciled in, a Reciprocal Jurisdiction, and which meets each of the conditions set forth in Section 2F(1)(b) – (g) of Model #785 and Section 9C of Model #786:

i. The assuming insurer must have and maintain on an ongoing basis minimum capital and surplus, or its equivalent, calculated on at least an annual basis as of the preceding December 31 or at the annual date otherwise statutorily reported to the Reciprocal Jurisdiction of no less than $250,000,000 similar to Section 2F(1)(b) of Model #785 and Section 9C(2) of Model #786? This minimum capital and surplus requirement may also be satisfied by an association including incorporated and individual unincorporated underwriters having minimum capital and surplus equivalents (net of liabilities) or own funds of at least $250,000,000 and a central fund containing a balance of at least $250,000,000.

ii. The assuming insurer must have and maintain an ongoing capital ratio, as applicable, as set forth in Section 2F(1)(c) of Model #785 and Section 9C(3) of Model #786?

iii. The assuming insurer must submit a properly executed Form RJ-1 consistent with Section 2F(1)(d) of Model #785 and Section 9C(4) of Model #786:
• The assuming insurer must agree to provide prompt written notice and explanation to the commissioner if it falls below the minimum requirements set forth in this subsection, or if any regulatory action is taken against it for serious noncompliance with applicable law pursuant to Section 2F(1)(d)(i) of Model #785 and Section 9C(4)(a) of Model #786.

• The assuming insurer must consent in writing to the jurisdiction of the courts of this state and to the appointment of the commissioner as agent for service of process pursuant to Section 2F(1)(d)(ii) of Model #785 and Section 9C(4)(b) of Model #786. The commissioner may also require that such consent be provided and included in each reinsurance agreement under the commissioner’s jurisdiction.

• The assuming insurer must consent in writing to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer, that have been declared enforceable in the territory where the judgment was obtained pursuant to Section 2F(1)(d)(iii) of Model #785 and Section 9C(4)(c) of Model #786.

• Each reinsurance agreement must include a provision requiring the assuming insurer to provide security in an amount equal to one hundred percent (100%) of the assuming insurer’s liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming insurer resists enforcement of a final judgment that is enforceable under the law of the jurisdiction in which it was obtained or a properly enforceable arbitration award, whether obtained by the ceding insurer or by its legal successor on behalf of its estate, if applicable pursuant to Section 2F(1)(d)(iv) of Model #785 and Section 9C(4)(d) of Model #786.

• The assuming insurer must confirm that it is not presently participating in any solvent scheme of arrangement, which involves this state’s ceding insurers, and agrees to notify the ceding insurer and the commissioner and to provide one hundred percent (100%) security to the ceding insurer consistent with the terms of the scheme, should the assuming insurer enter into such a solvent scheme of arrangement pursuant to Section 2F(1)(d)(v) of Model #785 and Section 9C(4)(e) of Model #786.

• The assuming insurer must agree in writing to meet the applicable information filing requirements pursuant to Section 9C(4)(f) of Model #786.

iv. The assuming insurer or its legal successor must provide, if requested by the commissioner, on behalf of itself and any legal predecessors, the documentation to the commissioner as outlined in Section 2F(1)(e) of Model #785 and Section 9C(5) of Model #786.
• For the two years preceding entry into the reinsurance agreement and on an annual basis thereafter, the assuming insurer’s annual audited financial statements, in accordance with the applicable law of the jurisdiction of its head office or domiciliary jurisdiction, as applicable, including the external audit report pursuant to Section 9C(5)(a) of Model #786?

• For the two years preceding entry into the reinsurance agreement, the solvency and financial condition report or actuarial opinion, if filed with the assuming insurer’s supervisor pursuant to Section 9C(5)(b) of Model #786?

• Prior to entry into the reinsurance agreement and not more than semi-annually thereafter, an updated list of all disputed and overdue reinsurance claims outstanding for 90 days or more, regarding reinsurance assumed from ceding insurers domiciled in the United States pursuant to Section 9C(5)(c) of Model #786?

• Prior to entry into the reinsurance agreement and not more than semi-annually thereafter, information regarding the assuming insurer’s assumed reinsurance by ceding insurer, ceded reinsurance by the assuming insurer, and reinsurance recoverable on paid and unpaid losses by the assuming insurer pursuant to Section 9C(5)(d) of Model #786?

v. The assuming insurer must maintain a practice of prompt payment of claims under reinsurance agreements consistent with Section 2F(1)(f) of Model #785 and Section 9C(6) of Model #786?

vi. The assuming insurer’s supervisory authority must confirm to the commissioner on an annual basis that the assuming insurer complies with the minimum capital and surplus requirements and the minimum solvency or capital ratio requirements as required under Section 2F(1)(g) of Model #785 and Section 9C(7) of Model #786?

gg. The commissioner is required to timely create and publish a list of Reciprocal Jurisdictions similar to Section 2F(2) of Model #786 and Section 9D of Model #786?

i. If the commissioner approves a jurisdiction that does not appear on the NAIC list of Reciprocal Jurisdictions, the commissioner must provide thoroughly documented justification in accordance with criteria published through the NAIC Committee Process pursuant to Section 2F(2)(a) of Model #785 and Section 9D(1) of Model #786?

ii. The commissioner may remove a jurisdiction from the list of Reciprocal Jurisdictions upon a determination that the jurisdiction no longer meets one or more of the requirements of a Reciprocal Jurisdiction pursuant to Section 2F(2)(b) of Model #785 and Section 9D(2) of Model #786, except that the commissioner shall not remove from the list a Reciprocal Jurisdiction as defined under Section 9B(1) and (2) of Model #786?
hh. The commissioner shall timely create and publish a list of assuming insurers to which cessions shall be granted credit consistent with Section 2F(3) of Model #785 and Section 9E of Model #786? Such assuming insurer must submit a properly executed Form RJ-1 and additional information as the commissioner may require.

i. If an NAIC accredited jurisdiction has determined that the conditions set forth in Section 2F of Model #785 and Section 9 of Model #786 have been met, the commissioner has the discretion to defer to that jurisdiction’s determination and add such assuming insurer to the list of assuming insurers to which cessions shall be granted credit in accordance pursuant to Section 2F(3) of Model #785 and Section 9E(1) of Model #786? The commissioner may accept financial documentation filed with another NAIC accredited jurisdiction or with the NAIC with respect to such reinsurer.

ii. When requesting that the commissioner defer to another NAIC accredited jurisdiction’s determination, an assuming insurer must submit a properly executed Form RJ-1 and additional information as the commissioner may require pursuant to Section 9E(2) of Model #786?

ii. If the commissioner determines that an assuming insurer no longer meets one or more of the requirements set forth in Section 2F of Model #786 and Section 9 of Model #786, the commissioner may revoke or suspend the eligibility of the assuming insurer consistent with Section 2F(4) of Model #785 and Section 9F of Model #786?

i. While an assuming insurer’s eligibility is suspended, no reinsurance agreement issued, amended or renewed after the effective date of the suspension qualifies for credit except to the extent that the assuming insurer’s obligations under the contract are otherwise secured pursuant to Section 2F(4)(a) of Model #785 and Section 9F(1) of Model #786?

ii. If an assuming insurer’s eligibility is revoked, no credit for reinsurance may be granted after the effective date of the revocation with respect to any reinsurance agreements entered into by the assuming insurer, including reinsurance agreements entered into prior to the date of revocation, except to the extent that the assuming insurer’s obligations under the contract are otherwise secured in a form acceptable to the commissioner pursuant to Section 2F(4)(b) of Model #785 and Section 9F(2) of Model #786?

iii. Before denying statement credit or imposing a requirement to post security or adopting any similar requirement that will have substantially the same regulatory impact as security, the commissioner shall follow the process set forth in Section 9G of Model #786?
jj. If subject to a legal process of rehabilitation, liquidation or conservation, as applicable, the ceding insurer, or its representative, may seek and, if determined appropriate by the court in which the proceedings are pending, may obtain an order requiring that the assuming insurer post security for all outstanding liabilities in accordance with Section 2F(5) of Model #785 and Section 9H of Model #786?

kk. Nothing shall limit or in any way alter the capacity of parties to a reinsurance agreement to agree on requirements for security or other terms in that reinsurance agreement, except as expressly prohibited by other applicable law or regulation similar to Section 2F(6) of Model #785?

ll. Credit may be taken only for reinsurance agreements entered into, amended, or renewed on or after the effective date of the statute, and only with respect to losses incurred and reserves reported on or after the later of (i) the date on which the assuming insurer has met all eligibility requirements, and (ii) the effective date of the new reinsurance agreement, amendment, or renewal consistent with the provisions of Section 2F(7) of Model #785?
MEMORANDUM

TO: Financial Regulation Standards and Accreditation (F) Committee
FROM: John F. Finston (CA)
Chair, Reinsurance (E) Task Force
DATE: March 20, 2017
RE: 2016 Revisions to Credit for Reinsurance Model Law (#785)
Term and Universal Life Insurance Reserve Financing Model Regulation (#787)

Executive Summary

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

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

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

1. The 2016 revisions to Model #785 and new Model #787 should be adopted as a new accreditation standard by the NAIC.

2. The F-Committee should consider a waiver in its normal timeline for adoption of an accreditation standard, and expeditiously consider adoption of this standard. The Task Force would recommend that the accreditation standard become effective January 1, 2020.
A statement and explanation of how the potential standard is directly related to solvency surveillance and why the proposal should be included in the standards:

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

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

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

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

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

The Captive and Special Purpose Vehicle (SPV) Use (E) Subgroup studied the use of captives and SPVs formed by commercial insurers. The Subgroup concluded that commercial insurers cede business to captives for a variety of business purposes. The Subgroup determined that the main use of captives and SPVs by commercial insurers was related to the financing of XXX and AXXX perceived reserve redundancies. The implementation of principle-based reinsurance (PBR) could reduce the need for commercial insurers to create new captives and SPVs to address perceived reserve redundancies; however, existing captives and SPVs are likely to remain in existence for several years or decades, until the existing blocks of business are run-off. **Regulators need to be able to assess and monitor the risks**
that captives and SPVs may pose to the holding company system, and the current regulatory process should be enhanced to provide standardized tools and processes to be used by all regulators when reviewing such transactions. Commercial insurer-owned captives and SPVs should not be used to avoid statutory accounting. To the extent that insurer-affiliated captives and SPVs may be created in the future for unforeseen purposes, additional guidance should be developed by the NAIC to assist the states in a uniform review of transactions. [Emphasis added].

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

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

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

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

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

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

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

Regulators needed to be able to assess and monitor the risks posed with respect to XXX/AXXX captive reinsurance transactions, and the regulatory process was enhanced through the adoption of the XXX/AXXX Reinsurance Framework, AG 48 and Model #787 to provide standardized tools and processes to be used by all regulators when reviewing such transactions. However, these new tools are complex and technical in nature, requiring the use of a new actuarial methodology to achieve the desired financial solvency results. Therefore, the Reinsurance (E) Task Force recommends that any new accreditation standard developed for Model #787 be
adopted by NAIC-accredited jurisdictions in a “substantially similar” manner, as that term is defined in the Accreditation Interlineations of the NAIC Financial Regulation Standards and Accreditation Program. In addition, all of the elements of the XXX/AXXX Reinsurance Framework have been put into place, with the exception of the new accreditation standard. Therefore, F-Committee should consider a waiver in its normal timeline for adoption of an accreditation standard, and expeditiously consider adoption of this new standard effective as of January 1, 2020.

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

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

TO: Financial Regulation Standards and Accreditation (F) Committee  
FROM: Reinsurance (E) Task Force  
DATE: August 24, 2017  
RE: Term and Universal Life Insurance Reserve Financing Model Regulation (#787)

Executive Summary

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

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

1. Model #787 should be adopted as a new accreditation standard by the NAIC, with significant elements as outlined in Attachment A.

2. The Financial Regulation Standards and Accreditation (F) Committee should consider a waiver in its normal timeline for adoption of an accreditation standard, and expeditiously consider adoption of this standard. The Task Force recommends that the accreditation standard become effective Jan. 1, 2020. The Task Force further recommends that a state’s adoption of AG 48 will serve to satisfy this accreditation standard until such time that the state adopts the significant elements of Model #787.

3. The 2016 revisions to the Credit for Reinsurance Model Law (#785) should be considered acceptable but not required by the states.

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

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

State Adoption of AG 48

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

2016 Revisions to Model #785

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

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

Proposed Accreditation Standard

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

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

a. Provides that the Credit for Reinsurance Model Regulation (#786) and Model #787 shall both apply to reinsurance treaties that cede liabilities pertaining to Covered Policies; provided, that in the event of a direct conflict between the provisions of Model #787 and the provisions of Model #786, the provisions of Model #787 shall apply, but only to the extent of the conflict, substantially similar to Section 3 of Model #787?

b. Provides that Model #787 does not apply to reinsurance exempt by the provisions of Section 4 of Model #787, including reinsurance ceded to an assuming insurer that meets the requirements of either Section 5B(4)(a) of the Credit for Reinsurance Model Law (#785), which pertains to certain certified reinsurers, or Section 5B(4)(b) of Model #785, which pertains to reinsurers meeting certain threshold size and licensing requirements?

c. Provides definitions of “Covered Policies,” “Grandfathered Policies,” “Required Level of Primary Security,” “Actuarial Method,” “Primary Security,” “Other Security” and “Valuation Manual” that are substantially similar to such terms as defined in Section 5 of Model #787?

d. Provides for an Actuarial Method to establish the Required Level of Primary Security for each reinsurance treaty subject to this regulation that is substantially similar to the methodology as set forth in Section 6A of Model #787?

e. Provides for valuations to be used 1) in calculating the Required Level of Primary Security pursuant to the Actuarial Method; and 2) in determining the amount of Primary Security and Other Security, as applicable, held by or on behalf of the ceding insurer, that are substantially similar to the valuations set out in Section 6B of Model #787?

f. Provides for requirements to obtain credit for reinsurance with respect to ceded liabilities pertaining to Covered Policies that are substantially similar to the requirements set out in Section 7A of Model #787?

g. Provides for requirements at inception date and on an ongoing basis substantially similar to Section 7B(1) of Model #787?

h. Provides that if the requirements to hold Primary Security and total security are not both satisfied, the ceding insurer shall establish a liability equal to the excess of the credit for reinsurance taken over the amount of Primary Security actually held, unless any deficiency has been eliminated pursuant to remediation provisions substantially similar to Section 7B(2) of Model #787?

i. Includes a prohibition against avoidance provision similar to Section 9 of Model #787?
BY E-MAIL

October 7, 2019

Todd E. Kiser
Chair, NAIC Financial Regulation Standards and Accreditation (F) Committee
Attention: Becky Meyer (bmeyer@naic.org)

Chlora Lindley-Myers
Chair, NAIC Reinsurance (E) Task Force
Attention: Jake Stultz (jstultz@naic.org)
Dan Schelp (dschelp@naic.org)

Re: Credit for Reinsurance Model Accreditation Decisions

Dear Commissioner Kiser and Director Lindley-Myers:

New York Life and Northwestern Mutual are writing in response to the current exposure by the Reinsurance (E) Task Force of draft revisions to the NAIC Accreditation Program Manual intended to incorporate the 2019 revisions to the Credit for Reinsurance Model Law (#785) and Credit for Reinsurance Model Regulation (#786) to implement the US-EU Covered Agreement.

Our comments are not with respect to those revisions, but rather to urge that the NAIC follow through on prior recommendations and set the Term and Universal Life Insurance Reserve Financing Model Regulation (#787) as an accreditation standard in parallel with the Covered Agreement revisions. Our companies have long advocated that Model #787 should be an accreditation requirement, which is consistent with the prior recommendation by the Reinsurance Task Force.

By way of background, the NAIC adopted Model #787 in 2016 as the permanent method to implement the NAIC’s XXX/AXXX Reinsurance Framework that it spent years developing. Model #787 establishes the credit for reinsurance that a ceding company may be allowed for a subject captive reinsurance transaction. The requirements for Primary Security and Other Security in Model #787 are substantively the same as those in Actuarial Guideline 48, the NAIC’s interim tool to implement its XXX/AXXX Reinsurance Framework. However, whereas Model #787 binds the ceding company’s allowed credit for reinsurance, AG 48 can only impose requirements on the ceding company’s appointed actuary.

On March 20, 2017, the Reinsurance Task Force recommended to the F Committee that Model #787 be made an accreditation standard on an expedited basis, so that it would become an accreditation requirement by January 1, 2020. This was consistent with the NAIC’s recognition that (1) uniformity in implementation of the XXX/AXXX Reinsurance Framework is critical to its success; and (2) AG 48 was intended from the start as only an interim solution until the ultimate credit for reinsurance mechanism could be implemented. On August 24, 2017, the Reinsurance Task Force recommended the elements of Model #787 to be included in the accreditation standard.
However, as progress was being made toward an expedited accreditation action for Model #787, the need arose to amend Models #785 and #786 to address the Covered Agreement. Not wanting states to face multiple rulemaking processes, the F Committee decided at the 2017 Fall National Meeting to defer adoption of Model #787 as an accreditation requirement until the changes to Models #785 and #786 to implement the Covered Agreement had been completed. Our companies agreed that the NAIC’s announced process made sense.

Now that the Covered Agreement changes to Models #785 and #786 have been adopted and are being considered for accreditation on an expedited basis, we strongly urge that the F Committee move forward as originally contemplated and complete the accreditation decisions on Model #787 in synch with the Model #785 and #786 changes. Doing so will make state implementation of the credit for reinsurance changes more efficient. Moreover, since the Reinsurance Task Force has already done the work to identify the accreditation elements for Model #787, moving in parallel should not delay the NAIC’s efforts on Models #785 and #786.

It is important to remember that the NAIC has already made compliance with its XXX/AXXX Reinsurance Framework an accreditation requirement. That was decided in 2015, when the NAIC revised the Part A Preamble to the 2016 Accreditation Program Manual to subject the regulation of XXX/AXXX captives to the Part A accreditation requirements, and deemed regulation according to the NAIC’s XXX/AXXX Reinsurance Framework to meet those requirements. What remains to be done is to solidify that earlier conclusion by making Model #787 itself an accreditation requirement.

While AG 48 has served as a critical interim measure to implement the XXX/AXXX Reinsurance Framework, it was never intended to be nor is it an adequate permanent substitute for Model #787. Only Model #787 embeds the Primary Security and Other Security requirements directly into the determination of reinsurance credit. AG 48, by contrast, relies upon an indirect enforcement approach: requiring a ceding company’s appointed actuary to perform an analysis and, in the event the Primary Security or Other Security requirements are not met, deliver a qualified actuarial opinion. The allowance, or not, of reinsurance credit as a matter of law under Model #787 serves as a more direct and consequential incentive for compliance and uniformity than can the actuarial opinion requirements of AG 48. While some may question the need to make Model #787 an accreditation standard in light of the existence of AG 48, we would note that the intent of the accreditation program is to ensure uniformity among accredited jurisdictions with respect to solvency regulation. That uniformity can be best achieved by making Model #787 an accreditation standard, thereby ensuring uniform consequences and enforcement with respect to this aspect of the XXX/AXXX Reinsurance Framework. Moreover, it was recognized from the beginning that utilizing an actuarial opinion requirement as a tool for enforcement of the NAIC’s XXX/AXXX Reinsurance Framework puts the actuarial opinion requirement to a novel use going beyond what is ordinarily contemplated as the purpose of the Actuarial Opinion and Memorandum Regulation.

For these reasons, the NAIC has always described AG 48 as the interim method to implement its XXX/AXXX Reinsurance Framework, and the credit for reinsurance changes set forth in
Model #787 as the permanent implementation method. This is also reflected in the fact that AG 48 itself includes sunset provisions to apply in individual states as they adopt Model #787.

There is no longer any reason for delay in the NAIC’s action to make Model #787 an accreditation requirement. We again urge that the F Committee take this up and move forward in parallel with the Covered Agreement changes to Models #785 and #786. Doing so will allow the NAIC to finally complete the important work of uniformly implementing its XXX/AXXX Reinsurance Framework.

We appreciate the opportunity to comment on this important topic. Please let us know if you need any additional information or would like to discuss our comments.

Sincerely,

Douglas A. Wheeler  
Senior Vice President, Office of Governmental Affairs  
New York Life Insurance Company

Andrew T. Vedder  
Vice President – Solvency Policy & Risk Management  
The Northwestern Mutual Life Insurance Company