RISK RETENTION GROUP (E) TASK FORCE

Risk Retention Group (E) Task Force Dec. 7, 2019, Minutes
  Risk Retention Group (E) Task Force Oct. 7, 2019, Minutes (Attachment One)
    Risk Retention Group (E) Task Force May 8, 2019, Minutes (Attachment One-A)
      Summary of Comments Regarding Registration of RRGs in Non-Domiciliary States (Attachment One-A1)
    2020 Proposed Charges (Attachment One-B)
    FAQ Document for RRGs (Attachment One-C)
    Best Practices Document for RRGs (Attachment One-D)
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      Comment Letters Regarding the Exposure of the FAQ, Best Practices and Registration Form (Attachment One-F)
    FAQ Document for RRGs (Attachment Two)
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Risk Retention Group (E) Task Force  
Austin, Texas  
December 7, 2019

The Risk Retention Group (E) Task Force met in Austin, TX, Dec. 7, 2019. The following Task Force members participated: Michael S. Pieciak, Chair, represented by Christine Brown (VT); Stephen C. Taylor, Vice Chair, represented by Sean O'Donnell (DC); Nancy G. Atkins represented by Sandy Batts (KY); James J. Donelson  represented by Stewart Guerin (LA); Matthew Rosendale represented by Steve Matthews (MT); Glen Muleready represented by Eli Snowbarger (OK); and Raymond G. Farmer represented by Lee Hill (SC).

1. **Adopted its Oct. 7 Minutes**

   Mr. Hill made a motion, seconded by Mr. O'Donnell, to adopt the Task Force’s Oct. 7 minutes (Attachment One). The motion passed unanimously.

2. **Adopted FAQ and Best Practices Documents for RRGs**

   Ms. Brown stated that over the past year, the Task Force has been working diligently to provide additional guidance to both state insurance regulators and industry regarding the registration process for risk retention groups (RRGs) in non-domestic states. The process started last year with a letter from the National Risk Retention Association (NRRA) citing concerns regarding fees and delays in the review of registration forms. The discussion that followed also raised concerns from non-domiciliary states, such as incomplete registration forms or potentially non-compliant RRGs. As a result, a drafting group was formed to develop frequently asked questions (FAQ) and best practices documents, and updates to the NAIC Uniform Risk Retention Group Registration Form (Registration Form). These documents were exposed for public comment at the Summer National Meeting, and several comment letters were received. The comment letters were discussed during an Oct. 7 conference call where there was agreement on many of the issues, but a few outstanding items were referred back to the drafting group for additional consideration. The drafting group provided its input, and the FAQ document (Attachment Two), the Best Practices document (Attachment Three), and the Registration Form (Attachment Four) were exposed again. During that exposure period, three comment letters were received from Washington, DC (comments incorporated into Attachments Two and Three), the NRRA (Attachment Five), and the Vermont Captive Insurance Association (VCIA) (Attachment Six).

   Becky Meyer (NAIC) summarized the recommendations from the drafting group, as noted in the FAQ and Best Practices documents.

   Mr. O'Donnell made a motion, seconded by Mr. Hill, to adopt the FAQ and Best Practices documents, including the suggestions as noted by comment bubbles in each document. The motion passed unanimously.

3. **Adopted a Referral to the Property and Casualty Insurance (C) Committee to Consider Proposed Revisions to the NAIC Uniform Risk Retention Group – Notice and Registration Form**

   Ms. Brown stated that the Registration Form is a little different than the FAQ and Best Practices documents because the proposal is for changes to an existing document rather than creating something new. This document is housed in the Risk Retention and Purchasing Group Handbook (Handbook). This Handbook is overseen by the Property and Casualty Insurance (C) Committee. Therefore, any changes to the Registration Form adopted by the Task Force will be referred to the Property and Casualty Insurance (C) Committee.

   Ms. Meyer summarized the recommendations from the drafting group as noted on the Registration Form (Attachment Four).

   Mr. Snowbarger made a motion, seconded by Mr. Matthews, to adopt the referral to the Property and Casualty Insurance (C) Committee to the Registration Form, including the suggestions by the drafting group. The motion passed unanimously.

4. **Discussed Next Steps for the Task Force**

   Ms. Brown noted that it is encouraging that the items the Task Force just adopted touch on many of the concerns identified earlier in the year. However, there are still several other areas that can be worked on and the areas of highest importance for the Task Force, interested state insurance regulators, and interested parties can be decided.
Skip Myers (NRRA) stated that within the coming months, the impact of these three documents and whether they are working as intended should be seen. If not, they may need to be tweaked. Mr. Myers also noted the importance of the role of the state of domicile to resolve any issues, if necessary. He stated that he was sure that these forms would be referred to frequently by industry, and he mentioned taking steps in the future to include the issues in an NAIC model or as part of the Handbook, which is something that is referred to by industry frequently. Chrys D. Lemon (VCIA) noted that the adoption of these items are important to the industry and regulation, and he looks forward to ongoing discussions.

Ms. Brown stated that one of the main goals is to quantify and monitor how helpful these documents are to facilitate discussions between the states and alleviate the questions and concerns that non-domiciliary states have. One item that is not mentioned in the summary, but is important, is monitoring and training on the information developed this year, such as conducting a webinar, working with some of the states’ captive insurance associations, and getting feedback from the NRRA. When the Task Force reconvenes in 2020, we may consider ways to further spread information and the concepts included in the FAQ and Best Practices documents. When talking about next steps, the Task Force should keep with the spirit of the Liability Risk Retention Act (LRRA). As Mr. Myers mentioned, the Task Force should also try to incorporate some of the best practices into the Handbook.

Mr. Hill noted that it is difficult to put the next steps in a priority order, and he asked that NRRA and others that have raised the issues that led to these discussions review the list of concerns and be prepared to provide input to the Task Force once more information is gathered on the impact of the items adopted.

Mr. O’Donnell noted that the Task Force will need to consider how to distribute the FAQ and Best Practices documents, as well as the revised Registration Form to all the states and RRGs.

Having no further business, the Risk Retention Group (E) Task Force adjourned.
The Risk Retention Group (E) Task Force met via conference call Oct. 7, 2019. The following Task Force members participated: Michael S. Pieciak, Chair, represented by Sandra Bigglestone (VT); Stephen C. Taylor, Vice Chair, represented by Sean O’Donnell (DC); Nancy G. Atkins represented by Sandy Batts (KY); James J. Donelon represented by Stewart Guerin (LA); Matthew Rosendale represented by Steve Matthews (MT); Barbara D. Richardson represented by Kathy Kelley (NV); Glen Mulready represented by Joel Sander (OK); and Raymond G. Farmer represented by Michael Shull (SC). Also participating was: John Talley (MO).

1. **Adopted its May 8 and Summer National Meeting Minutes**

   Mr. Shull made a motion, seconded by Mr. O’Donnell, to adopt the Task Force’s May 8 (Attachment One-A) and Aug. 3 (see NAIC Proceedings – Summer 2019, Risk Retention Group (E) Task Force) minutes. The motion passed unanimously.

2. **Adopted its 2020 Proposed Charges**

   Ms. Bigglestone stated that a new charge is proposed for 2020 to better align with the ongoing work the Task Force is doing to address questions raised related to the registration of risk retention groups (RRGs) in non-domestic states. Overall, the focus for the next year will be to monitor the progress of the work the Task Force has done so far on this issue. The Task Force will then consider how effective the guidance and information is, provide training on the guidance and information, and ultimately determine if there is more work that needs to be done based on feedback received.

   Mr. Matthews made a motion, seconded by Ms. Batts, to adopt the Task Force’s 2020 proposed charges (Attachment One-B). The motion passed unanimously.

3. **Discussed Comments on the Exposure of the FAQ, Best Practices and Registration Form**

   Ms. Bigglestone stated that the three documents that were exposed: frequently asked questions (FAQ) (Attachment One-C), Best Practices for RRGs (Attachment One-D), and the NAIC Uniform Risk Retention Group Registration Form (registration form) (Attachment One-E), were developed as a result of concerns raised by both industry and non-domestic states about the registration process for RRGs in non-domestic states. A total of seven comment letters were received from: District of Columbia, Nevada; Pennsylvania; National Risk Retention Association (NRRA); the Nonprofits Insurance Alliance; the Vermont Captive Insurance Association (VCIA); and the Premier Insurance Management Services (Attachment One-F).

   All comments as shown on the three documents were agreed to by the Task Force with the exception of the following: 1) discussion on the FAQ of what constitutes a “complete” registration form; 2) inclusion of biographical affidavits for all board members on the best practices listing of items provided to the domestic state; and 3) comments on the registration form related to items 7, 17 and 19. These items require more discussion and have been sent back to the volunteer group to recommend a solution to the Task Force. This recommendation will then be exposed for a public comment period prior to the Fall National Meeting.

   In addition to the comments discussed, Mr. Talley raised a question about handling the registration for an RRG in a hazardous financial condition or that is otherwise non-compliant. Robert H. Myers Jr. (NRRA) referenced the remedies put forth in Section 3902(a)1 of the Liability Risk Retention Act (LRRA). He also mentioned the importance of communication with the domestic state.

   Having no further business, the Risk Retention Group (E) Task Force adjourned.
The Risk Retention Group (E) Task Force met via conference call May 8, 2019. The following Task Force members participated: Michael S. Pieciak, Chair, represented by Sandra Bigglestone (VT); Stephen C. Taylor, Vice Chair, represented by Sean O’Donnell and Dana Sheppard (DC); Colin M. Hayashida represented by Andrew Kurata (HI); Nancy G. Atkins represented by Sandy Batts (KY); James J. Donelon represented by Bill Werner (LA); Matthew Rosendale represented by Steve Matthews (MT); John G. Franchini represented by Anna Krylova (NM); Barbara D. Richardson represented by Peter Rao (NV); Glen Mulready represented by Joel Sander (OK); and Raymond G. Farmer represented by Michael Shull (SC). Also participating were: Janet Grace (CT); Kathleen Orth (MN); and Barbara Kluger (NY).

1. Discussed Summary of Concerns Regarding Registration of RRGs in Non-Domiciliary States

Ms. Bigglestone stated that a list of concerns/issues regarding non-domiciliary state registration actions, along with potential action items, has been developed to guide the work of the Task Force. She said the list includes concerns raised by the National Risk Retention Association (NRRA) and non-domiciliary states responsible for registering risk retention groups (RRGs). Becky Meyer (NAIC) summarized the list of concerns (Attachment One-A1).

Ms. Bigglestone noted that the list includes concerns of fees and delayed registration time frames presented by the NRRA. It also includes concerns voiced by non-domiciliary states such as incomplete, inaccurate or even non-compliant registrations. The possible action items include short-term solutions such as a frequently asked questions (FAQ) document or updates to the registration form, as well as long-term solutions such as updates to Part D—Organization, Licensing and Change of Control of a Domestic Insurer (Part D) of the Financial Regulation Standards and Accreditation Program or updates to the Model Risk Retention Act (#705).

Ms. Bigglestone stated that it could be beneficial to start work on items that can make the most impact in a short amount of time such as an FAQ document or updating the registration form, then the Task Force could move to more in-depth solutions as needed. She noted that some solutions could be developed by the Task Force while others, such as opening Model #705 for revisions, would require referrals to other NAIC groups.

Robert H. Myers Jr. (NRRA) said there appears to be some confusion about the federal Liability Risk Retention Act (LRRA). The LRRA was designed to give authority to the domestic state; therefore, it does not preempt the domestic state’s ability to regulate an RRG. Consequently, when a non-domestic state has a question or issue, it should be able to contact the domestic state. Because this communication may be a key to mitigating many of the issues summarized, the Task Force may consider starting its work by developing best practices for communication between the domestic and non-domestic state insurance regulators.

Ms. Bigglestone stated that she has seen questionnaires sent from a non-domestic state to a domestic state that appear helpful in gathering information, and they may be a starting point for the Task Force to develop best practices. She also stated that the Task Force could consider drafting guidance for filling out the registration form to further help ensure that information is appropriately shared and received.

Mr. O’Donnell agreed with taking a look at the registration form, and he suggested that the registration form may need to be updated to provide contact information for the domestic state insurance regulator overseeing the RRG. He noted that there is sometimes confusion about what information should be provided to the non-domiciliary state in accordance with the LRRA, and he suggested that updates to the registration form could provide clarity.

Ms. Kluger agreed that updates to the registration form could facilitate speeding up the registration process. She provided the example that sometimes there is confusion about the type of coverage being offered by the RRG and its compliance with the LRRA; if this is clear upfront, she believes delays in registrations may be reduced.
Ms. Bigglestone noted that there are differences between a new RRG registering in other states and an existing RRG that decides to expand to other states. For those RRGs expanding, it is possible that the original feasibility study that must be provided to the non-domiciliary state under the LRRA may not be useful if the business plan has changed. Therefore, the Task Force should consider what information the domiciliary state should be responsible for providing, as the domiciliary state should be aware of any changes in business plan and any expansion activity (which is, in itself, a change in business plan).

Mr. Matthews agreed that communication with the domiciliary state is important, and he suggested that the Task Force consider whether including contact information for the domiciliary state insurance regulator is sufficient or if it should go a step further and request that a statement from the domiciliary state insurance regulator be included with the registration form.

Ms. Orth stated that one concern is when a registration form is received from an RRG that is in a weak financial state and there are concerns of ongoing solvency. She questioned if a statement from the domiciliary state would remedy the issue or if other steps would be needed. Ms. Bigglestone agreed that situations would vary, and the concept of best practices for a system of communication could contemplate a variety of scenarios.

Mr. Sheppard stated that the ability to trust and rely on other states is a core element of the regulatory system. To help support this system of trust, he recommended reviewing Model #705 and updating it, if needed, including elements from Model #705 in Part B—Regulatory Practices and Procedures (Part B) of the Financial Regulation Standards and Accreditation Program, as well as subjecting RRGs to Part D of the accreditation program.

Ms. Grace stated that the domestic state must take responsibility for sound regulation of the licensing process for RRGs. One challenge with this system is that the RRG may write little to no business in the domestic state, lowering the priority for the domestic state as it focuses on companies with policyholders in its state.

Ms. Meyer stated that subjecting RRGs to Part D of the accreditation program could encourage domestic states to take more responsibility for the licensing process and enhance the states’ reliance on each other. Ms. Bigglestone asked if state insurance regulators believe that subjecting RRGs to Part D would help alleviate concerns. Mr. Matthews stated that there are still challenges with traditional companies that are already subject to Part D. Ms. Bigglestone noted that, per her review of the Part D standards, the process for domestic RRGs is similar, and including RRGs in the Part D standards should not add a burden to the RRG process.

Mr. Sheppard stated that it is important to hold both the domestic and non-domestic states accountable for their roles in regulating RRGs. Mr. Myers agreed, noting that this is the key to addressing the NRRA’s request for the Task Force to review concerns about treatment of non-domiciliary registrations. The NRRA wants to take steps that support a healthy RRG industry, and it believes this includes putting more emphasis on the role of the the domestic states and encouraging non-domestic states to rely on the domestic state as intended by the LRRA. One element to ensure that the process is successful is enhancing communication between the domestic and non-domestic state. If a non-domestic state has questions, concerns or lacks information, it should be able to go to the domestic state for assistance. Developing best practices for communication would support this goal.

Ms. Bigglestone suggested establishing a volunteer drafting group to start developing initial solutions such as best practices in communication, updates to the registration form, instructions/supporting guidance for the registration form, or answers for the FAQ document. The drafting group will report back to the Task Force during its next meeting.

Having no further business, the Risk Retention Group (E) Task Force adjourned.
<table>
<thead>
<tr>
<th>Concern/Issue</th>
<th>Possible Action</th>
<th>Status and Considerations</th>
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| Fees charged by non-domiciliary states (initial and renewal registration fees) | • Develop FAQ  
  • Updates to RRPG Handbook  
  • Updates to the Model Risk Retention Act |                                                                                          |
| Delays by non-domiciliary states in processing registration forms            | • Develop FAQ  
  • Updates to RRPG  
  • Enhance domiciliary state expectations  
  • Consider subjecting RRGs to Part D of accreditation requirements |                                                                                          |
| Time and resources needed to review and process registrations                | • Enhance domiciliary state expectations                                         |                                                                                          |
| Lack of instructions/clarity in registration process (includes questions about immediacy of writing once registration submitted) | • Updates to RRPG Handbook  
  • Updates to Company Licensing Best Practices Handbook |                                                                                          |
| Registration forms received that are not complete or accurate (includes business plans that do not reflect current operations) | • Registration Form review Instructions  
  o Updates to RRPG Handbook  
  o Updates to Company Licensing Best Practices Handbook |                                                                                          |
| Registration forms received that contain violations                         | • Registration Form review Instructions  
  o Updates to RRPG Handbook  
  o Updates to Company Licensing Best Practices Handbook  
  • Develop FAQ |                                                                                          |
| Registration forms received for RRG that is insolvent or nearly insolvent    | • Enhance domiciliary state expectations                                         |                                                                                          |
| Options for recourse by non-domiciliary state if concerns with RRG           | • Develop FAQ – References to LRRA                                               |                                                                                          |
| Notification to non-domiciliary state if serious issues are noted with RRG   | • Enhance domiciliary state expectations (communication)                          |                                                                                          |
| Non-domiciliary state requesting access to same information/detail domiciliary state has upon registration (bios, etc.) | • Enhance domiciliary state expectations (communication)  
  • Updates to online NAIC databases |                                                                                          |
2020 Proposed Charges

RISK RETENTION GROUP (E) TASK FORCE

The mission of the Risk Retention Group (E) Task Force is to stay apprised of the work of other NAIC groups as it relates to financial solvency regulation and the NAIC Financial Regulation Standards and Accreditation Program. The Task Force may make referrals to the Financial Regulation Standards and Accreditation (F) Committee and/or other NAIC groups, as deemed appropriate.

Ongoing Support of NAIC Programs, Products or Services

1. The Risk Retention Group (E) Task Force will:

   A. Monitor and evaluate the work of other NAIC committees, task forces and working groups related to risk retention groups (RRGs). Specifically, if any of these actions affect the NAIC Financial Regulation and Accreditation Standards Program, assess whether and/or how the changes should apply to RRGs and their affiliates.

   B. Monitor and analyze federal actions, including any U.S. Government Accountability Office (GAO) reports. Consider any action necessary as a result of federal activity.

   C. Monitor the impacts of recent tools and resources made available to domiciliary and non-domiciliary state insurance regulators pertaining to RRGs. Report developments on the effort to improve communication between regulators and consistent treatment of risk retention groups. Consider whether additional action is necessary, including educational opportunities, updating resources and further clarifications.

NAIC Support Staff: Becky Meyer
1. What publications are available to help understand RRGs and state’s authority?
   a. NAIC Risk Retention and Purchasing Group Handbook is available from the NAIC publications webpage at [https://www.naic.org/documents/prod_serv_legal_ris_bb.pdf](https://www.naic.org/documents/prod_serv_legal_ris_bb.pdf). The following key documents can be found as Appendices in the Handbook:
      - Appendix A: Federal Liability Risk Retention Act
      - Appendix B: NAIC Model Risk Retention Act (#705)
      - Appendix D: NAIC Uniform Risk Retention Group Registration Form
   b. Accreditation Program Manual
      - Part A: Laws and Regulations – 18 accreditation standards that outline the laws required specifically for states that charter RRGs
      - Part B: Regulatory Practices and Procedures - RRG specific procedures for financial analysis and procedures when a disclaimer of affiliation is filed

2. How does the LRRA address regulation of RRGs?
   a. Under §3902 of the LRRA, with the exception of the domiciliary state, RRGs are exempt from all state laws, rules, regulations, or orders that would make unlawful, or would regulate, directly or indirectly, the formation and operation of an RRG, except as provided in the LRRA. Only the domiciliary state may regulate the formation and operation of an RRG.
   b. The implementation of the LRRA was intended to allow organizations to come together in the creation of a risk-bearing, risk-sharing entity (the RRG) to offer its members, who are the beneficiaries of the insurance provided, liability coverage in an expedient and economical manner.

3. How does RRG registration in a non-domiciliary state differ from the licensing process for a traditional insurer?
   a. There are no solvency requirements imposed by the non-domiciliary state upon an RRG seeking to register in the State. Regulation as to formation and operation, including the imposition of solvency requirements, are imposed by the domestic state.
   b. RRGs are subject to a substantially similar application and licensing process imposed by the domestic state, or state of domicile. For registration to conduct business in non-domestic states, RRGs are not subject to the standard application and licensing process (NAIC UCAA Instructions or NAIC Company Licensing Handbook).
   c. The registration process is intended to be simpler than the licensing process for other types of insurers. Registration is focused on information gathering rather than decision making. Registration is not the same as admission or company licensing; it is not intended to provide non-domiciliary states with any regulatory powers over RRGs other than that provided in the LRRA. It is not within a state’s authority to use the processing of a registration to bar RRGs seeking to lawfully operate in a state, nor can a state declare a “moratorium” on the filing of RRG registrations. Once an RRG provides a complete NAIC Uniform Risk Retention Group Registration Form they may begin operating in the state and approval from the non-domestic state is not required. However, best practice is for the non-domiciliary state to notify the RRG following their initial review of the NAIC Uniform Risk Retention Group Registration Form that either the form received was complete, or that the form was missing.
information. The non-domiciliary state may also reach out to the domiciliary state for more information and is encouraged to do so. (see the Best Practices—Risk Retention Groups document)

d. The LRRA references two documents that must be provided to the non-domiciliary state—a plan of operation OR a feasibility study. There is also additional information such as contact information of the RRG, chartering state information, and the lines of liability insurance business that are written by the RRG seeking to register. All this information is provided in the completed NAIC Uniform Risk Retention Group Registration Form.

e. For an RRG that is in compliance with the LRRA and the regulation of their domestic state (including authorization to register to do business in another state), the non-domestic state cannot deny the RRG’s registration. If there is uncertainty, the domestic state should be contacted.

4. What are the steps for the non-domiciliary insurance regulator to take in the registration process for an RRG?

a. Review the NAIC Uniform Risk Retention Group Registration Form and verify the RRG has provided a complete form.

b. Once a complete form is received, the RRG is authorized to write in the state where it registers. The following best practices may also be considered during the registration process; however, they do not impact the registration status of the RRG:
   a. Review the information provided with the registration form for reasonableness.
   b. Reach out to the domestic state insurance regulator for additional information or concerns. The best practices Inquiry Template can be used and modified as appropriate.
   c. Notify the RRG once the registration form is deemed complete. They are now registered in the state.

5. What should a non-domiciliary state do if they have concerns about a complete RRG registration form received?

a. If the RRG provided a complete form, but there are concerns about the lines of business or financial solvency, or some other matter, the non-domiciliary state should first communicate with the domestic state. If necessary, the non-domiciliary state should consider pursuing the remedies in LRRA §3902(a)(1) also discussed in FAQ #12.

6. When can a non-domiciliary state reject an RRG registration?

a. A non-domestic state cannot reject the registration of an RRG that submits a complete registration form. Instead the non-domestic state should communicate concerns to the domestic state or refer to the remedies in LRRA §3902(a)(1) also discussed in FAQ #12.

7. Can an RRG registration be delayed if a financial statement filing and/or audit is not yet available at the time of application or registration?

a. No, an RRG can register prior to filing of an annual financial statement audit and a statement of opinion on loss and loss adjustment expense reserves with its domiciliary state.

b. Once these initial filings are made, they are available on I-Site for review.

c. If questions arise due to lack of this information, the non-domiciliary state should reach out to the domestic state to address its concerns.
8. What items does the LRRA require an RRG provide to the non-domiciliary state in conjunction with the registration?
   a. It is recommended that states adopt the NAIC Uniform Risk Retention Group Registration Form, which has been developed by the NAIC in order to facilitate uniformity. Such forms are included in the Risk Retention and Purchasing Group Handbook.
   b. Consistent with LRRA, each RRG shall submit a copy of the plan of operation OR a feasibility study before it may offer insurance in the state.
      Note: If the RRG is newly formed, the feasibility study provides relevant information on rates and expected losses. If the RRG is expanding the states in which it operates and has been writing business for an extended period, the feasibility study becomes less relevant and a current business plan, along with documents a non-domiciliary state can easily obtain from the NAIC's I-Site (Annual Statement(s), RBC Report(s), MD&A(s), Audited Financial Statement(s), Actuarial Certification(s)) provide pertinent information.
   c. If the plan of operation or feasibility study does not appear to be updated, a non-domiciliary state should contact the domiciliary state regulator to obtain more information, including the IPS, and may request revised documents from the RRG if original submission is found to be inaccurate or unclear.

9. What should be included in a plan of operation?
   a. The LRRA states that an RRG’s plan of operation or feasibility study includes information on liability insurance coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer.
   b. In addition, the Best Practices – Risk Retention Groups document offers a list of other suggested items for inclusion in a plan of operations or feasibility study.

10. What does the LRRA say about renewals for RRGs in non-domiciliary states?
    a. The LRRA is silent; therefore, initial registration is sufficient unless the operation of an RRG is affected by runoff, rehabilitation or liquidation processes. RRGs file changes in business plans, financial filings, etc. on an ongoing basis with non-domiciliary states; therefore, non-domiciliary states should consider developing a process for communicating with the domiciliary state (such as the example in the Best Practices – Risk Retention Groups document) and consider an annual request for Certificate of Good Standing/Compliance from the domiciliary state.
    b. Section 3902(d)(3) of the LRRA requires that an RRG submit to the insurance commissioner of each state in which it is doing business a copy of the annual financial statement that it files with the RRG’s domiciliary state. Non-domiciliary states should be aware that in many states where RRGs are licensed/chartered as captive insurers in conformity with NAIC accreditation standards, RRGs are permitted to use Generally Accepted Accounting Principles rather than Statutory Accounting Principles to report on their financial conditions, with required disclosure and reconciliation in footnote one. (see also Section II, page 3 of the Risk Retention and Purchasing Group Handbook)
    c. The filing is an ongoing requirement that must be complied with on an annual basis and is generally due to non-domiciliary states upon filing with the domiciliary state. The annual financial statement shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by an actuary or loss reserve specialist who is qualified in accordance with the criteria established by the NAIC in the annual statement instructions.

Commented [MB5]: District of Columbia: Recommend updating as follows – “The annual "filing requirements for RRGs include an unaudited filing using the official NAIC Annual Statement Blank (property/casualty), an audited" financial statement certified by an independent public accountant and a statement of opinion on loss…”

Commented [MB6]: District of Columbia: Add “See the above-mentioned NAIC Accreditation Program Manual, Part A: Laws and Regulations for RRGs, for annual filing requirements for RRGs.”
11. What does the LRRA say about taxes and fees charged by a non-domiciliary RRG?
   a. LRRA §3902(a)(1)(B) says any state may require an RRG to:
      a. Pay on a nondiscriminatory basis, applicable premium and other taxes, which are levied on
         admitted insurers and surplus lines insurers, brokers, or policyholders under the laws of the
         state.
   b. Fees are not directly addressed in the LRRA and as such, there has been disagreement about the legality
      of both initial and renewal registration fees and compliance with LRRA. The authority on this topic is
      therefore federal case law. Thus far, there is one case (Nat’l Risk Retention Assoc. v. Brown, 927 F. Supp.
      195 (M.D. La. 1996)) in which the court ruled that certain state requirements, including the payment of
      an annual renewal registration fee, were preempted by the LRRA. See the Risk Retention and Purchasing
      Group Handbook for additional detail on the case and other fee considerations.

12. What remedies are available to a non-domiciliary state if violations of applicable State laws occur?
   a. Secure clarification from the RRG’s state of domicile;
   b. Call for an examination of the RRG by the state of domicile [15 U.S.C. §3902(a)(1)(E)];

13. Is there a list of domestic and non-domestic state contact persons in state insurance regulator offices who
    are knowledgeable about RRGs?
   a. Yes. Appendix C of the NAIC Risk Retention and Purchasing Group Handbook includes a list of state
      insurance department contact persons. The most recent list is maintained as a separate document on
      the NAIC’s publication webpage alongside a complete copy of the Risk Retention and Purchasing Group
      Handbook.
Best Practices – Risk Retention Groups

The domiciliary state maintains authority and has responsibility to regulate the formation and operation of a Risk Retention Group (RRG). Therefore, when concerns arise in a non-domiciliary state about a RRG, the best resource is the domiciliary state. This includes concerns about solvency and capital levels, financial condition, or other non-compliance of an RRG as well as operational questions and concerns that should be directed to the domiciliary state.

States are encouraged to examine their RRG laws to make certain that they are consistent with (1) the LRRA and (2) the NAIC Model Risk Retention Act.

Questions/Concerns from Non-domiciliary State

Upon initial registration of an RRG in a non-domiciliary state, it is not uncommon for questions to arise that are best directed to the domiciliary state. Attachment A outlines a sample Inquiry Template that can be used to request this information. The template may be customized as deemed appropriate by the non-domiciliary state. Domiciliary states should respond in a timely manner to such requests.

Questions about operations and financial solvency that arise following initial registration should also be addressed to the domiciliary state.

If significant concerns still exist after communication with the domiciliary state and the non-domiciliary state concludes that the RRG is not compliant with any of the specific procedures set forth in the LRRA, the following steps may be undertaken:

- Refer to your own state RRG statute to ensure compliance of your prospective action;
- Provide written notice of any non-compliance directly to the RRG;
- Submit a demand for examination of the RRG to the domiciliary regulator, as provided by the LRRA [15 U.S.C. §3902(a)(1)(E)];
- Institute suit in a court of competent jurisdiction.

A non-domiciliary state may request the following from the domiciliary state and similarly, the domiciliary state should be prepared to provide the following to the non-domiciliary state:

- Insurer Profile Summary (IPS)
- Inquire about the extent of biographical affidavit review and results of background checks
- Most recent examination report (may be obtained from I-Site)
- Amendments to the RRG’s business plan or feasibility study
- Verification of domiciliary state approval to expand into non-domiciliary state

Alternatively, Attachment A – Inquiry Template may be used for this request with modifications as necessary.

Registration Timeline

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The registration process for RRGs should be shorter than the licensing process for other types of insurers as the RRG is responsible only for a complete registration form and the related attachments. The non-domestic state cannot reject a complete registration that complies with state and federal laws. However, it is still necessary for the non-domiciliary state to review the registration form to ensure it is complete and demonstrates that the RRG complies with the LRRA. In addition, concerns can be raised with the domiciliary state, who has the authority to regulate the formation and operation of an RRG. The following guidelines take into consideration similar guidelines for ordinary insurance companies, and adherence is at the discretion of each state.

- A non-domiciliary state should review the registration form for completeness within 10 business days of its receipt of the form and notify the Risk Retention Group of the need to submit any missing elements.
- Following receipt of a complete application, a non-domiciliary state should notify the RRG within 30 days that its registration is confirmed.
- The domiciliary state should respond to inquiries from a non-domiciliary state in a prompt manner, typically no later than 10 business days after receiving the inquiry.

**Domiciliary State Responsibilities**

When a domiciliary state identifies an RRG as troubled or potentially troubled, the State insurance regulator should make efforts to communicate proactively with other state insurance regulators in which the RRG is registered (consistent with the Troubled Insurance Company Handbook). Although the domiciliary regulator is responsible for taking actions involving their domiciliary RRGs, awareness by a non-domiciliary state may help them to proactively do what they can to protect their residents and respond to policyholder complaints or concerns directed to them.

**Plan of Operation/Feasibility Study**

Domiciliary states should ensure the RRG’s plan of operation or feasibility study includes the following, at a minimum:
- information sufficient to verify that its members are engaged in businesses or activities similar or related with respect to the liability to which such members are exposed by virtue of any related, similar or common business, trade, product, services, premises or operations;
- information sufficient to verify that the liability insurance coverage to be provided by the Risk Retention Group will only cover the members of the Risk Retention Group;
- for each state in which it intends to operate, information regarding the liability insurance coverages, deductibles, coverage limits, rates and/or rating/underwriting methodology for each line of commercial liability insurance the group intends to offer;
- historical and expected loss experience of proposed members and national experience of similar exposures to the extent that this experience is reasonably available;
- appropriate opinions/feasibility work by a qualified independent casualty actuary, including a determination of minimum premium participation levels required to commence operation and to prevent a hazardous financial condition;
- pro forma financial statements and projections, including assumptions, on an expected and adverse basis;
- identification of Board of Directors, including independence determination;
- biographical affidavits for all BOD members;
- evidence of compliance with corporate governance standards, including draft policies;
- underwriting and claim procedures;
- marketing methods and materials if available;

**Commented [MB1]: Pamela Davis:** Can you provide examples of state laws that might be used to deny the Registration of an RRG?

**Commented [MB2]: VOIA:** Recommend revising to: “The non-domestic state cannot reject a complete registration that complies with those laws of the non-domestic state that are not pre-empted under the LRRA. In the event a non-domestic state has concerns with an RRG registration, such concerns should be raised with the domiciliary state regulator, who has the authority to regulate the formation and operation of an RRG.”

**Commented [MB3]: Pennsylvania:** Depending on how “complete” is defined, a 10-day turnaround may not be reasonable.

**Commented [MB4]: District of Columbia:** Suggests adding “or application for licensing.” With this change, also add “/Application” to the heading.

**Commented [MB5]: Premier:** Will listing this here prompt a non-domiciliary state to also ask for it when this is something handled by the domestic state? Limiting the distribution of confidential information (such as SSN#s) can help ensure this information is not subject to a security breach and remains confidential.
- draft insurance policies;
- names of reinsurers and reinsurance agreements, if available;
- investment policies;
- identification of each state in which the RRG intends to write business/register;
- identification of service providers, including fee structure and relationships to members; and
- subsequent material revisions to the plan of operation or feasibility study.
Attachment A – Inquiry Template

The above-subject company has applied for Registration as a Risk Retention Group ("RRG") in the State of ________ to write ____________ liability coverage to its members who are in the business of________________. As you can appreciate, due to the provisions of the Liability Risk Retention Act of 1986 the (state) has limited authority to regulate RRGs and therefore to a large extent, the (state) relies on the RRGs' domiciliary state to exercise general oversight and responsibility in the areas of licensing, solvency, rates and marketing. As part of our due diligence, we would appreciate any information your office can share with us regarding the company with respect to the following items, some of which may be satisfied by providing the Insurer Profile Summary:

1. Any significant concerns the State of [domicile] has regarding the company.
2. Any issues that may have a significant impact on the company going forward.
3. Any issues regarding the number of consumer complaints the company has in [state of domicile] or other states that may have been brought to your attention.
4. Comments and/or concerns about the financial condition of the company.
5. Comments or concerns about the management or performance of the company.
6. Results of any financial analysis or market conduct findings.
7. The company's priority level within the Financial Analysis Division.
8. Any conditions imposed by your Department upon the company's license.
9. Any significant non-compliance issues with the State of [domicile] regulatory authority including filing requirements and corrective action, if any.
10. Comments regarding the company's application for registration in the State of [state registering].
11. Approval from State of [domicile] for the RRG to register in the State of [state registering].

Commented [MB6]: Pennsylvania: update to "and/or" in both items.
The following is the uniform registration form adopted in 1991 by the NAIC. This registration form is being filed by a Risk Retention Group (RRG) operating in accordance with the Federal Liability Risk Retention Act of 1986 (LRRA), 15 USC 3901-3906, chartered or licensed to write only liability insurance by the state of domicile listed in #1c. The registration form and supplemental documents are provided in accordance with §3902(d)(2) of the LRRA. Under §3902 of the LRRA, with the exception of the domiciliary state, RRGs are exempt from all state laws, rules, regulations, or orders that would make unlawful, or would regulate, directly or indirectly, the operation of an RRG, except that any state may require an RRG to comply with those laws specified in the LRRA. The domiciliary state regulates the formation and operation of the RRG.

**Part A**

STATE OF [Insert State in which the Risk Retention Group intends to do business]  
DEPARTMENT OF INSURANCE  
RISK RETENTION GROUP - NOTICE AND REGISTRATION  
(All Information Should Be Typed)

1a. Name of the Risk Retention Group as it appears on its Certificate of Authority.

1b. FEIN:

1c. State of domicile and date licensed/chartered.

1d. Primary contact person for state of domicile to whom questions regarding the Risk Retention Group should be addressed (include name, phone number and email address):

2. List any other name(s) by which the Risk Retention Group is known or may be doing business in this State or any other state:
3. The Risk Retention Group is chartered and licensed as a liability insurance company under the laws of the State of ____________ and is authorized to engage in the following lines and/or classifications of liability insurance under the laws of its chartering State:

______________________________

4. Give a general description of the liability insurance coverages the Risk Retention Group plans to write in the state it is registering to do business in:

______________________________

5. Has the Risk Retention Group’s domiciliary state approved the Risk Retention Group to register and expand its writings in the state it is seeking to become registered in?

______________________________

6. Ownership of the Risk Retention Group consists of one or the other of the following (check one):

a) _______ the owners of the Group are the only persons who comprise the membership of the Group and the only ones who are provided insurance by the Group.

b) _______ the sole owner of the Group is: ________________________________

(Name and Address of Organization)

an organization which has as its members only persons who comprise the membership of the Group and which has as its owners only persons who comprise the membership of the Group and who are provided insurance by the Group.

7. The Risk Retention Group members are engaged in businesses or activities similar or related with respect to the liability to which such members are exposed by virtue of any related, similar or common business (whether profit or nonprofit), trade, product, services (including professional services), premises or operations. Give a general description of businesses or activities engaged in by the Group’s members:

______________________________
NAIC UNIFORM RISK RETENTION GROUP REGISTRATION FORM

8. (a) List the name, position with the Risk Retention Group, SS#, and address of each officer and director of the Risk Retention Group: (Attach additional pages, if necessary.)

(b) Identify and give the telephone number of the officer or director of the Risk Retention Group who can be contacted for any information regarding the management of the insurance activities of the Group:

Name: __________________________ Telephone Number: __________________________

9. List the name, addresses (postal and email), telephone number and Federal Employer Identification Number (FEIN) of the company responsible for managing the insurance operations of the Risk Retention Group and the company contact person’s name and telephone number: (If none, answer none.)

Contact Person: __________________________ Telephone #: __________________________

10. List the name(s), NPR#, SS#, and address(es) of the licensed insurance agent(s) or broker(s) who will be responsible for marketing the Risk Retention Group’s insurance policies in the State of [Insert State in which the Risk Retention Group intends to do business] and the current licensing status in the State of [Insert State in which the Risk Retention Group intends to do business] in which they are licensed: (If none, answer none. Attach additional pages, if necessary.)

<table>
<thead>
<tr>
<th>Name</th>
<th>SS#</th>
<th>NPR#</th>
<th>Address</th>
<th>License Status in State Registering</th>
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11. In accordance with the Liability Risk Retention Act, we verify the following:

Commented [MB11]: District of Columbia: DC does not request the FEIN of the manager.

Commented [MB12]: VCIA: It may be more appropriate to request the organization’s FEIN above in Item 1 rather than here in Item 9 the FEIN of the manager.

Commented [MB13]: Pennsylvania: consider requesting an email address for the company contact person.

Commented [MB14]: Items a-d are not new, but were previously items #3,4,6 and 9 on the original form.
**NAIC UNIFORM RISK RETENTION GROUP REGISTRATION FORM**

A. The Risk Retention Group is a corporation or other limited liability association whose primary activity consists of assuming and spreading all, or any portion, of the liability exposure of its members.

B. The Risk Retention Group is organized for the primary purpose of conducting the activity described under Item “A” above.

C. The Risk Retention Group does not exclude any person from membership in the Group solely to provide for members of the Group a competitive advantage over such a person.

D. The activities of the Risk Retention Group do not include the provision of insurance other than:

i. liability insurance for assuming and spreading all or any portion of the similar or related liability exposure of its Group members; and

ii. reinsurance with respect to the similar or related liability exposure of another Risk Retention Group (or a member of such other Risk Retention Group) engaged in business or activities so that such Risk Retention Group or member meets the requirement under Item #7 above for membership in the Risk Retention Group which provides such reinsurance.

12. In accordance with the LRRA, if the State in which the Risk Retention Group is registering requires compliance with the following laws and requirements, the RRG agrees to the following:

A. The Risk Retention Group will comply with the unfair claim settlement practices laws of this State.

B. The Risk Retention Group will pay, on a non-discriminatory basis, applicable premium and other taxes which are levied on admitted insurers, surplus line insurers, brokers or policyholders such Group under the laws of this State.

B.C. The Risk Retention Group will participate, on a nondiscriminatory basis, in any mechanism established or authorized under the law of the State for the equitable apportionment among insurers of liability insurance losses and expenses incurred on policies written through such mechanism.

C.D. The Risk Retention Group will designate the Insurance Commissioner [Director, Superintendent] of this State as its agent solely for the purpose of receiving service of legal documents or process by executing Part B of this form, attached hereto.

D.E. The Risk Retention Group will submit to examination by the Insurance Commissioner [Director, Superintendent] of this State to determine the Group’s financial condition, if:

i. the Insurance Commissioner [Director, Superintendent] of the Group’s chartering State has not begun or has refused to initiate an examination of the Group; and

ii. any such examination by the Insurance Commissioner [Director, Superintendent] shall be coordinated to avoid unjustified duplication and unjustified repetition.

E.F. The Risk Retention Group will comply with a lawful order issued in a delinquency proceeding commenced by the Insurance Commissioner [Director, Superintendent] of this State...
NAIC UNIFORM RISK RETENTION GROUP REGISTRATION FORM

State upon a finding of financial impairment, or in a voluntary dissolution proceeding.

E. The Risk Retention Group will comply with the laws of this State concerning deceptive, false or fraudulent acts or practices, including any injunctions regarding such conduct obtained from a court of competent jurisdiction.

F. The Risk Retention Group will comply with the laws of this State concerning deceptive, false or fraudulent acts or practices, including any injunctions regarding such conduct obtained from a court of competent jurisdiction.

H. The Risk Retention Group will provide the following notice, in at least 10-point type, in any insurance policy issued by the Group:

NOTICE

This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your State. State insurance insolvency guaranty funds are not available for your risk retention group.

In accordance with the LRRA, the Risk Retention Group affirms that it has submitted to the Insurance Commissioner [Director, Superintendent] as part of this filing and before it has offered any insurance in this State, a copy of the plan of operation or feasibility study which it has filed with the Insurance Commissioner [Director, Superintendent] of its chartering State. This plan or study includes the name of the State in which the Group is chartered, as well as the Group’s principal place of business, and such plan of operation or feasibility study further includes the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of liability insurance the Group intends to offer. The Group has also submitted to the Insurance Commissioner [Director, Superintendent] of this State any revisions of such plan of operation or feasibility study to reflect any changes in the plan if the Group intends to offer any additional lines of liability insurance or, including any change in the designation of the State in which it is chartered.

The Risk Retention Group will submit a copy of its annual financial statement submitted to its chartering state, to the Insurance Commissioner [Director, Superintendent] of this State by March 1 of each year. The annual financial statement will be certified by an independent public accountant and include a statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries or a qualified loss reserve specialist. The annual financial statement, certification and statement of opinion on loss and loss adjustment expense reserves will be submitted to the Insurance Commissioner [Director, Superintendent] of this State by the date it is required to be submitted to its chartering state.

The Risk Retention Group will not solicit or sell insurance to any person in this State who is not eligible for membership in the Group.

The Risk Retention Group will not solicit or sell insurance in this State, or otherwise operate in this State, if the Group is in hazardous financial condition or is financially impaired.

The Risk Retention Group will not issue any insurance policy in this State which provides coverage prohibited generally by statute or declared unlawful by the highest court of the state whose law applies to such policy.

The Risk Retention Group has submitted a registration fee of $__________, if applicable, payable to the Insurance Commissioner [Director, Superintendent] of this State.

To the extent required by the LRRA, the Risk Retention Group will comply with all other...
19. The Risk Retention Group will notify the Insurance Commissioner [Director, Superintendent] as to any subsequent changes in any of the items included in this form.

The undersigned hereby swear and affirm that the foregoing statements and information regarding their principal, the (Name of Risk Retention Group) are true and correct.

President of the Risk Retention Group

Secretary of the Risk Retention Group

State of )

County of )

Sworn before me this ______ day of ____________, 20 __

______________, Notary Public. My Commission Expires: ____________

Commented [MB16]: Pamela Davis: Is the Insurance Commissioner in Item 19 the domicile or non-domicile Commissioner? If non-domicile, does that mean that an RRG must report every change in the board of directors to every non-domicile regulator? If so, how soon after the change?
NAIC UNIFORM RISK RETENTION GROUP REGISTRATION FORM

Part B

APPOINTMENT OF ATTORNEY TO ACCEPT SERVICE AND DESIGNATION

The ______________________________ ("the Group"), a risk retention group which is chartered and licensed as a liability insurance company under the laws of the State of __________________, having notified the Insurance Commissioner [Director, Superintendent] of the State of __________________ of its intention to do business in this State as a risk retention group pursuant to the federal Liability Risk Retention Act of 1986, hereby appoints the Insurance Commissioner [Director, Superintendent] of the State of __________________, any successor in office, and any authorized deputy its true and lawful attorney, in and for the State of __________________, upon whom all legal documents or process in any proceeding against it may be served. Such service of legal documents or process shall be of the same legal force and validity as if served personally upon the Group.

The Group designates:

__________________________
(Name)

__________________________
(Address)

__________________________
(City, Town or Village)

__________________________
(State and ZIP Code)

as its officer, agent or other person to whom shall be forwarded all legal documents or process served upon the Insurance Commissioner [Director, Superintendent] of the State of __________________, any successors in office, or any authorized deputy, for the Group. This designation shall continue in full force and effect until superseded by a new written designation filed with the Insurance Commissioner [Director, Superintendent].
NAIC UNIFORM RISK RETENTION GROUP REGISTRATION FORM

This appointment and designation is made pursuant to a resolution by the Group’s governing body authorizing it, and a certified copy of the resolution is attached hereto. This appointment shall be binding upon any person or corporation which as successor acquires the Group’s assets or assumes its liabilities, by merger or consolidation or otherwise.

This appointment may be withdrawn only upon a written notice of termination and, in any event, shall not be terminated by the Group or its successor so long as any contracts or liabilities or duties arising out of contracts entered into by the Group while it was doing business in this State are in effect.

IN WITNESS OF THIS APPOINTMENT AND DESIGNATION, the Group, in accordance with the resolution of its Board of Directors duly passed on ________________, 20__, has affixed its corporate seal, and caused the same to be subscribed and attested in its name by its President and Secretary, at the City of ________________ in the State of ________________ on ________________, 20__.  

______________________________
(Name of Risk Retention Group)

By: __________________________ President

______________________________ Secretary

State of ________________ )
                      ) ss:
County of ________________ )

Sworn before me this __________ day of ________________, 20__.  

______________________________, Notary Public. My Commission Expires: __________
1. **What publications are available to help understand RRGs and state's authority?**
   
   The following key documents can be found as Appendices in the Handbook:
   - Appendix A: Federal Liability Risk Retention Act
   - Appendix B: NAIC Model Risk Retention Act (#705)
   - Appendix D: NAIC Uniform Risk Retention Group Registration Form
   b. Accreditation Program Manual
      - Part A: Laws and Regulations – 18 accreditation standards that outline the laws required specifically for states that charter RRGs
      - Part B: Regulatory Practices and Procedures - RRG specific procedures for financial analysis, credit for reinsurance for RRGs, and procedures when a disclaimer of affiliation is filed

2. **How does the LRRA address regulation of RRGs?**
   a. Under §3902 of the LRRA, with the exception of the domiciliary state, RRGs are exempt from all state laws, rules, regulations, or orders that would make unlawful, or would regulate, directly or indirectly, the formation and operation of an RRG, except as provided in the LRRA. Only the domiciliary state may regulate the formation and operation of an RRG.
   b. The implementation of the LRRA was intended to allow organizations to come together in the creation of a risk-bearing, risk-sharing entity (the RRG) to offer its members, who are the beneficiaries of the insurance provided, liability coverage in an expedient and economical manner.

3. **How does RRG registration in a non-domiciliary state differ from the licensing process for a traditional insurer?**
   a. There are no solvency requirements imposed by the non-domiciliary state upon an RRG seeking to register in the State. Regulation as to formation and operation, including the imposition of solvency requirements, are imposed by the domestic state.
   b. RRGs are subject to a substantially similar application and licensing process imposed by the domestic state, or state of domicile. For registration to conduct business in non-domestic states, RRGs are not subject to the standard application and licensing process (NAIC UCAA Instructions or NAIC Company Licensing Handbook).
   c. The registration process is intended to be simpler than the licensing process for other types of insurers. Registration is focused on information gathering rather than decision making. Registration is not the same as admission or company licensing; it is not intended to provide non-domiciliary states with any regulatory powers over RRGs other than that provided in the LRRA. It is not within a state’s authority to use the processing of a registration to bar RRGs seeking to lawfully operate in a state, nor can a state declare a “moratorium” on the filing of RRG registrations. Once an RRG provides a complete NAIC Uniform Risk Retention Group
Registration Form they may begin operating in the state and approval from the non-domestic state is not required. However, best practice is for the non-domiciliary state to notify the RRG following their initial review of the NAIC Uniform Risk Retention Group Registration Form that either the form received was complete, or that the form was missing information. The non-domiciliary state may also reach out to the domiciliary state for more information and is encouraged to do so. (see the Best Practices—Risk Retention Groups document)

d. The LRRA references two documents that must be provided to the non-domestic state—a plan of operation OR a feasibility study. There is also additional information such as contact information of the RRG, chartering state information, and the lines of liability insurance business that are written by the RRG seeking to register. All this information is provided in the completed NAIC Uniform Risk Retention Group Registration Form.

e. For an RRG that is compliant with the LRRA and the regulation of their domestic state (including authorization to register to do business in another state), the non-domestic state cannot deny the RRG’s registration. If there is uncertainty, the domestic state should be contacted.

4. What are the steps for the non-domiciliary insurance regulator to take in the registration process for an RRG?

a. Review the NAIC Uniform Risk Retention Group Registration Form and verify the RRG has provided a complete form.

b. Once a complete form is received, the RRG is authorized to write in the state where it registers. The following best practices may also be considered during the registration process; however, they do not impact the registration status of the RRG:
   a. Review the information provided with the registration form for reasonableness.
   b. Reach out to the domestic state insurance regulator for additional information or concerns. The best practices Inquiry Template can be used and modified as appropriate.
   c. Notify the RRG once the registration form is deemed complete. They are now registered in the state.

5. What should a non-domiciliary state do if they have concerns about a complete RRG registration form received?

a. If the RRG provided a complete form, but there are concerns about the lines of business or financial solvency, or some other matter, the non-domiciliary state should first communicate with the domestic state. If necessary, the non-domiciliary state should consider pursuing the remedies in LRRA §3902(a)(1) also discussed in FAQ #12.

6. When can a non-domiciliary state reject an RRG registration?

a. A non-domestic state cannot reject the registration of an RRG that submits a complete registration form. Instead the non-domestic state should communicate concerns to the domestic state or refer to the remedies in LRRA §3902(a)(1) also discussed in FAQ #12.
7. Can an RRG registration be delayed if a financial statement filing and/or audit is not yet available at the time of application or registration?
   a. No, an RRG can register prior to filing of an annual financial statement audit and a statement of opinion on loss and loss adjustment expense reserves with its domiciliary state.
   b. Once these initial filings are made, they are available on I-Site for review.
   c. If questions arise due to lack of this information, the non-domiciliary state should reach out to the domestic state to address its concerns.

8. What items does the LRRA require an RRG provide to the non-domiciliary state in conjunction with the registration?
   a. It is recommended that states adopt the NAIC Uniform Risk Retention Group Registration Form, which has been developed by the NAIC in order to facilitate uniformity. Such forms are included in the Risk Retention and Purchasing Group Handbook.
   b. Consistent with LRRA, each RRG shall submit a copy of the plan of operation OR a feasibility study before it may offer insurance in the state.
      Note: If the RRG is newly formed, the feasibility study provides relevant information on rates and expected losses. If the RRG is expanding the states in which it operates and has been writing business for an extended period, the feasibility study becomes less relevant and a current business plan, along with documents a non-domiciliary state can easily obtain from the NAIC’s I-Site (Annual Statement(s), RBC Report(s), MD&A(s), Audited Financial Statement(s), Actuarial Certification(s)) provide pertinent information.
   c. If the plan of operation or feasibility study does not appear to be updated, a non-domiciliary state should contact the domiciliary state regulator to obtain more information, including the IPS, and may request revised documents from the RRG if original submission is found to be inaccurate or unclear.

9. What should be included in a plan of operation?
   a. The LRRA states that an RRG’s plan of operation or feasibility study includes information on liability insurance coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer.
   b. In addition, the Best Practices – Risk Retention Groups document offers a list of other suggested items for inclusion in a plan of operations or feasibility study.

10. What does the LRRA say about renewals for RRGs in non-domiciliary states?
    a. The LRRA is silent; therefore, initial registration is sufficient unless the operation of an RRG is affected by runoff, rehabilitation or liquidation processes. RRGs file changes in business plans, financial filings, etc. on an ongoing basis with non-domiciliary states; therefore, non-domiciliary states should consider developing a process for communicating with the domiciliary state (such as the example in the Best Practices—Risk Retention Groups document) and consider an annual request for Certificate of Good Standing/Compliance from the domiciliary state.
    b. Section 3902(d)(3) of the LRRA requires that an RRG submit to the insurance commissioner of each state in which it is doing business a copy of the annual financial statement that it files with.
the RRG’s domiciliary state. Non-domiciliary states should be aware that in many states where RRGs are licensed/chartered as captive insurers in conformity with NAIC accreditation standards, RRGs are permitted to use Generally Accepted Accounting Principles rather than Statutory Accounting Principles to report on their financial conditions, with required disclosure and reconciliation in footnote one. (see also Section II, page 3 of the Risk Retention and Purchasing Group Handbook)

c. The filing is an ongoing requirement that must be complied with on an annual basis and is generally due to non-domiciliary states upon filing with the domiciliary state. The annual filing requirements for RRGs include an unaudited filing using the Official NAIC Annual Statement Blank (Property/Casualty), an audited financial statement shall be certified by an independent public accountant, and contain a statement of opinion on loss and loss adjustment expense reserves made by an actuary or loss reserve specialist who is qualified in accordance with the criteria established by the NAIC in the annual statement instructions. See the above-mentioned NAIC Accreditation Program Manual, Part A: Laws and Regulations for RRGs, for annual filing requirements for RRGs.

11. What does the LRRA say about taxes and fees charged by a non-domiciliary RRG?
   a. LRRA S3902(a)(1)(B) says any state may require an RRG to:
      a. Pay on a nondiscriminatory basis, applicable premium and other taxes, which are levied on admitted insurers and surplus lines insurers, brokers, or policyholders under the laws of the state.
      b. Fees are not directly addressed in the LRRA and as such, there has been disagreement about the legality of both initial and renewal registration fees and compliance with LRRA. The authority on this topic is therefore federal case law. Thus far, there is one case (Nat’l Risk Retention Assoc. v. Brown, 927 F. Supp. 195 (M.D. La. 1996)) in which the court ruled that certain state requirements, including the payment of an annual renewal registration fee, were preempted by the LRRA. See the Risk Retention and Purchasing Group Handbook for additional detail on the case and other fee considerations.

12. What remedies are available to a non-domiciliary state if violations of applicable State laws occur?
   a. Secure clarification from the RRG’s state of domicile;
   b. Call for an examination of the RRG by the state of domicile [15 U.S.C. §3902(a)(1)(E)];

13. Is there a list of domestic and non-domestic state contact persons in state insurance regulator offices who are knowledgeable about RRGs?
   a. Yes. Appendix C of the NAIC Risk Retention and Purchasing Group Handbook includes a list of state insurance department contact persons. The most recent list is maintained as a separate document on the NAIC’s publication webpage alongside a complete copy of the Risk Retention and Purchasing Group Handbook: 
      https://www.naic.org/prod_serv_alpha_listing.htm#risk_retention
The domiciliary state maintains authority and responsibility to regulate the formation and operation of a Risk Retention Group (RRG). Therefore, when concerns arise in a non-domiciliary state about a RRG, the best resource is the domiciliary state. This includes concerns about solvency and capital levels, financial condition, or other non-compliance of an RRG as well as operational questions and concerns that should be directed to the domiciliary state.

States are encouraged to examine their RRG laws to make certain that they are consistent with (1) the LRRA and (2) the NAIC Model Risk Retention Act.

Questions/Concerns from Non-domiciliary State

Upon initial registration of an RRG in a non-domiciliary state, it is not uncommon for questions to arise that are best directed to the domiciliary state. Attachment A outlines a sample Inquiry Template that can be used to request this information. The template may be customized as deemed appropriate by the non-domiciliary state. Domiciliary states should respond in a timely manner to such requests.

Questions about operations and financial solvency that arise following initial registration should also be addressed to the domiciliary state.

If significant concerns still exist after communication with the domiciliary state and the non-domiciliary state concludes that the RRG is not compliant with any of the specific procedures set forth in the LRRA, the following steps may be undertaken:

a. Refer to your own state RRG statute to ensure compliance of your prospective action;
b. Provide written notice of any non-compliance directly to the RRG;
c. Submit a demand for examination of the RRG to the domiciliary regulator, as provided by the LRRA [15 U.S.C. S3902(a)(1)(E)];
d. Institute suit in a court of competent jurisdiction.

A non-domiciliary state may request the following from the domiciliary state and similarly, the domiciliary state should be prepared to provide the following to the non-domiciliary state:

ea. Insurer Profile Summary (IPS)
bf. Inquire about the extent of biographical affidavit review and results of background checks
g. Most recent examination report (may be obtained from I-Site)
h. Amendments to the RRG’s business plan or feasibility study
i. Verification of domiciliary state approval to expand into non-domiciliary state

Alternatively, Attachment A – Inquiry Template may be used for this request with modifications as necessary.
Registration Timeline

The registration process for RRGs should be shorter than the licensing process for other types of insurers as the RRG is responsible only for a complete registration form and the related attachments. The non-domestic state cannot reject a complete registration that complies with state and federal laws. However, it is still necessary for the non-domiciliary state to review the registration form to ensure it is complete and demonstrates that the RRG complies with the LRRA. In addition, concerns can be raised with the domiciliary state, who has the authority to regulate the formation and operation of an RRG. The following guidelines take into consideration similar guidelines for ordinary insurance companies, and adherence is at the discretion of each state.

- A non-domiciliary state should review the registration form for completeness within 10 business days of its receipt of the form notify the Risk Retention Group of the need to submit any missing elements.
- Following receipt of a complete application, a non-domiciliary state should notify the RRG within 30 days that its registration is confirmed.
- The domiciliary state should respond to inquiries from a non-domiciliary state in a prompt manner, typically no later than 10 business days after receiving the inquiry.

Domiciliary State Responsibilities

When a domiciliary state identifies an RRG as troubled or potentially troubled, the State insurance regulator should make efforts to communicate proactively with other state insurance regulators in which the RRG is registered (consistent with the Troubled Insurance Company Handbook). Although the domiciliary regulator is responsible taking actions involving their domiciliary RRGs, awareness by a non-domiciliary state may help them to proactively do what they can to protect their residents and respond to policyholder complaints or concerns directed to the them.

Plan of Operation/Feasibility Study/Application

Domiciliary states should ensure the RRG’s plan of operation, feasibility study, or application for licensing includes the following, at a minimum:
- information sufficient to verify that its members are engaged in businesses or activities similar or related with respect to the liability to which such members are exposed by virtue of any related, similar or common business, trade, product, services, premises or operations;
- information sufficient to verify that the liability insurance coverage to be provided by the Risk Retention Group will only cover the members of the Risk Retention Group;
- for each state in which it intends to operate, information regarding the liability insurance coverages, deductibles, coverage limits, rates and/or rating/underwriting methodology for each line of commercial liability insurance the group intends to offer;
- historical and expected loss experience of proposed members and national experience of similar exposures to the extent that this experience is reasonably available;
- appropriate opinions/feasibility work by a qualified independent casualty actuary, including a determination of minimum premium participation levels required to commence operation and to prevent a hazardous financial condition;
- pro forma financial statements and projections, including assumptions, on an expected and adverse basis;
- identification of Board of Directors, including independence determination;
- biographical affidavits for all BOD members;
- evidence of compliance with corporate governance standards, including draft policies;
- underwriting and claim procedures;
- marketing methods and materials if available;
- draft insurance policies;
- names of reinsurers and reinsurance agreements, if available;
- investment policies;
- identification of each state in which the RRG intends to write business/register;
- identification of service providers, including fee structure and relationships to members/and
- subsequent material revisions to the plan of operation or feasibility study.
Attachment A – Inquiry Template

The above-subject company has applied for Registration as a Risk Retention Group ("RRG") in the State of ________ to write ____________ liability coverage to its members who are in the business of_____________________________. As you can appreciate, due to the provisions of the Liability Risk Retention Act of 1986 the (state) has limited authority to regulate RRGs and therefore to a large extent, the (state) relies on the RRGs’ domiciliary state to exercise general oversight and responsibility in the areas of licensing, solvency, rates and marketing. As part of our due diligence, we would appreciate any information your office can share with us regarding the company with respect to the following items, some of which may be satisfied by providing the Insurer Profile Summary:

1. Any significant concerns the State of [domicile] has regarding the company.
2. Any issues that may have a significant impact on the company going forward.
3. Any issues regarding the number of consumer complaints the company has in [state of domicile] or other states that may have been brought to your attention.
4. Comments and/or concerns about the financial condition of the company.
5. Comments or concerns about the management or performance of the company.
6. Results of any financial analysis or market conduct findings.
7. The company’s priority level within the Financial Analysis Division.
8. Any conditions imposed by your Department upon the company’s license.
9. Any significant non-compliance issues with the State of [domicile] regulatory authority including filing requirements and corrective action, if any.
10. Comments regarding company’s application for registration in the State of [state registering].
11. Approval from State of [domicile] for the RRG to register in the State of [state registering].
The following is the uniform registration form adopted by the NAIC. This registration form is being filed by a Risk Retention Group (RRG) operating in accordance with the Federal Liability Risk Retention Act of 1986 (LRRA), 15 USC 3901-3906, chartered or licensed to write only liability insurance by the state of domicile listed in #1c. The registration form and supplemental documents are provided in accordance with §3902(d)(2) of the LRRA. Under §3902 of the LRRA, with the exception of the domiciliary state, RRGs are exempt from all state laws, rules, regulations, or orders that would make unlawful, or would regulate, directly or indirectly, the operation of an RRG, except that any state may require an RRG to comply with those laws specified in the LRRA. The domiciliary state regulates the formation and operation of the RRG.

**Part A**

STATE OF [Insert State in which the Risk Retention Group intends to do business]

DEPARTMENT OF INSURANCE

RISK RETENTION GROUP - NOTICE AND REGISTRATION

(All Information Should Be Typed)

1a. Name of the Risk Retention Group as it appears on its Certificate of Authority:

1b. FEIN:

1c. State of domicile and date licensed/chartered:

1d. Primary contact person for state of domicile to whom questions regarding the Risk Retention Group should be addressed (include name, phone number and email address):

2. List any other name(s) by which the Risk Retention Group is known or may be doing business in this State or any other state:

3. The Risk Retention Group is authorized to engage in the following lines and/or classifications of liability insurance under the laws of its chartering State:
4. Give a general description of the liability insurance coverages the Risk Retention Group plans to write in the state it is registering to do business in.


5. Has the Risk Retention Group’s domiciliary state approved the Risk Retention Group to register and expand its writings in the state it is seeking to become registered in?


6. Ownership of the Risk Retention Group consists of one or the other of the following (check one):
   a) ______ the owners of the Group are the only persons who comprise the membership of the Group and the only ones who are provided insurance by the Group.
   b) ______ the sole owner of the Group is:

          _____________________________

          (Name and Address of Organization)

          an organization which has as its members only persons who comprise the membership of the Group and which has as its owners only persons who comprise the membership of the Group and who are provided insurance by the Group.

7. The Risk Retention Group members are engaged in businesses or activities similar or related with respect to the liability to which such members are exposed by virtue of any related, similar or common business (whether profit or nonprofit), trade, product, services (including professional services), premises or operations. Give a general description of businesses or activities engaged in by the Group’s members:


8. (a) List the name, position with the Risk Retention Group, and address of each officer and director of the Risk Retention Group: (Attach additional pages, if necessary.)


(b) Identify and give the telephone number of the officer or director of the Risk Retention Group who can be contacted for any information regarding the management of the insurance activities of the Group:
Name: __________________________________ Telephone Number: ____________________________

9. List the name, addresses (postal and email), telephone number and Federal Employer Identification Number (FEIN) of the company responsible for managing the insurance operations of the Risk Retention Group and the company contact person’s name and telephone number. (If none, answer none.)

Contact Person: ______________________ Telephone # ______________________

10. List the name(s) NPR#, and address(es) of the licensed insurance agent(s) or broker(s) who will be responsible for marketing the Risk Retention Group’s insurance policies in the State of [Insert State in which the Risk Retention Group intends to do business] and the current licensing status in the State of [Insert State in which the Risk Retention Group intends to do business]. (If none, answer none. Attach additional pages, if necessary.)

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<th>Name</th>
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11. In accordance with the Liability Risk Retention Act, we verify the following:

A. The Risk Retention Group is a corporation or other limited liability association whose primary activity consists of assuming and spreading all, or any portion, of the liability exposure of its members.

B. The Risk Retention Group is organized for the primary purpose of conducting the activity described under Item “A” above.

C. The Risk Retention Group does not exclude any person from membership in the Group solely to provide for members of the Group a competitive advantage over such a person.

D. The activities of the Risk Retention Group do not include the provision of insurance other than:
   i. liability insurance for assuming and spreading all or any portion of the similar or related liability exposure of its Group members; and
   ii. reinsurance with respect to the similar or related liability exposure of another Risk Retention Group (or a member of such other Risk Retention Group) engaged in
12. In accordance with the LRRA, if the State in which the Risk Retention Group is registering requires compliance with the following laws and requirements, the RRG agrees to the following:

A. The Risk Retention Group will comply with the unfair claim settlement practices laws of this State.

B. The Risk Retention Group will pay, on a non-discriminatory basis, applicable premium and other taxes which are levied on admitted insurers, surplus line insurers, brokers or policyholders under the laws of this State.

C. The Risk Retention Group will participate, on a nondiscriminatory basis, in any mechanism established or authorized under the law of the State for the equitable apportionment among insurers of liability insurance losses and expenses incurred on policies written through such mechanism.

D. The Risk Retention Group will designate the Insurance Commissioner [Director, Superintendent] of this State as its agent solely for the purpose of receiving service of legal documents or process by executing Part B of this form, attached hereto.

E. The Risk Retention Group will submit to examination by the Insurance Commissioner [Director, Superintendent] of this State to determine the Group’s financial condition, if:
   i. the Insurance Commissioner [Director, Superintendent] of the Group’s chartering State has not begun or has refused to initiate an examination of the Group; and
   ii. any such examination by the Insurance Commissioner [Director, Superintendent] shall be coordinated to avoid unjustified duplication and unjustified repetition.

F. The Risk Retention Group will comply with a lawful order issued in a delinquency proceeding commenced by the Insurance Commissioner [Director, Superintendent] of this State upon a finding of financial impairment, or in a voluntary dissolution proceeding.

G. The Risk Retention Group will comply with the laws of this State regarding deceptive, false or fraudulent acts or practices, including any injunctions regarding such conduct obtained from a court of competent jurisdiction.

H. The Risk Retention Group will comply with an injunction issued by a court of competent jurisdiction upon petition by the Insurance Commissioner [Director, Superintendent] of this State alleging that the Group is in hazardous financial condition or is financially impaired.

I. The Risk Retention Group will provide the following notice, in at least 10-point type, in any insurance policy issued by the Group:

   **NOTICE**

   This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your State. State insurance insolvency guaranty funds are not available for your risk retention group.
13. In accordance with the LRRA, the Risk Retention Group affirms that it has submitted to the Insurance Commissioner [Director, Superintendent] as part of this filing and before it has offered any insurance in this State, a copy of the plan of operation or feasibility study which it has filed with the Insurance Commissioner [Director, Superintendent] of its state of domicile. This plan or study includes the name of the State in which the Group is chartered, as well as the Group’s principal place of business, and such plan of operation or feasibility study further includes the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of liability insurance the Group intends to offer. The Group has also submitted to the Insurance Commissioner [Director, Superintendent] of this State any revisions of such plan of operation or feasibility study to reflect any changes if the Group intends to offer any additional lines of liability insurance or change in the designation of the State in which it is chartered.

14. The Risk Retention Group will submit a copy of its annual financial statement submitted to its chartering state, to the Insurance Commissioner [Director, Superintendent] of this State. The annual financial statement shall be certified by an independent public accountant and include a statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries or a qualified loss reserve specialist. The annual financial statement, certification and statement of opinion on loss and loss adjustment expense reserves will be submitted to the Insurance Commissioner [Director, Superintendent] of this State by the date it is required to be submitted to its chartering state.

15. The Risk Retention Group will not solicit or sell insurance to any person in this State who is not eligible for membership in the Group.

16. The Risk Retention Group will not solicit or sell insurance in this State, or otherwise operate in this State, if the Group is in hazardous financial condition or is financially impaired.

17. The Risk Retention Group will not issue any insurance policy in this State which provides coverage prohibited generally by statute of this State or declared unlawful by the highest court of this State whose law applies to such policy.

18. To the extent required by the LRRA, the Risk Retention Group will comply with all other applicable state laws.

19. The Risk Retention Group will notify the Insurance Commissioner [Director, Superintendent] as to any subsequent changes in any of the items included in this form.

The undersigned hereby swear and affirm that the foregoing statements and information regarding their principal, the (Name of Risk Retention Group) are true and correct.

President of the Risk Retention Group

Secretary of the Risk Retention Group

State of ss:

County of ss:

Sworn before me this day of , 20 .

, Notary Public. My Commission Expires: 
Part B

APPOINTMENT OF ATTORNEY TO ACCEPT SERVICE AND DESIGNATION

The_____________________________ ("the Group"), a risk retention group which is chartered and licensed as a liability insurance company under the laws of the State of ________________, having notified the Insurance Commissioner [Director, Superintendent] of the State of ________________, of its intention to do business in this State as a risk retention group pursuant to the federal Liability Risk Retention Act of 1986, hereby appoints the Insurance Commissioner [Director, Superintendent] of the State of ________________, any successor in office, and any authorized deputy its true and lawful attorney, in and for the State of ________________, upon whom all legal documents or process in any proceeding against it may be served. Such service of legal documents or process shall be of the same legal force and validity as if served personally upon the Group.

The Group designates:

______________________________
(Name)

______________________________
(Address)

______________________________
(City, Town or Village)

______________________________
(State and ZIP Code)

as its officer, agent or other person to whom shall be forwarded all legal documents or process served upon the Insurance Commissioner [Director, Superintendent] of the State of ________________, any successors in office, or any authorized deputy, for the Group. This designation shall continue in full force and effect until superseded by a new written designation filed with the Insurance Commissioner [Director, Superintendent].


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This appointment and designation is made pursuant to a resolution by the Group’s governing body authorizing it, and a certified copy of the resolution is attached hereto. This appointment shall be binding upon any person or corporation which as successor acquires the Group’s assets or assumes its liabilities, by merger or consolidation or otherwise.

This appointment may be withdrawn only upon a written notice of termination and, in any event, shall not be terminated by the Group or its successor so long as any contracts or liabilities or duties arising out of contracts entered into by the Group while it was doing business in this State are in effect.

IN WITNESS OF THIS APPOINTMENT AND DESIGNATION, the Group, in accordance with the resolution of its Board of Directors duly passed on ____________, 20__, has affixed its corporate seal, and caused the same to be subscribed and attested in its name by its President and Secretary, at the City of ____________, in the State of ____________ on ____________, 20__.  

______________________________
(Name of Risk Retention Group)

By: __________________________ President

______________________________ Secretary

State of ____________

) ss:

County of ____________

Sworn before me this ______ day of ____________, 20__.  

______________________________, Notary Public.  My Commission Expires: ____________
Nevada has no objections to the changes/updates regarding RRGs.

Thank you for the opportunity to assist you in this matter.

Kathy Kelley (Lamb), AA 4 with the APIR designation
PLEASE NOTE MY NEW EMAIL: kkelley@doi.nv.gov
State of Nevada, Division of Insurance
Corporate & Financial Affairs
1818 E. College Parkway, Ste. 103
Carson City, NV 89706-7986
T: (775) 687-0753
F: (775) 687-0787
E-Mail: kkelley@doi.nv.gov
Facebook: https://www.facebook.com/NevadaDivisionofInsurance
Twitter: https://twitter.com/nevadadoi
Visit Nevada Division of Insurance web pages: Address Changes, Annual Renewals of Company License, Annual Statement Filings, Biographical Affidavits, Electronic Payments, Holding Company Forms, Primary, Expansion & Corporate Amendment Applications, Statutory Deposits, Withdrawal of Company License.
NAIC Uniform Risk Retention Group – Notice and Registration form

Item 1c. – generally speaking, isn’t it likely that the date chartered and date licensed are different dates.

Item 8. – typo “Rroup”

Item 9. – consider requesting an email address for the company contact person

Risk Retention Groups: Frequently Asked Questions

General observation - “Complete” is used but not defined throughout the document. Several examples follow:

3.c. Once an RRG provides a complete NAIC Uniform Risk Retention Group Registration Form they may begin operating in the state and approval from the non-domestic state is not required.

4.a. Review the NAIC Uniform Risk Retention Group Registration Form and verify the RRG has provided a complete form.

6.a. A non-domestic state cannot reject the registration of an RRG that submits a complete registration form.

There is a difference between (1) a registration form in which all questions are answered and attachments are provided; and, (2) a registration form in which all questions are answered and attachments are provided with responses/documents demonstrating compliance with state and federal laws.

Considering the interpretation of the LRRA that an RRG can commence business in the state once a “complete” registration is filed, consider adding some definition or discussion around what a “complete” registration form is.

FAQ 4.b.a. – consider changing “for reasonableness” to “to verify that the RRG is qualified under the definition of Risk Retention Group.”

Best Practices – Risk Retention Groups

Registration Timeline – depending upon how “complete” is defined, a 10-day turnaround may not be reasonable.

Domiciliary State Responsibilities – Second sentence clean-up to read as:

Although the domiciliary regulator is responsible for taking actions involving their domiciliary RRGs, awareness by a non-domiciliary state may help them to proactively do what they can to protect their residents and respond to policyholder complaints or concerns directed to the them.
Attachment One-F
Risk Retention Group (E) Task Force
12/7/19

Attachment A – Inquiry Template – revisions to 5, 6 and 10 as follows:

Item 5 – Comments and/or concerns about the management or performance of the company.

Item 6 – Results of any financial analysis and/or market conduct findings.

Item 10 – Comments regarding the company’s application for registration in the State of [state registering].
September 5, 2019

VIA EMAIL - BMeyer@naic.org

Becky Meyer, CPA
Senior Accreditation Manager
National Association of Insurance Commissioners
1100 Walnut, Suite 1500
Kansas City, MO 64106

Re: Risk Retention Group (E) Task Force
Ongoing Support of NAIC Programs, Products or Services

Dear Ms. Meyer:

Attached are the comments of the National Risk Retention Association (NRRA) in redline format.

Our only comment on the Best Practices document is grammatical so that the sentence would read properly.

For the FAQ document, we only added the ALAS v. Fitzgerald case and a cite to the NAIC RRG Handbook where both NRRA v. Brown and the ALAS v. Fitzgerald cases are discussed.

We recommend one change for the Notice and Registration document. The current version of Item 6(a) deviates from the language in the LRRA, 15 USC § 3901 (a)(4)(E)(i). In order to be consistent, 6(a) should be:

___the owners of the Group are only persons who comprise the membership of the Group and who are provided Insurance by the Group.

The drafting committee has done an excellent job of conforming the Notice and Registration document to the LRRA, e.g., in Items 11 and 12, which is important to avoid a conflict between state and federal law. To avoid any confusion, we believe Item 6(a) should be conformed as noted above.
Becky Meyer, CPA
September 5, 2019
Page 2

The NRRA very much appreciates the opportunity to comment on the work of the Risk Retention Group Task Force.

Very truly yours,

Joseph E. Deems
Executive Director
National Risk Retention Association

rjm
Risk Retention Groups: Frequently Asked Questions

1. What publications are available to help understand RRGs and state’s authority?
   a. NAIC Risk Retention and Purchasing Group Handbook is available from the NAIC publications webpage at https://www.naic.org/documents/prod_serv_legal_ris_bb.pdf. The following key documents can be found as Appendices in the Handbook:
      - Appendix A: Federal Liability Risk Retention Act
      - Appendix B: NAIC Model Risk Retention Act (#705)
      - Appendix D: NAIC Uniform Risk Retention Group Registration Form
   b. Accreditation Program Manual
      - Part A: Laws and Regulations – 18 accreditation standards that outline the laws required specifically for states that charter RRGs
      - Part B: Regulatory Practices and Procedures - RRG specific procedures for financial analysis and procedures when a disclaimer of affiliation is filed

2. How does the LRRA address regulation of RRGs?
   a. Under §3902 of the LRRA, with the exception of the domiciliary state, RRGs are exempt from all state laws, rules, regulations, or orders that would make unlawful, or would regulate, directly or indirectly, the formation and operation of an RRG, except as provided in the LRRA. Only the domiciliary state may regulate the formation and operation of an RRG.
   b. The implementation of the LRRA was intended to allow organizations to come together in the creation of a risk-bearing, risk-sharing entity (the RRG) to offer its members, who are the beneficiaries of the insurance provided, liability coverage in an expedient and economical manner.

3. How does RRG registration in a non-domiciliary state differ from the licensing process for a traditional insurer?
   a. There are no solvency requirements imposed by the non-domiciliary state upon an RRG seeking to register in the State. Regulation as to formation and operation, including the imposition of solvency requirements, are imposed by the domestic state.
   b. RRGs are subject to a substantially similar application and licensing process imposed by the domestic state, or state of domicile. For registration to conduct business in non-domestic states, RRGs are not subject to the standard application and licensing process (NAIC UCAA Instructions or NAIC Company Licensing Handbook).
   c. The registration process is intended to be simpler than the licensing process for other types of insurers. Registration is focused on information gathering rather than decision making. Registration is not the same as admission or company licensing; it is not intended to provide non-domiciliary states with any regulatory powers over RRGs other than that provided in the LRRA. It is not within a state’s authority to use the processing of a registration to bar RRGs seeking to lawfully operate in a state, nor can a state declare a “moratorium” on the filing of RRG registrations. Once an RRG provides a complete NAIC Uniform Risk Retention Group Registration Form.
Registration Form they may begin operating in the state and approval from the non-domestic state is not required. However, best practice is for the non-domiciliary state to notify the RRG following their initial review of the NAIC Uniform Risk Retention Group Registration Form that either the form received was complete, or that the form was missing information. The non-domiciliary state may also reach out to the domiciliary state for more information and is encouraged to do so. (see the Best Practices—Risk Retention Groups document)

d. The LRRA references two documents that must be provided to the non-domestic state—a plan of operation OR a feasibility study. There is also additional information such as contact information of the RRG, chartering state information, and the lines of liability insurance business that are written by the RRG seeking to register. All this information is provided in the completed NAIC Uniform Risk Retention Group Registration Form.

e. For an RRG that is compliant with the LRRA and the regulation of their domestic state (including authorization to register to do business in another state), the non-domestic state cannot deny the RRG’s registration. If there is uncertainty, the domestic state should be contacted.

4. What are the steps for the non-domiciliary insurance regulator to take in the registration process for an RRG?

a. Review the NAIC Uniform Risk Retention Group Registration Form and verify the RRG has provided a complete form.

b. Once a complete form is received, the RRG is authorized to write in the state where it registers. The following best practices may also be considered during the registration process; however, they do not impact the registration status of the RRG:

   a. Review the information provided with the registration form for reasonableness.
   b. Reach out to the domestic state insurance regulator for additional information or concerns. The best practices Inquiry Template can be used and modified as appropriate.
   c. Notify the RRG once the registration form is deemed complete. They are now registered in the state.

5. What should a non-domiciliary state do if they have concerns about a complete RRG registration form received?

a. If the RRG provided a complete form, but there are concerns about the lines of business or financial solvency, or some other matter, the non-domiciliary state should first communicate with the domestic state. If necessary, the non-domiciliary state should consider pursuing the remedies in LRRA §3902(a)(1) also discussed in FAQ #12.

6. When can a non-domiciliary state reject an RRG registration?

a. A non-domestic state cannot reject the registration of an RRG that submits a complete registration form. Instead the non-domestic state should communicate concerns to the domestic state or refer to the remedies in LRRA §3902(a)(1) also discussed in FAQ #12.
7. Can an RRG registration be delayed if a financial statement filing and/or audit is not yet available at the time of application or registration?
   a. No, an RRG can register prior to filing of an annual financial statement audit and a statement of opinion on loss and loss adjustment expense reserves with its domiciliary state.
   b. Once these initial filings are made, they are available on I-Site for review.
   c. If questions arise due to lack of this information, the non-domiciliary state should reach out to the domestic state to address its concerns.

8. What items does the LRRA require an RRG provide to the non-domiciliary state in conjunction with the registration?
   a. It is recommended that states adopt the NAIC Uniform Risk Retention Group Registration Form, which has been developed by the NAIC in order to facilitate uniformity. Such forms are included in the Risk Retention and Purchasing Group Handbook.
   b. Consistent with LRRA, each RRG shall submit a copy of the plan of operation OR a feasibility study before it may offer insurance in the state.
      Note: If the RRG is newly formed, the feasibility study provides relevant information on rates and expected losses. If the RRG is expanding the states in which it operates and has been writing business for an extended period, the feasibility study becomes less relevant and a current business plan, along with documents a non-domiciliary state can easily obtain from the NAIC’s I-Site (Annual Statement(s), RBC Report(s), MD&A(s), Audited Financial Statement(s), Actuarial Certification(s)) provide pertinent information.
   c. If the plan of operation or feasibility study does not appear to be updated, a non-domiciliary state should contact the domiciliary state regulator to obtain more information, including the IPS, and may request revised documents from the RRG if original submission is found to be inaccurate or unclear.

9. What should be included in a plan of operation?
   a. The LRRA states that an RRG’s plan of operation or feasibility study includes information on liability insurance coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer.
   b. In addition, the Best Practices – Risk Retention Groups document offers a list of other suggested items for inclusion in a plan of operations or feasibility study.

10. What does the LRRA say about renewals for RRGs in non-domiciliary states?
    a. The LRRA is silent; therefore, initial registration is sufficient unless the operation of an RRG is affected by runoff, rehabilitation or liquidation processes. RRGs file changes in business plans, financial filings, etc. on an ongoing basis with non-domiciliary states; therefore, non-domiciliary states should consider developing a process for communicating with the domiciliary state (such as the example in the Best Practices—Risk Retention Groups document) and consider an annual request for Certificate of Good Standing/Compliance from the domiciliary state.
b. Section 3902(d)(3) of the LRRA requires that an RRG submit to the insurance commissioner of each state in which it is doing business a copy of the annual financial statement that it files with the RRG's domiciliary state. Non-domiciliary states should be aware that in many states where RRGs are licensed/chartered as captive insurers in conformity with NAIC accreditation standards, RRGs are permitted to use Generally Accepted Accounting Principles rather than Statutory Accounting Principles to report on their financial conditions, with required disclosure and reconciliation in footnote one. (see also Section II, page 3 of the Risk Retention and Purchasing Group Handbook)

c. The filing is an ongoing requirement that must be complied with on an annual basis and is generally due to non-domiciliary states upon filing with the domiciliary state. The annual financial statement shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by an actuary or loss reserve specialist who is qualified in accordance with the criteria established by the NAIC in the annual statement instructions.

11. What does the LRRA say about taxes and fees charged by a non-domiciliary RRG?
   a. LRRA S3902(a)(1)(B) says any state may require an RRG to:
      a. Pay on a nondiscriminatory basis, applicable premium and other taxes, which are levied on admitted insurers and surplus lines insurers, brokers, or policyholders under the laws of the state.
   b. Fees are not directly addressed in the LRRA and as such, there has been disagreement about the legality of both initial and renewal registration fees and compliance with LRRA. The authority on this topic is therefore federal case law. Thus far, there is one case (Nat'l Risk Retention Assoc. v. Brown, 927 F. Supp. 195 (M.D. La. 1996) and Attorney's Liab. Assurance Society, Inc. v. Fitzgerald, 174 F. Supp. 2d 619 (W.D. Mich. 2001)) in which the court ruled that certain state requirements, including the payment of an annual renewal registration fee, were preempted by the LRRA. See the Risk Retention and Purchasing Group Handbook ([II-5, 6, 7]) for additional detail on the case and other fee considerations.

12. What remedies are available to a non-domiciliary state if violations of applicable State laws occur?
   a. Secure clarification from the RRG’s state of domicile;
   b. Call for an examination of the RRG by the state of domicile [15 U.S.C. §3902(a)(1)(E)];

13. Is there a list of domestic and non-domestic state contact persons in state insurance regulator offices who are knowledgeable about RRGs?
   a. Yes. Appendix C of the NAIC Risk Retention and Purchasing Group Handbook includes a list of state insurance department contact persons. The most recent list is maintained as a separate document on the NAIC’s publication webpage alongside a complete copy of the Risk Retention and Purchasing Group Handbook.
Best Practices – Risk Retention Groups

The domiciliary state maintains authority and has responsibility to regulate the formation and operation of a Risk Retention Group (RRG). Therefore, when concerns arise in a non-domiciliary state about a RRG, the best resource is the domiciliary state. This includes concerns about solvency and capital levels, financial condition, or other non-compliance of an RRG as well as operational questions and concerns that should be directed to the domiciliary state.

States are encouraged to examine their RRG laws to make certain that they are consistent with (1) the LRRA and (2) the NAIC Model Risk Retention Act.

Questions/Concerns from Non-domiciliary State

Upon initial registration of an RRG in a non-domiciliary state, it is not uncommon for questions to arise that are best directed to the domiciliary state. Attachment A outlines a sample Inquiry Template that can be used to request this information. The template may be customized as deemed appropriate by the non-domiciliary state. Domiciliary states should respond in a timely manner to such requests.

Questions about operations and financial solvency that arise following initial registration should also be addressed to the domiciliary state.

If significant concerns still exist after communication with the domiciliary state and the non-domiciliary state concludes that the RRG is not compliant with any of the specific procedures set forth in the LRRA, the following steps may be undertaken:

a. Refer to your own state RRG statute to ensure compliance of your prospective action;
b. Provide written notice of any non-compliance directly to the RRG;
c. Submit a demand for examination of the RRG to the domiciliary regulator, as provided by the LRRA [15 U.S.C. S3902(a)(1)(E)];
d. Institute suit in a court of competent jurisdiction.

A non-domiciliary state may request the following from the domiciliary state and similarly, the domiciliary state should be prepared to provide the following to the non-domiciliary state:

e. Insurer Profile Summary (IPS)
f. Inquire about the extent of biographical affidavit review and results of background checks
g. Most recent examination report (may be obtained from I-Site)
h. Amendments to the RRG’s business plan or feasibility study
i. Verification of domiciliary state approval to expand into non-domiciliary state

Alternatively, Attachment A – Inquiry Template may be used for this request with modifications as necessary.

NRRA Comments

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Registration Timeline
The registration process for RRGs should be shorter than the licensing process for other types of insurers as the RRG is responsible only for a complete registration form and the related attachments. The non-domiciliary state cannot reject a complete registration that complies with state and federal laws. However, it is still necessary for the non-domiciliary state to review the registration form to ensure it is complete and demonstrates that the RRG complies with the LRRA. In addition, concerns can be raised with the domiciliary state, who has the authority to regulate the formation and operation of an RRG. The following guidelines take into consideration similar guidelines for ordinary insurance companies, and adherence is at the discretion of each state.

- A non-domiciliary state should review the registration form for completeness within 10 business days of its receipt of the form and notify the Risk Retention Group of the need to submit any missing elements.
- Following receipt of a complete application, a non-domiciliary state should notify the RRG within 30 days that its registration is confirmed.
- The domiciliary state should respond to inquiries from a non-domiciliary state in a prompt manner, typically no later than 10 business days after receiving the inquiry.

Domiciliary State Responsibilities
When a domiciliary state identifies an RRG as troubled or potentially troubled, the State insurance regulator should make efforts to communicate proactively with other state insurance regulators in which the RRG is registered (consistent with the Troubled Insurance Company Handbook). Although the domiciliary regulator is responsible taking actions involving their domiciliary RRGs, awareness by a non-domiciliary state may help them to proactively do what they can to protect their residents and respond to policyholder complaints or concerns directed to them.

Plan of Operation/Feasibility Study
Domiciliary states should ensure the RRG’s plan of operation or feasibility study includes the following, at a minimum:
- Information sufficient to verify that its members are engaged in businesses or activities similar or related with respect to the liability to which such members are exposed by virtue of any related, similar or common business, trade, product, services, premises or operations;
- Information sufficient to verify that the liability insurance coverage to be provided by the Risk Retention Group will only cover the members of the Risk Retention Group;
- For each state in which it intends to operate, information regarding the liability insurance coverages, deductibles, coverage limits, rates and/or rating/underwriting methodology for each line of commercial liability insurance the group intends to offer;
- Historical and expected loss experience of proposed members and national experience of similar exposures to the extent that this experience is reasonably available;
- Appropriate opinions/feasibility work by a qualified independent casualty actuary, including a determination of minimum premium participation levels required to commence operation and to prevent a hazardous financial condition;
- pro forma financial statements and projections, including assumptions, on an expected and adverse basis;
- identification of Board of Directors, including independence determination;
- biographical affidavits for all BOD members;
- evidence of compliance with corporate governance standards, including draft policies;
- underwriting and claim procedures;
- marketing methods and materials if available;
- draft insurance policies;
- names of reinsurers and reinsurance agreements, if available;
- investment policies;
- identification of each state in which the RRG intends to write business/register;
- identification of service providers, including fee structure and relationships to members; and
- subsequent material revisions to the plan of operation or feasibility study.
Attachment A – Inquiry Template

The above-subject company has applied for Registration as a Risk Retention Group (“RRG”) in the State of ________, to write __________ liability coverage to its members who are in the business of________________________. As you can appreciate, due to the provisions of the Liability Risk Retention Act of 1986 the (state) has limited authority to regulate RRGs and therefore to a large extent, the (state) relies on the RRGs’ domiciliary state to exercise general oversight and responsibility in the areas of licensing, solvency, rates and marketing. As part of our due diligence, we would appreciate any information your office can share with us regarding the company with respect to the following items, some of which may be satisfied by providing the Insurer Profile Summary:

1. Any significant concerns the State of [domicile] has regarding the company.
2. Any issues that may have a significant impact on the company going forward.
3. Any issues regarding the number of consumer complaints the company has in [state of domicile] or other states that may have been brought to your attention.
4. Comments and/or concerns about the financial condition of the company.
5. Comments or concerns about the management or performance of the company.
6. Results of any financial analysis or market conduct findings.
7. The company’s priority level within the Financial Analysis Division.
8. Any conditions imposed by your Department upon the company’s license.
9. Any significant non-compliance issues with the State of [domicile] regulatory authority including filing requirements and corrective action, if any.
10. Comments regarding company’s application for registration in the State of [state registering].
11. Approval from State of [domicile] for the RRG to register in the State of [state registering].
RISK RETENTION GROUP FORM

Appendix D

The following is the uniform registration form adopted in 1994 by the NAIC. This registration form is being filed by a Risk Retention Group (RRG) operating in accordance with the Federal Liability Risk Retention Act of 1986 (LRRA), 15 USC 3901-3906, chartered or licensed to write only liability insurance by the state of domicile listed in #1c. The registration form and supplemental documents are provided in accordance with §3902(d)(2) of the LRRA. Under §3902 of the LRRA, with the exception of the domiciliary state, RRGs are exempt from all state laws, rules, regulations, or orders that would make unlawful, or would regulate, directly or indirectly, the operation of an RRG, except that any state may require an RRG to comply with those laws specified in the LRRA. The domiciliary state regulates the formation and operation of the RRG.

Part A

STATE OF [Insert State in which the Risk Retention Group intends to do business]

DEPARTMENT OF INSURANCE

RISK RETENTION GROUP - NOTICE AND REGISTRATION
(All Information Should Be Typed)

1a. Name of the Risk Retention Group as it appears on its Certificate of Authority:

1b. FEIN

1c. State of domicile and date license/chartered.

1d. Primary contact person for state of domicile to whom questions regarding the Risk Retention Group should be addressed (include name, phone number and email address):

2. List any other name(s) by which the Risk Retention Group is known or may be doing business in this State or any other state:

3. The Risk Retention Group is chartered and licensed as a liability insurance company under the laws of the State of _________ and is authorized to engage in the following lines and/or classifications of liability insurance under the laws of its chartering State:
RISK RETENTION GROUP FORM

4. Give a general description of the liability insurance coverages the Risk Retention Group plans to write in the state it is registering to do business in.

5. Has the Risk Retention Group’s domiciliary state approved the Risk Retention Group to register and expand its writings in the state it is seeking to become registered in?

6. Ownership of the Risk Retention Group consists of one or the other of the following (check one):
   a) ______ the owners of the Group are the only persons who comprise the membership of the Group and the only ones who are provided insurance by the Group.
   b) ______ the sole owner of the Group is:

   (Name and Address of Organization)

   an organization which has as its members only persons who comprise the membership of the Group and which has as its owners only persons who comprise the membership of the Group and who are provided insurance by the Group.

7. The Risk Retention Group members are engaged in businesses or activities similar or related with respect to the liability to which such members are exposed by virtue of any related, similar or common business, trade, product, services (including professional services), premises or operations. Give a general description of businesses or activities engaged in by the Group’s members:

8. (a) List the name, position with the Risk Retention Group, SSI, and address of each officer and director of the Risk Retention Group: (Attach additional pages, if necessary.)
RISK RETENTION GROUP FORM

(b) Identify and give the telephone number of the officer or director of the Risk Retention Group who can be contacted for any information regarding the management of the insurance activities of the Group:

Name: ___________________________ Telephone Number: ___________________________

9. List the name, address, (postal and email), telephone number and Federal Employer Identification Number (FEIN) of the company responsible for managing the insurance operations of the Risk Retention Group and the company contact person’s name and telephone number at the company. (If none, answer none.)

Contact Person: ___________________________ Telephone # ___________________________

10. List the name(s), NRI#/ SSN(s) and address(es) of the licensed insurance agent(s) or broker(s) who will be responsible for marketing the Risk Retention Group’s insurance policies in the State of [Insert State in which the Risk Retention Group intends to do business] and the current licensing status in the State in which the Risk Retention Group intends to do business where they are licensed. (If none, answer none. Attach additional pages, if necessary.)

<table>
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<tr>
<th>Name</th>
<th>SSN/NR#</th>
<th>Address</th>
<th>License Status in State</th>
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<td>Register/Non-Register</td>
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11. In accordance with the Liability Risk Retention Act, we verify the following:

A. The Risk Retention Group is a corporation or other limited liability association whose primary activity consists of assuming and spreading all, or any portion, of the liability exposure of its members.

B. The Risk Retention Group is organized for the primary purpose of conducting the activity described under Item "A" above.

C. The Risk Retention Group does not exclude any person from membership in the Group solely to provide for members of the Group a competitive advantage over such a person.

D. The activities of the Risk Retention Group do not include the provision of insurance other than.

Commented (Meyer, Becky): Items a-d are not new, but were previously items 3, 4, 6 and 9 on the original form.
RISK RETENTION GROUP FORM

1. [ ] liability insurance for assuming and spreading all or any portion of the similar or related liability exposure of its Group members; and

2. [ ] reinsurance with respect to the similar or related liability exposure of another Risk Retention Group (or a member of such other Risk Retention Group) engaged in business or activities so that such Risk Retention Group or member meets the requirement under Item 87 above for membership in the Risk Retention Group which provides such reinsurance.

12. In accordance with the LLRA, if the State in which the Risk Retention Group is registering requires compliance with the following laws and requirements, the RRG agrees to the following:

A. The Risk Retention Group will comply with the unfair claim settlement practices laws of this State.

B. [ ] The Risk Retention Group will pay, on a non-discriminatory basis, applicable premium and other taxes which are levied on admitted insurers, surplus line insurers, brokers or policyholders, such Group under the laws of this State.

C. [ ] The Risk Retention Group will participate, on a nondiscriminatory basis, in any mechanism established or authorized under the law of the State for the equitable apportionment among insurers of liability insurance losses and expenses incurred on policies written through such mechanism.

D. [ ] The Risk Retention Group will designate the Insurance Commissioner [Director, Superintendent] of this State as being its agent solely for the purpose of receiving service of legal documents or process by executing Part B of this form, attached hereto.

E. [ ] The Risk Retention Group will submit to examination by the Insurance Commissioner [Director, Superintendent] of this State to determine the Group’s financial condition, if:

   i. the Insurance Commissioner [Director, Superintendent] of the Group’s chartering State has not begun or has refused to initiate an examination of the Group; and

   ii. any such examination by the Insurance Commissioner [Director, Superintendent] is to be coordinated to avoid unjustified duplication and unjustified repetition.

F. [ ] The Risk Retention Group will comply with a lawful order issued in a delinquency proceeding commenced by the Insurance Commissioner [Director, Superintendent] of this State upon a finding of financial impairment, or in a voluntary dissolution proceeding.

G. [ ] The Risk Retention Group will comply with the laws of this State concerning deceptive, false or fraudulent acts or practices, including any injunctions regarding such conduct obtained from a court of competent jurisdiction.

H. [ ] The Risk Retention Group will comply with an injunction issued by a court of competent jurisdiction upon petition by the Insurance Commissioner [Director, Superintendent] of this State alleging that the Group is in hazardous financial condition or is financially impaired.

I. [ ] The Risk Retention Group will provide the following notice, in at least 10-point type, in any insurance policy issued by the Group:
RISK RETENTION GROUP FORM

Notice

This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your State. State insurance insolvency guaranty funds are not available for your risk retention group.

12.13. In accordance with the LRRA, the Risk Retention Group affirms that it has submitted to the Insurance Commissioner [Director, Superintendent] as part of this filing and before it has offered any insurance in this State, a copy of the plan of operation or feasibility study which it has filed with the Insurance Commissioner [Director, Superintendent] of its chartering State/state of domicile. This plan or study includes the name of the State in which the Group is chartered, as well as the Group’s principal place of business, and such plan of operation or feasibility study further includes the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of liability insurance the Group intends to offer. The Group has also will promptly submitted to the Insurance Commissioner [Director, Superintendent] of this State any revisions of such plan of operation or feasibility study to reflect any changes to the plan if the Group intends to offer any additional lines of liability insurance or any change in the designation of the State in which it is chartered.

12.14. The Risk Retention Group will submit a copy of its annual financial statement submitted to its chartering state, to the Insurance Commissioner [Director, Superintendent] of this State, by March 1 of each year. The annual financial statement will be certified by an independent public accountant and include a statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries or a qualified loss reserve specialist. The annual financial statement certification and statement of opinion on loss and loss adjustment expense reserves will be submitted to the Insurance Commissioner [Director, Superintendent] of this State by the date it is required to be submitted to its chartering state.

12.15. The Risk Retention Group will not solicit or sell insurance to any person in this State who is not eligible for membership in the Group.

12.16. The Risk Retention Group will not solicit or sell insurance in this State, or otherwise operate in this State, if the Group is in hazardous financial condition or is financially impaired.

12.17. The Risk Retention Group will not issue any insurance policy in this State which provides coverage prohibited generally by statute of this State or declared unlawful by the highest court of this State whose law applies to such policy.

17. The Risk Retention Group has submitted a registration fee of $________________, if applicable, payable to the Insurance Commissioner [Director, Superintendent] of this State.

18. To the extent required by the LRRA, the Risk Retention Group will comply with all other applicable state laws.

19. The Risk Retention Group will notify the Insurance Commissioner [Director, Superintendent] as to any subsequent changes in any of the items included in this form.

The undersigned hereby swear and affirm that the foregoing statements and information regarding their principal, the ____________________________ (Name of Risk Retention Group) are true and correct.

President of the Risk Retention Group
RISK RETENTION GROUP FORM

Secretary of the Risk Retention Group

State of ________________ in:

County of ________________

Sworn before me this __________ day of ________________, 20__

______________________, Notary Public. My Commission Expires: ________________
RISK RETENTION GROUP FORM

Part B

APPOINTMENT OF ATTORNEY TO ACCEPT SERVICE AND DESIGNATION

The ______________________________ (“the Group”), a risk retention group which is chartered and licensed as a liability insurance company under the laws of the State of __________________, having notified the Insurance Commissioner [Director, Superintendent] of the State of __________________ of its intention to do business in this State as a risk retention group pursuant to the federal Liability Risk Retention Act of 1986, hereby appoints the Insurance Commissioner [Director, Superintendent] of the State of __________________, any successor in office, and any authorized deputy its true and lawful attorney, in and for the State of __________________, upon whom all legal documents or process in any proceeding against it may be served. Such service of legal documents or process shall be of the same legal force and validity as if served personally upon the Group.

The Group designates:

________________________________________

(Name)

________________________________________

(Address)

________________________________________

(City, Town or Village)

________________________________________

(State and ZIP Code)

as its officer, agent or other person to whom shall be forwarded all legal documents or process served upon the Insurance Commissioner [Director, Superintendent] of the State of __________________, any successors in office, or any authorized deputy, for the Group. This designation shall continue in full force and effect until superseded by a new written designation filed with the Insurance Commissioner [Director, Superintendent].
RISK RETENTION GROUP FORM

This appointment and designation is made pursuant to a resolution by the Group’s governing body authorizing it, and a certified copy of the resolution is attached hereto. This appointment shall be binding upon any person or corporation which as successor acquires the Group’s assets or assumes its liabilities, by merger or consolidation or otherwise.

This appointment may be withdrawn only upon a written notice of termination and, in any event, shall not be terminated by the Group or its successor so long as any contracts or liabilities or duties arising out of contracts entered into by the Group while it was doing business in this State are in effect.

IN WITNESS OF THIS APPOINTMENT AND DESIGNATION, the Group, in accordance with the resolution of its Board of Directors duly passed on ________________ 20__, has affixed its corporate seal, and caused the same to be subscribed and attested in its name by its President and Secretary, at the City of ________________ in the State of ________________ on ________________, 20__. ________________

(Name of Risk Retention Group)

By: ___________________________ President

______________________________ Secretary

State of ________________)

) ss:

County of ________________ )

Sworn before me this ___ day of ________________, 20__

______________________________ Notary Public  My Commission Expires: ________________

Comments on the Uniform Registration Form for RRGs

Item 6 (a) and (b): How is “persons” defined for the purposes of this form. Since RRGs may only insure commercial insurance, does this word encompass both individual professionals and business entities?

Item 19: Is the Insurance Commissioner in Item 19 the domicile or non-domicile Commissioner? If non-domicile, does that mean that an RRG must report every change in the board of directors to every non-domicile regulator? If so, how soon after the change?

Comments on the Q&A

In the paragraph entitled Registration Timeline it states that, “The non-domestic state cannot reject a complete registration that complies with state and federal laws.” Can you provide examples of state laws that might be used to deny the Registration of an RRG?

Please let me know if you have any questions.

Cordially,

Pamela

Pamela E. Davis
Founder, President and CEO
831-621-6018 | Direct
800-359-6422 | Office

Nonprofits Insurance Alliance
A head for insurance. A heart for nonprofits.
insurancefornonprofits.org
September 6, 2019

Via email: bmeyer@naic.org

Ms. Becky Meyer, CPA
Senior Accreditation Manager
National Association of Insurance Commissioners
1100 Walnut, Suite 1500
Kansas City, MO  64106

Re: Comments on Risk Retention Group (E) Task Force on RRG Notice and Registration Form; Frequently Asked Questions and Best Practices

Dear Ms. Meyer:

The Vermont Captive Insurance Association (VCIA) and its 450 member organizations appreciate the opportunity to provide comments on these three documents relating to risk retention groups (RRGs). The State of Vermont is the domicile of approximately 40% of the roughly 220 active RRGs operating in the United States, and most of these are members of VCIA.

We greatly appreciate the hard work of the RRG (E) Task Force to tackle some of the issues raised by impermissible requirements imposed by non-domiciliary states on RRGs. We believe that many of the problems encountered by RRGs in non-domiciliary states result from efforts to impose requirements, particularly registration requirements and fees, not permitted by the Liability Risk Retention Act (LRRA).

VCIA commends the Task Force for its efforts to clarify application of the LRRA and educate state regulators and the RRG community on authority given by the LRRA to domiciliary states and to non-domiciliary states. The Task Force has done an excellent job addressing and clarifying these issues. The revised NAIC Uniform RRG Notice and Registration Form, Frequently Asked Questions, and Best Practices are comprehensive and straightforward, and provide clarity to the most serious registration issues raised by RRGs.
VCIA comment letter re: NAIC RRG TF Exposure Drafts – September 6, 2019

VCIA has four comments on the draft registration form:

1. We recommend the second to last sentence of the introductory paragraph on page 1 be rephrased as follows: “Under §3902 of the LRRA, with the exception of the domiciliary state, RRGs are exempt from all state laws, rules, regulations, or orders that would make unlawful, or would regulate, directly or indirectly, the operation of an RRG, except that any state may require an RRG to comply with those specific state laws not exempted by §3902 of the LRRA.” We believe this revision is important to clarify that the right of non-domiciliary states to regulate RRGs is limited to specific state laws.

2. The Task Force may want to consider in Item 1 requesting the address and NAIC Company Code of the organization. It may also be more appropriate to request the organization’s FEIN in Item 1 rather than requiring in Item 9 the FEIN of the manager.

3. In Item 6(a), with respect to members and insureds, we recommend that the language in the form be the same as in the LRRA because the language in the proposed form appears to be more restrictive than that in the LRRA. [See Section 3901 (a)(4)(E)(i)].

4. We recommend Item 7 be deleted and a new Item 15 created as follows: “In accordance with the LRRA, and as evidenced by the domiciliary state’s action in approving licensure of the Risk Retention Group, the RRG affirms its members are engaged in businesses or activities similar or related with respect to the liability to which such members are exposed by virtue of any related, similar or common business (whether profit or nonprofit), trade, product, services (including professional services), premises or operations.” Presently, Item 7 of the registration form requires RRG registrants to affirmatively prove to non-domiciliary states that the RRG is compliant with this LRRA requirement by requiring the RRG to include a description of the businesses or activities engaged in by the RRG’s members. Including this affirmative requirement in the registration form is inconsistent with the LRRA. The LRRA is very clear that the domicile state is solely empowered to regulate the formation and operation of RRGs. To form and license an RRG, the domicile state must review the RRG application to determine whether the applicant meets the federal law requirements for forming an RRG. One of the key requirements is a showing that the applicant’s members are sufficiently similar or related with respect to their liability exposures by virtue of any related, similar or common business, etc. Without satisfying this LRRA requirement, the RRG cannot be licensed in its domicile state. The revision recommended above will help clarify that the membership’s compliance with the LRRA is confirmed by the domicile state as part of formation and licensure and that this is not a determination subject to non-domiciliary state regulation.

5. Item 17 appears to expand Section 3905(c) of the LRRA, which provides: “Prohibited insurance policy coverage. The terms of any insurance policy provided by a risk retention group . . . shall not provide or be construed to provide insurance policy coverage prohibited generally by the state statute or declared unlawful by the highest court of the state whose law applies to such policy.”
VCIA comment letter re: NAIC RRG TF Exposure Drafts – September 6, 2019

As drafted, Item 17 states that the law of the state in which the RRG is registering applies to the policy and that RRGs are barred from writing coverages that have been declared unlawful by such state’s highest court. This prohibition is much broader than what is contained in the LRRA. VCIA recommends that the language of Item 17 track Section 3905(c) more closely; i.e., “[t]he risk retention group will not issue any policy in the state which provides coverage prohibited generally by statute or declared unlawful by the highest court of the state whose law applies to the policy.”

In addition, VCIA has one comment on the draft Best Practices document:

(1) We recommend the second and third sentences of the section titled “Registration Timeline” be revised as the current language could be interpreted as implying that non-domiciliary states have broader authority over the registration process than that granted under the LRRA. Our suggested revision is as follows: “The non-domestic state cannot reject a complete registration that complies with those laws of the non-domestic state that are not pre-empted under the LRRA. In the event a non-domestic state has concerns with an RRG registration, such concerns should be raised with the domiciliary state regulator, who has the authority to regulate the formation and operation of an RRG.”

Thank you again for the opportunity to submit these comments.

Sincerely,

Richard Smith
President

cc: Sandra Bigglestone
Vermont Dept. of Financial Regulation
I think the three exposed RRG documents are well drafted and I support them. I have been managing RRGs since 1990 and have struggled in dealing with non-domiciliary states over the years. I think these documents would help clarify roles and responsibilities.

I did notice a couple of typos in the Best Practice document:

On page 2 in the Registration Timeline section

- A non-domiciliary state should review the registration form for completeness within 10 business days of its receipt of the form and notify the Risk Retention Group of the need to submit any missing elements.

On page 2 in the Domiciliary State Responsibilities section

When a domiciliary state identifies an RRG as troubled or potentially troubled, the State insurance regulator should make efforts to communicate proactively with other state insurance regulators in which the RRG is registered (consistent with the Troubled Insurance Company Handbook). Although the domiciliary regulator is responsible for taking actions involving their domiciliary RRGs, awareness by a non-domiciliary state may help them to proactively do what they can to protect their residents and respond to policyholder complaints or concerns directed to the them.

Also in the plan of operations/feasibility section I do question the need to provide copies of biographical affidavits to the non-domiciliary states. There are a couple of states that take this to heart and request that we send them updated bios whenever a new director is elected. In this day and age of identity theft and state level data theft/data ransom events (even though the bio form in VT no longer asks for SSN), directors expect us to keep their information confidential. What I typically do is tell the non-domiciliary state that the bio has been filed with Vermont DFR and they can contact Vermont for access to the bio if need be. So far that has been successful.

Sincerely,

Kate Boucher

Kathryn M. Boucher, CPA, ARM-E, ACI, FCI
Director of Captive Management
Premier Insurance Management Services - a Premier, Inc. company
American Excess Insurance Exchange, Risk Retention Group
150 Dorset St., PMB #238
S. Burlington, VT 05403
802-863-4400 (T) | 802-343-2015 (M) | 704-733-2229 (F)
Kate_boucher@premierinc.com
For information on AEIX: www.aeixrrg.com
## Risk Retention Groups: Frequently Asked Questions

1. **What publications are available to help understand RRGs and state’s authority?**
   The following key documents can be found as Appendices in the Handbook:
   - Appendix A: Federal Liability Risk Retention Act
   - Appendix B: NAIC Model Risk Retention Act (#705)
   - Appendix D: NAIC Uniform Risk Retention Group Registration Form

   b. Accreditation Program Manual
      - Part A: Laws and Regulations – 18 accreditation standards that outline the laws required specifically for states that charter RRGs
      - Part B: Regulatory Practices and Procedures - RRG specific procedures for financial analysis and procedures when a disclaimer of affiliation is filed
      - Interlineations – Reinsurance guidelines for RRG’s licensed as captive insurers

2. **How does the LRRA address regulation of RRGs?**
   a. Under §3902 of the LRRA, with the exception of the domiciliary state, RRGs are exempt from all state laws, rules, regulations, or orders that would make unlawful, or would regulate, directly or indirectly, the formation and operation of an RRG, except as provided in the LRRA. Only the domiciliary state may regulate the formation and operation of an RRG.
   b. The implementation of the LRRA was intended to allow organizations to come together in the creation of a risk-bearing, risk-sharing entity (the RRG) to offer its members, who are the beneficiaries of the insurance provided, liability coverage in an expedient and economical manner.

3. **How does RRG registration in a non-domiciliary state differ from the licensing process for a traditional insurer?**
   a. There are no solvency requirements imposed by the non-domiciliary state upon an RRG seeking to register in the State. Regulation as to formation and operation, including the imposition of solvency requirements, are imposed by the domestic state.
   b. RRGs are subject to a substantially similar application and licensing process imposed by the domestic state, or state of domicile. For registration to conduct business in non-domestic states, RRGs are not subject to the standard application and licensing process (NAIC UCAA Instructions or NAIC Company Licensing Handbook).
   c. The registration process is intended to be simpler than the licensing process for other types of insurers. Registration is focused on information gathering rather than decision making. Registration is not the same as admission or company licensing; it is not intended to provide non-domiciliary states with any regulatory powers over RRGs other than that provided in the LRRA. It is not within a state’s authority to use the processing of a registration to bar RRGs seeking to lawfully operate in a state, nor can a state declare a “moratorium” on the filing of RRG registrations. Once an RRG provides a complete NAIC Uniform Risk Retention Group Registration Form they may begin operating in the state and approval from the non-domestic state is not required. However, best practice is for the non-domiciliary state to notify the RRG following their initial review of the NAIC Uniform Risk Retention Group Registration Form that either the form received was complete, or that the form was missing information. The non-domiciliary state may also reach out to the domiciliary state for more information and is encouraged to do so. (see the Best Practices—Risk Retention Groups document)

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[Commented [MB1]: Pennsylvania: Consider defining what constitutes a “complete” registration form as reference throughout this document.]()  
[Commented [MB2R1]: Drafting group recommends replacing this sentence with:  
"Once an RRG (that it is in compliance with the definition of an RRG as stated in the LRRA) provides the NAIC Uniform Risk Retention Group Registration Form with all required information entered and attached, they may begin operating in the state. Approval from the non-domestic regulator is not required."
]  
[Commented [OS(3): DC agrees with the proposed change with the following highlighted modification:  
"Once an RRG (that it is in compliance with the definition of an RRG as stated in the LRRA) provides the NAIC Uniform Risk Retention Group Registration Form with all required information entered and attached, i.e., a "complete form", they may begin operating in the state. Approval from the non-domestic regulator is not required." ]()}
d. The LRRA references two documents that must be provided to the non-domestic state – a plan of operation OR a feasibility study. There is also additional information such as contact information of the RRG, chartering state information, and the lines of liability insurance business that are written by the RRG seeking to register. All this information is provided in the completed NAIC Uniform Risk Retention Group Registration Form.
e. For an RRG that is compliant with the LRRA and the regulation of their domestic state (including authorization to register to do business in another state), the non-domestic state cannot deny the RRG’s registration. If there is uncertainty, the domestic state should be contacted.

4. What are the steps for the non-domiciliary insurance regulator to take in the registration process for an RRG?
   a. Review the NAIC Uniform Risk Retention Group Registration Form and verify the RRG has provided a complete form.
   b. Once a complete form is received, the RRG is authorized to write in the state where it registers. The following best practices may also be considered during the registration process; however, they do not impact the registration status of the RRG:
      a. Review the information provided with the registration form for reasonableness.
      b. Reach out to the domestic state insurance regulator for additional information or concerns. The best practices Inquiry Template can be used and modified as appropriate.
      c. Notify the RRG once the registration form is deemed complete. They are now registered in the state.

5. What should a non-domiciliary state do if they have concerns about a complete RRG registration form received?
   a. If the RRG provided a complete form, but there are concerns about the lines of business or financial solvency, or some other matter, the non-domiciliary state should first communicate with the domestic state. If necessary, the non-domiciliary state should consider pursuing the remedies in LRRA §3902(a)(1) also discussed in FAQ #12.

6. When can a non-domiciliary state reject an RRG registration?
   a. A non-domestic state cannot reject the registration of an RRG that submits a complete registration form. Instead the non-domestic state should communicate concerns to the domestic state or refer to the remedies in LRRA §3902(a)(1) also discussed in FAQ #12.

7. Can an RRG registration be delayed if a financial statement filing and/or audit is not yet available at the time of application or registration?
   a. No, an RRG can register prior to filing of an annual financial statement audit and a statement of opinion on loss and loss adjustment expense reserves with its domiciliary state.
   b. Once these initial filings are made, they are available on I-Site for review.
   c. If questions arise due to lack of this information, the non-domiciliary state should reach out to the domestic state to address its concerns.

8. What items does the LRRA require an RRG provide to the non-domiciliary state in conjunction with the registration?
   a. It is recommended that states adopt the NAIC Uniform Risk Retention Group Registration Form, which has been developed by the NAIC in order to facilitate uniformity. Such forms are included in the Risk Retention and Purchasing Group Handbook.
   b. Consistent with LRRA, each RRG shall submit a copy of the plan of operation OR a feasibility study before it may offer insurance in the state.
Note: If the RRG is newly formed, the feasibility study provides relevant information on rates and expected losses. If the RRG is expanding the states in which it operates and has been writing business for an extended period, the feasibility study becomes less relevant and a current business plan, along with documents a non-domiciliary state can easily obtain from the NAIC’s I-Site (Annual Statement(s), RBC Report(s), MD&A(s), Audited Financial Statement(s), Actuarial Certification(s)) provide pertinent information.

c. If the plan of operation or feasibility study does not appear to be updated, a non-domiciliary state should contact the domiciliary state regulator to obtain more information, including the IPS, and may request revised documents from the RRG if original submission is found to be inaccurate or unclear.

9. What should be included in a plan of operation?
   a. The LRRA states that an RRG’s plan of operation or feasibility study includes information on liability insurance coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer.
   b. In addition, the Best Practices – Risk Retention Groups document offers a list of other suggested items for inclusion in a plan of operations or feasibility study.

10. Where can the non-domiciliary state get information about an RRG’s directors and officers?
   a. Directors and officers are listed in the annual and quarterly financial statements available from the NAIC’s I-Site. All changes in Directors and Officers, with accompanying biographical affidavit(s), are submitted to and reviewed by the domiciliary state. In order to eliminate the need for redundant regulatory functions and unnecessary transfer of sensitive personal identifiable information, a non-domiciliary state should rely on the domiciliary state’s review, which includes background checks on directors, officers and key management personnel of an RRG to ensure the competency, character and integrity of the insurer’s management.

10.11. What does the LRRA say about renewals for RRGs in non-domiciliary states?
   a. The LRRA is silent; therefore, initial registration is sufficient unless the operation of an RRG is affected by runoff, rehabilitation or liquidation processes. RRGs file changes in business plans, financial filings, etc. on an ongoing basis with non-domiciliary states; therefore, non-domiciliary states should consider developing a process for communicating with the domiciliary state (such as the example in the Best Practices – Risk Retention Groups document) and consider an annual request for Certificate of Good Standing/Compliance from the domiciliary state.
   b. Section 3902(d)(3) of the LRRA requires that an RRG submit to the insurance commissioner of each state in which it is doing business a copy of the annual financial statement that it files with the RRG’s domiciliary state. Non-domiciliary states should be aware that in many states where RRGs are licensed/chartered as captive insurers in conformity with NAIC accreditation standards, RRGs are permitted to use Generally Accepted Accounting Principles rather than Statutory Accounting Principles to report on their financial conditions, with required disclosure and reconciliation in footnote one. (see also Section II, page 3 of the Risk Retention and Purchasing Group Handbook)
   c. The filing is an ongoing requirement that must be complied with on an annual basis and is generally due to non-domiciliary states upon filing with the domiciliary state. The annual filing requirements for RRGs include an unaudited filing using the official Annual Statement Blank (property/casualty), an audited financial statement certified by an independent public accountant and a statement of opinion on loss and loss adjustment expense reserves made by an actuary or loss reserve specialist who is qualified in accordance with the criteria established by the NAIC in the annual statement instructions. See the Commented (MB4): Drafting group recommends adding this FAQ in response to a question on the Best Practices document related to biographical affidavits for all BOD members.
above-mentioned NAIC Accreditation Program Manual, Part A: Laws and Regulations for annual filing requirements for RRGs.

11.12. What does the LRRA say about taxes and fees charged by a non-domiciliary RRG?
   a. LRRA §3902(a)(1)(B) says any state may require an RRG to:
      a. Pay on a nondiscriminatory basis, applicable premium and other taxes, which are levied on admitted insurers and surplus lines insurers, brokers, or policyholders under the laws of the state.
   b. Fees are not directly addressed in the LRRA and as such, there has been disagreement about the legality of both initial and renewal registration fees and compliance with LRRA. The authority on this topic is therefore federal case law. For example, there is one case (Nat’l Risk Retention Assoc. v. Brown, 927 F. Supp. 195 (M.D. La. 1996)) in which the court ruled that certain state requirements, including the payment of an annual renewal registration fee, were preempted by the LRRA. See the Risk Retention and Purchasing Group Handbook for additional detail on relevant cases and other fee considerations.

12.13. What remedies are available to a non-domiciliary state if violations of applicable State laws occur?
   a. Secure clarification from the RRG’s state of domicile;
   b. Call for an examination of the RRG by the state of domicile [15 U.S.C. §3902(a)(1)(E)];

13.14. Is there a list of domestic and non-domestic state contact persons in state insurance regulator offices who are knowledgeable about RRGs?
   a. Yes. Appendix C of the NAIC Risk Retention and Purchasing Group Handbook includes a list of state insurance department contact persons. The most recent list is maintained as a separate document on the NAIC’s publication webpage alongside a complete copy of the Risk Retention and Purchasing Group Handbook. (Link to Handbook: https://www.naic.org/documents/prod_serv_legal_ris_bb.pdf)
Best Practices – Risk Retention Groups

The domiciliary state maintains authority and has responsibility to regulate the formation and operation of a Risk Retention Group (RRG). Therefore, when concerns arise in a non-domiciliary state about a RRG, the best resource is the domiciliary state. This includes concerns about solvency and capital levels, financial condition, or other non-compliance of an RRG as well as operational questions and concerns that should be directed to the domiciliary state.

States are encouraged to examine their RRG laws to make certain that they are consistent with (1) the LRRA and (2) the NAIC Model Risk Retention Act.

Questions/Concerns from Non-domiciliary State

Upon initial registration of an RRG in a non-domiciliary state, it is not uncommon for questions to arise that are best directed to the domiciliary state. Attachment A outlines a sample Inquiry Template that can be used to request this information. The template may be customized as deemed appropriate by the non-domiciliary state. Domiciliary states should respond in a timely manner to such requests.

Questions about operations and financial solvency that arise following initial registration should also be addressed to the domiciliary state.

If significant concerns still exist after communication with the domiciliary state and the non-domiciliary state concludes that the RRG is not compliant with any of the specific procedures set forth in the LRRA, the following steps may be undertaken:

a. Refer to your own state RRG statute to ensure compliance of your prospective action;

b. Provide written notice of any non-compliance directly to the RRG;

c. Submit a demand for examination of the RRG to the domiciliary regulator, as provided by the LRRA [15 U.S.C. 53902(a)(1)(F)];

d. Institute suit in a court of competent jurisdiction.

A non-domiciliary state may request the following from the domiciliary state and similarly, the domiciliary state should be prepared to provide the following to the non-domiciliary state:

e. Insurer Profile Summary (IPS)

f. Inquire about the extent of biographical affidavit review and results of background checks

g. Most recent examination report (may be obtained from I-Site)

h. Amendments to the RRG’s business plan or feasibility study

i. Verification of domiciliary state approval to expand into non-domiciliary state

Alternatively, Attachment A – Inquiry Template may be used for this request with modifications as necessary.

Registration Timeline

The registration process for RRGs should be shorter than the licensing process for other types of insurers as the RRG is responsible only for a complete registration form* and the related attachments. The non-domiciliary
A non-domiciliary state should review the registration form to ensure all required information is entered on the form within 10 business days of its receipt of the form and notify the Risk Retention Group of the need to submit any missing elements.

Following receipt of a complete registration application, a non-domiciliary state should notify the RRG within 30 days that its registration is confirmed.

The domiciliary state should respond to inquiries from a non-domiciliary state in a prompt manner, typically no later than 10 business days after receiving the inquiry.


Domiciliary State Responsibilities

When a domiciliary state identifies an RRG as troubled or potentially troubled, the State insurance regulator should make efforts to communicate proactively with other state insurance regulators in which the RRG is registered (consistent with the Troubled Insurance Company Handbook). Although the domiciliary regulator is responsible for taking actions involving their domiciliary RRGs, awareness by a non-domiciliary state may help them to proactively do what they can to protect their residents and respond to policyholder complaints or concerns directed to them.

General Licensing Guidance

Domiciliary states should ensure the RRG’s application for licensing, which includes the plan of operation and feasibility study, includes the following, at a minimum:

- information sufficient to verify that its members are engaged in businesses or activities similar or related with respect to the liability to which such members are exposed by virtue of any related, similar or common business, trade, product, services, premises or operations;
- information sufficient to verify that the liability insurance coverage to be provided by the Risk Retention Group will only cover the members of the Risk Retention Group;
- for each state in which it intends to operate, information regarding the liability insurance coverages, deductibles, coverage limits, rates and/or rating/underwriting methodology for each line of commercial liability insurance the group intends to offer;
- historical and expected loss experience of proposed members and national experience of similar exposures to the extent that this experience is reasonably available;
- appropriate opinions/feasibility work by a qualified independent casualty actuary, including a determination of minimum premium participation levels required to commence operation and to prevent a hazardous financial condition;
- pro forma financial statements and projections, including assumptions, on an expected and adverse basis;
- identification of Board of Directors, including independence determination;
- biographical affidavits for all BOD members;
- evidence of compliance with corporate governance standards, including draft policies;

*Commented [MB1]: Premier: Will listing this here prompt a non-domiciliary state to also ask for it when this is something handled by the domestic state? Limiting the distribution of confidential information (such as SSN#s) can help ensure this information is not subject to a security breach and remains confidential.

*Commented [MB2R1]: Drafting Group recommends adding the following FAQ to the FAQ document.

FAQ: Where can the non-domiciliary state get information about an RRG’s directors and officers?

*Directors and officers are listed in the annual and quarterly financial statements available from the NAIC’s I-Site. All changes in Directors and Officers, with accompanying biographical affidavit(s), are submitted to and reviewed by the domiciliary state. In order to eliminate the need for redundant regulatory functions and unnecessary transfer of sensitive personal identifiable information, a non-domiciliary state should rely on the domiciliary state’s review, which includes background checks on directors, officers and key management personnel of an RRG to ensure the competency, character and integrity of the insurer’s management.
- underwriting and claim procedures;
- marketing methods and materials if available;
- draft insurance policies;
- names of reinsurers and reinsurance agreements, if available;
- investment policies;
- identification of each state in which the RRG intends to write business/register;
- identification of service providers, including fee structure and relationships to members; and
- subsequent material revisions to the plan of operation or feasibility study.
The above-subject company has applied for Registration as a Risk Retention Group ("RRG") in the State of ________ to write ____________ liability coverage to its members who are in the business of________________________________. As you can appreciate, due to the provisions of the Liability Risk Retention Act of 1986 the (state) has limited authority to regulate RRGs and therefore to a large extent, the (state) relies on the RRGs’ domiciliary state to exercise general oversight and responsibility in the areas of licensing, solvency, rates and marketing. As part of our due diligence, we would appreciate any information your office can share with us regarding the company with respect to the following items, some of which may be satisfied by providing the Insurer Profile Summary:

1. Any significant concerns the State of [domicile] has regarding the company.
2. Any issues that may have a significant impact on the company going forward.
3. Any issues regarding the number of consumer complaints the company has in [state of domicile] or other states that may have been brought to your attention.
4. Comments and/or concerns about the financial condition of the company.
5. Comments and/or concerns about the management or performance of the company.
6. Results of any financial analysis and/or market conduct findings.
7. The company’s priority level within the Financial Analysis Division.
8. Any conditions imposed by your Department upon the company’s license.
9. Any significant non-compliance issues with the State of [domicile] regulatory authority including filing requirements and corrective action, if any.
10. Comments regarding the company’s application for registration in the State of [state registering].
11. Approval from State of [domicile] for the RRG to register in the State of [state registering].
MEMORANDUM

TO: Property and Casualty Insurance (C) Committee
FROM: Risk Retention Group (E) Task Force
DATE: December 7, 2019
RE: Revisions to the NAIC Uniform Risk Retention Group Registration Form

The Risk Retention Group (E) Task Force has worked to address concerns from non-domiciliary states and industry regarding the registration process of risk retention groups (RRGs) in non-domiciliary states.

Concerns were initially raised by the National Risk Retention Association (NRRA) in a letter to the Task Force dated Nov. 19, 2018. The letter specifically cited extensive registration processing time and fees imposed. In discussions that followed, non-domiciliary states also raised concerns, including RRGs attempting to register that were in a hazardous financial condition or were not compliant with the federal Liability Risk Retention Act (LRRA).

To help address some of the concerns, the Task Force proposed updates to the NAIC Uniform Risk Retention Group Registration Form (Registration Form). The revisions were exposed for two public comment periods before finalizing the attached recommendation to the Property and Casualty Insurance (C) Committee.

The Task Force requests that the Committee consider adopting the proposed revisions to the Registration Form for inclusion in the Risk Retention and Purchasing Group Handbook.

If you have any questions regarding this referral, please contact NAIC staff (Becky Meyer, bmeyer@naic.org).
The following is the uniform registration form adopted in 1991 by the NAIC. This registration form is being filed by a Risk Retention Group (RRG) operating in accordance with the Federal Liability Risk Retention Act of 1986 (LRRA), 15 USC 3901-3906, chartered or licensed to write only liability insurance by the state of domicile listed in #1e. The registration form and supplemental documents are provided in accordance with §3902(d)(2) of the LRRA. Under §3902 of the LRRA, with the exception of the domiciliary state, RRGs are exempt from any state laws, rules, regulations, or orders that would make unlawful, or would regulate, directly or indirectly, the operation of an RRG, except that any state may require an RRG to comply with those laws specified in §3902(a)(1)(A),(B),(C) and (G) of the LRRA. The domiciliary state regulates the formation and operation of the RRG.

**Part A**

**STATE OF [Insert State in which the Risk Retention Group intends to do business]**

**DEPARTMENT OF INSURANCE**

**RISK RETENTION GROUP - NOTICE AND REGISTRATION**

(All Information Should Be Typed)

1a. Name of the Risk Retention Group as it appears on its Certificate of Authority:

1b. **Address of the Risk Retention Group:**

1c. **NAIC Company Code:**

1d. **FEIN:**

1e. **State of domicile, date licensed and date chartered:**

1f. **Primary contact person for state of domicile to whom questions regarding the Risk Retention Group should be addressed (include name, phone number and email address):**
2. List any other name(s) by which the Risk Retention Group is known or may be doing business in this State or any other state:


3. The Risk Retention Group is chartered and licensed as a liability insurance company under the laws of the State of ____________, and is authorized to engage in the following lines and/or classifications of liability insurance under the laws of its chartering State:


4. Give a general description of the liability insurance coverages the Risk Retention Group plans to write in the state it is registering to do business in.


5. Has the Risk Retention Group’s domiciliary state approved the Risk Retention Group to register and expand its writings in the state it is seeking to become registered in?


6. Ownership of the Risk Retention Group consists of one or the other of the following (check one):
   a) _____ the owners of the Group are only persons who comprise the membership of the Group and who are provided insurance by the Group.
   b) _____ the sole owner of the Group is: ____________________________
      
      (Name and Address of Organization)
      
      an organization which has as its members only persons who comprise the membership of the Group and which has as its owners only persons who comprise the membership of the Group and who are provided insurance by the Group.

7. The Risk Retention Group members are engaged in businesses or activities similar or related with respect to the liability to which such members are exposed by virtue of any related, similar or common business (whether profit or nonprofit), trade, product, services (including professional services), premises or operations. Give a general description of businesses or activities engaged in by the Group’s members:


Commented [MB1]: VCIA: We recommend Item 7 be deleted and a new Item 15 created as follows: "In accordance with the LRRA, and as evidenced by the domiciliary state’s action in approving licensure of the Risk Retention Group, the RRG affirms its members are engaged in businesses or activities similar or related with respect to the liability to which such members are exposed by virtue of any related, similar or common business (whether profit or nonprofit), trade, product, services (including professional services), premises or operations." *See explanation in comment letter.*

Commented [MB2R1]: Drafting group recommendation is to leave #7 here.
8. (a) List the name, position with the Risk Retention Group, SS#, and address of each officer and director of the Risk Retention Group: (Attach additional pages, if necessary.)

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
(b) Identify and give the telephone number of the officer or director of the Risk Retention Group who can be contacted for any information regarding the management of the insurance activities of the Group:

Name: ___________________________ Telephone Number: _______________________

9. List the name, address, and telephone number and Federal Employer Identification Number (FEIN) of the company responsible for managing the insurance operations of the Risk Retention Group and the company contact person’s name, telephone number and email, at the company: (If none, answer none.)

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

Contact Person: ___________________________ Telephone #: _______________________
Email: ___________________________

10. List the name(s), NPR#, SS#, and address(es) of the licensed insurance agent(s) or broker(s) who will be responsible for marketing the Risk Retention Group’s insurance policies in the State of [Insert State in which the Risk Retention Group intends to do business] and the current licensing status in the State of [Insert State in which the Risk Retention Group intends to do business] in which they are licensed: (If none, answer none. Attach additional pages, if necessary.)

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11. In accordance with the Liability Risk Retention Act, we verify the following:

A. The Risk Retention Group is a corporation or other limited liability association whose primary activity consists of assuming and spreading all, or any portion, of the liability exposure of its members.

B. The Risk Retention Group is organized for the primary purpose of conducting the activity described under Item “A” above.

C. The Risk Retention Group does not exclude any person from membership in the Group solely to provide for members of the Group a competitive advantage over such a person.

D. The activities of the Risk Retention Group do not include the provision of insurance other than:
   i. liability insurance for assuming and spreading all or any portion of the similar or related liability exposure of its Group members; and
   ii. reinsurance with respect to the similar or related liability exposure of another Risk Retention Group (or a member of such other Risk Retention Group) engaged in business or activities so that such Risk Retention Group or member meets the requirement under Item #7 above for membership in the Risk Retention Group which provides such reinsurance.

12. In accordance with the LRRA, if the State in which the Risk Retention Group is registering requires compliance with the following laws and requirements, the RRG agrees to the following:

A. The Risk Retention Group will comply with the unfair claim settlement practices laws of this State.

B. The Risk Retention Group will pay, on a non-discriminatory basis, applicable premium and other taxes which are levied on admitted insurers, surplus line insurers, brokers or policyholders, such Group under the laws of this State.

B.C. The Risk Retention Group will participate, on a nondiscriminatory basis, in any mechanism established or authorized under the law of the State for the equitable apportionment among insurers of liability insurance losses and expenses incurred on policies written through such mechanism.

C.D. The Risk Retention Group will designate the Insurance Commissioner [Director, Superintendent] of this State as its agent solely for the purpose of receiving service of legal documents or process by executing Part B of this form, attached hereto.

D.E. The Risk Retention Group will submit to examination by the Insurance Commissioner [Director, Superintendent] of this State to determine the Group’s financial condition, if:
   i. the Insurance Commissioner [Director, Superintendent] of the Group’s chartering State has not begun or has refused to initiate an examination of the Group; and
   ii. any such examination by the Insurance Commissioner [Director, Superintendent] shall be coordinated to avoid unjustified duplication and unjustified repetition.

E.F. The Risk Retention Group will comply with a lawful order issued in a delinquency

Commented [MB3]: Items a-d are not new, but were previously items #3,4,6 and 9 on the original form.
NAIC UNIFORM RISK RETENTION GROUP REGISTRATION FORM

proceeding commenced by the Insurance Commissioner [Director, Superintendent] of this State upon a finding of financial impairment, or in a voluntary dissolution proceeding.

E-G. The Risk Retention Group will comply with the laws of this State concerning deceptive, false or fraudulent acts or practices, including any injunctions regarding such conduct obtained from a court of competent jurisdiction.

G-H. The Risk Retention Group will comply with an injunction issued by a court of competent jurisdiction upon petition by the Insurance Commissioner [Director, Superintendent] of this State alleging that the Group is in hazardous financial condition or is financially impaired.

H-I. The Risk Retention Group will provide the following notice, in at least 10-point type, in any insurance policy issued by the Group:

NOTICE

This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your State. State insurance insolvency guaranty funds are not available for your risk retention group.

12.13. In accordance with the LRRA, the Risk Retention Group affirms that it has submitted to the Insurance Commissioner [Director, Superintendent] as part of this filing and before it has offered any insurance in this State, a copy of the plan of operation or feasibility study which it has filed with the Insurance Commissioner [Director, Superintendent] of its chartering State. This plan or study includes the name of the State in which the Group is chartered, as well as the Group’s principal place of business, and such plan of operation or feasibility study further includes the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of liability insurance the Group intends to offer. The Group has also submitted to the Insurance Commissioner [Director, Superintendent] of this State any revisions of such plan of operation or feasibility study to reflect any changes in the plan if the Group intends to offer any additional lines of liability insurance or if the designation of the State in which it is chartered.

13.14. The Risk Retention Group will submit a copy of its annual financial statement submitted to its chartering state, to the Insurance Commissioner [Director, Superintendent] of this State, by March 1 of each year. The annual financial statement shall be certified by an independent public accountant and include a statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries or a qualified loss reserve specialist. The annual financial statement, certification and statement of opinion on loss and loss adjustment expense reserves will be submitted to the Insurance Commissioner [Director, Superintendent] of this State by the date it is required to be submitted to its chartering state.

14.15. The Risk Retention Group will not solicit or sell insurance to any person in this State who is not eligible for membership in the Group.

15.16. The Risk Retention Group will not solicit or sell insurance in this State, or otherwise operate in this State, if the Group is in hazardous financial condition or is financially impaired.

16.17. The Risk Retention Group will not issue any insurance policy in this State which provides coverage prohibited generally by statute of this State or declared unlawful by the highest court of this State whose law applies to such policy. In accordance with the LRRA, the terms of any insurance policy provided by the Risk Retention Group shall not provide or be construed to provide insurance policy coverage prohibited generally by State statute or declared unlawful by the highest court of the State whose law applies to such policy.
NAIC UNIFORM RISK RETENTION GROUP REGISTRATION FORM

17. The Risk Retention Group has submitted a registration fee of $__________, if applicable, payable to the Insurance Commissioner [Director, Superintendent] of this State.

18. To the extent required by the LRRA, the Risk Retention Group will comply with all other applicable state laws.

19. The Risk Retention Group will notify the Insurance Commissioner [Director, Superintendent] as to any subsequent changes in any of the items included in this form (except for items #1f, #8 and #10).

The undersigned hereby swear and affirm that the foregoing statements and information regarding their principal, the __________________________ (Name of Risk Retention Group) are true and correct.

President of the Risk Retention Group

Secretary of the Risk Retention Group

State of ________________

County of ________________

Sworn before me this day of ________________, 20__

________________________, Notary Public. My Commission Expires: ________________
NAIC UNIFORM RISK RETENTION GROUP REGISTRATION FORM

Part B

APPOINTMENT OF ATTORNEY TO ACCEPT SERVICE AND DESIGNATION

The [Name of Risk Retention Group] ("the Group"), a risk retention group which is chartered and licensed as a liability insurance company under the laws of the State of [State of Chartering], having notified the Insurance Commissioner [Director, Superintendent] of the State of [State of Chartering] of its intention to do business in this State as a risk retention group pursuant to the federal Liability Risk Retention Act of 1986, hereby appoints the Insurance Commissioner [Director, Superintendent] of the State of [State of Chartering], any successor in office, and any authorized deputy its true and lawful attorney, in and for the State of [State of Chartering], upon whom all legal documents or process in any proceeding against it may be served. Such service of legal documents or process shall be of the same legal force and validity as if served personally upon the Group.

The Group designates:

______________________________
(Name)
______________________________
(Address)
______________________________
(City, Town or Village)
______________________________
(State and ZIP Code)

as its officer, agent or other person to whom shall be forwarded all legal documents or process served upon the Insurance Commissioner [Director, Superintendent] of the State of [State of Chartering], any successors in office, or any authorized deputy, for the Group. This designation shall continue in full force and effect until superseded by a new written designation filed with the Insurance Commissioner [Director, Superintendent].
NAIC UNIFORM RISK RETENTION GROUP REGISTRATION FORM

This appointment and designation is made pursuant to a resolution by the Group’s governing body authorizing it, and a certified copy of the resolution is attached hereto. This appointment shall be binding upon any person or corporation which as successor acquires the Group’s assets or assumes its liabilities, by merger or consolidation or otherwise.

This appointment may be withdrawn only upon a written notice of termination and, in any event, shall not be terminated by the Group or its successor so long as any contracts or liabilities or duties arising out of contracts entered into by the Group while it was doing business in this State are in effect.

IN WITNESS OF THIS APPOINTMENT AND DESIGNATION, the Group, in accordance with the resolution of its Board of Directors duly passed on ________________, 20__, has affixed its corporate seal, and caused the same to be subscribed and attested in its name by its President and Secretary, at the City of ___________ in the State of ____________ on ________________, 20__.

______________________________
(Name of Risk Retention Group)

By: __________________________ President

______________________________ Secretary

State of ________________) ) ss:

County of ________________)

Sworn before me this ______ day of ________________, 20__.

______________________________, Notary Public. My Commission Expires: ___________
November 8, 2019

VIA EMAIL - BMeyer@naic.org

Becky Meyer, CPA
Senior Accreditation Manager
National Association of Insurance Commissioners
1100 Walnut, Suite 1500
Kansas City, MO  64106

Re:  Comments on Risk Retention Group (E) Task Force on RRG Notice and Registration Form, Frequently Asked Questions, and Best Practices

Dear Ms. Meyer:

The National Risk Retention Association (“NRRA”) appreciates the opportunity to comment on the three documents issued by the Risk Retention (E) Task Force (“RRG Task Force”) on October 18, 2019:

1. NAIC Uniform Risk Retention Group – Notice and Registration Form
2. Risk Retention Groups: Frequently Asked Questions

NRRA has no specific changes to suggest to these documents. We appreciate the hard work of the Task Force, particularly the Drafting Group, in producing these documents. We believe that when the documents are adopted by the states and put into use on a daily basis, they will provide guidance to both the industry and to the regulators and will help to make the RRG registration process more fair and efficient.

We would particularly like to commend the Task Force on their adherence to the language of the Liability Risk Retention Act, 15 U.S.C. 3901, et seq. The intent of Congress was to enact a type of regulation which provides to the chartering, or “lead state,” the vast preponderance of authority over its RRGs, while specifying those limited authorities permitted under federal law to the non-domiciliary states. Where there is a conflict regarding the interpretation of the law, the federal law, under the Supremacy Clause of the U.S. Constitution, will prevail.
We appreciate your allowing us the opportunity to comment on these documents and will be available at the meeting of the Task Force at the NAIC meeting in Austin, Texas to respond to any inquiries.

Very truly yours,

Joseph E. Deems
Executive Director
National Risk Retention Association

rjm
November 8, 2019

Via email: bmeyer@naic.org

Ms. Becky Meyer, CPA
Senior Accreditation Manager
National Association of Insurance Commissioners
1100 Walnut, Suite 1500
Kansas City, MO 64106

Re: Comments on Risk Retention Group (E) Task Force on RRG Notice and Registration Form; Frequently Asked Questions and Best Practices

Dear Ms. Meyer:

The Vermont Captive Insurance Association (VCIA) and its 450 member organizations appreciate the opportunity to provide comments on the three updated RRG (E) Task Force documents relating to risk retention groups (RRGs).

We greatly appreciate the hard work of the Task Force to tackle many of the issues raised by impermissible requirements imposed by non-domiciliary states on RRGs. VCIA commends the Task Force for its efforts to clarify application of the LRRA and educate state regulators and the RRG community on authority given by the LRRA to domiciliary states and to non-domiciliary states.

We understand the position of the Task Force regarding one of VCIA’s recommendations in the registration form that sought to clarify compliance with the Liability Risk Retention Act (LRRA). We believe that many of the problems encountered by RRGs in non-domiciliary states result from efforts to impose requirements, particularly registration requirements and fees, not permitted by the LRRA. Therefore we suggested adherence to the language in the statute as much as possible.

Overall, the Task Force has done an excellent job addressing and clarifying these issues. The updated NAIC Uniform RRG Notice and Registration Form, Frequently Asked Questions, and Best Practices are comprehensive and straightforward, and provide clarity to the most serious registration issues raised by RRGs.
VCIA comment letter re: NAIC RRG TF Exposure Drafts – November 8, 2019

Thank you again for your work.

Sincerely,

[Signature]

Richard Smith
President

cc: Sandra Bigglestone
    Vermont Dept. of Financial Regulation