FINANCIAL REGULATION STANDARDS AND ACCREDITATION (F) COMMITTEE

Draft Pending Adoption

Date: 8/16/2022

Financial Regulation Standards and Accreditation (F) Committee
Portland, Oregon
August 10, 2022

The Financial Regulation Standards and Accreditation (F) Committee met Aug. 10, 2022. The following Committee members participated: Lori K. Wing-Heier, Chair (AK); Vicki Schmidt, Co-Vice Chair (KS); Sharon P. Clark, Co-Vice Chair (KY); Alan McClain (AR); Andrew N. Mais (CT); Timothy N. Schott (ME); Gary D. Anderson (MA); Eric Dunning (NE); Mike Causey represented by Jackie Obusek (NC); Andrew R. Stolfi represented by Doug Hartz (OR); Elizabeth Kelleher Dwyer represented by Matthew Gendron (RI); Michael Wise represented by Daniel Morris (SC); Larry D. Deiter (SD); Scott A. White (VA); and Jeff Rude (WY).

1. <u>Adopted its Spring National Meeting Minutes</u>

Commissioner Schmidt made a motion, seconded by Commissioner Clark, to adopt the Committee's April 5 minutes (*see NAIC Proceedings – Spring 2022, Financial Regulation Standards and Accreditation (F) Committee*). The motion passed unanimously.

Director Wing-Heier said the Committee met Aug. 9 in regulator-to-regulator session, pursuant to paragraph 7 (consideration of individual state insurance department's compliance with NAIC financial regulation standards) of the NAIC Policy Statement on Open Meetings. During this meeting, the Committee voted to award continued accreditation to Alaska, Iowa, Minnesota, and Ohio.

2. <u>Adopted Revisions to the Examination Coordination Accreditation Guidelines</u>

Director Wing-Heier stated that at the Spring National Meeting, the Financial Examiners Handbook (E) Technical Group provided a referral (Attachment One) regarding updates to the exam coordination guidelines in the accreditation program. The Technical Group identified an inconsistency between guidance in the NAIC *Financial Condition Examiners Handbook* (Handbook) and the accreditation guideline regarding exam coordination. Specifically, the Handbook guidance requires coordination documentation for holding company groups with insurers domiciled in multiple states, whereas the accreditation guidance requires the same documentation for holding company groups with multiple insurers. Since the coordination guidance is intended to facilitate work between states, the recommendation is to align the accreditation guideline with the Handbook guidance. The referral was exposed for a 30-day public comment period, and no comments were received.

Commissioner White made a motion, seconded by Commissioner Mais, to adopt the recommendation to change the accreditation guidance to require coordination documentation for holding company groups with insurers domiciled in multiple states. The motion passed unanimously.

3. <u>Adopted Receivership Updates to Model #440 and Model #450</u>

Director Wing-Heier stated that at the 2021 Summer National Meeting, the Receivership and Insolvency (E) Task Force adopted revisions to the *Insurance Holding Company System Regulatory Act* (#440) and *Insurance Holding Company System Model Regulation with Reporting Forms and Instructions* (#450). The revisions address the continuation of essential services through affiliated intercompany agreements with an insurer that is placed into receivership. Because both models are part of the accreditation standards, the Committee considers the impact of any changes. The Task Force provided a recommendation (Attachment Two) that the model revisions should be considered acceptable but not required for accreditation. The recommendation was exposed for a 30-day public comment period, and no comments were received.

Mr. Hartz made a motion, seconded by Commissioner Clark, to adopt the recommendation from the Receivership and Insolvency Task Force that the 2021 revisions to Model #440 and Model #450 be acceptable for accreditation but not required. The motion passed unanimously.

4. Adopted a Recommendation Regarding VA Captives

Director Wing-Heier stated that captives are generally excluded from the accreditation standards with the exception of captive risk retention groups (RRGs), and captives that reinsure term and universal life with secondary guarantees, variable annuity (VA), or long-term care (LTC) business. Currently, VA and LTC have "to be determined" effective dates as work was ongoing in these areas. Last year, this Committee sent a request to the Financial Condition (E) Committee for more information on the extent VA and LTC captives are used, any relevant trends, and updates on related work. The focus of the exposure is the second paragraph (Attachment Three), which discusses updates to the NAIC *Valuation Manual* to alleviate concerns regarding captives that reinsure VA business. The memorandum recommends replacing the "to be determined" effective date with a reference to VM-21, Requirements for Principle-Based Reserves for Variable Annuities. Since the *Valuation Manual* is already required for accreditation, the proposed revision does not represent a new requirement. Rather, it serves as a reference for how this item is addressed in the standards. This means there is no proposed requirement that would apply directly to captives. Rather, the issue is being addressed through the standards for traditional insurers. If future trends indicate a concern, the Committee may reconsider at that time.

Commissioner White made a motion, seconded by Commissioner Schmidt, to adopt the updates to the preamble to reference VM-21 regarding VA business. The motion passed unanimously.

5. Received Updates on the Status of Model Laws for Accreditation

Director Wing-Heier stated that when model laws are adopted as requirements for accreditation, states are given a period of time to work within the legislative processes for their state to put the requirements in place. The NAIC provides support to the states and tracks adoption of the requirements. There are two new requirements that become effective Sept. 1, 2022. While this date is less than a month away, review of states' laws and regulation for compliance with accreditation will not begin until Jan. 1, 2023.

Holly Weatherford (NAIC) provided an update on the adoption of the 2019 revisions to the *Credit for Reinsurance Model Law* (#785) and the *Credit for Reinsurance Model Regulation* (#786). She stated that jurisdictions have until Sept. 1, 2022, to adopt these revisions or face potential federal preemption by the Federal Insurance Office (FIO) pursuant to the "Bilateral Agreement Between the United States of America and the United Kingdom on Prudential Measures Regarding Insurance and Reinsurance" (Covered Agreement) with the European Union (EU) and United Kingdom (UK). She stated that just this morning, the U.S. Virgin Islands signed its legislation, as expected, bringing the count to all 56 NAIC jurisdictions having adopted the equivalent of Model #785. The three smaller territories, American Samoa, Guam and Northern Mariana Islands, were all able to adopt the models by an Order, with the approval of the FIO. With respect to the model regulation, 51 jurisdictions have adopted so far, another three jurisdictions currently have action pending, and it is expected that the other two jurisdictions will issue their regulations shortly. It is anticipated that all NAIC jurisdictions will have their laws, regulations, or orders in place by Sept. 1.

Ms. Weatherford provided an update on the status of the federal preemption reviews currently being conducted by the FIO. The federal Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) lays out a process under which the FIO must go through before it can make any federal preemption determinations. The NAIC has been in frequent communication with the FIO regarding its reviews of state laws. Publicly, the FIO has praised the NAIC's efforts, stating that the NAIC has made tremendous progress on this front and that each state has made a sincere effort to adopt the spirit of the models. The NAIC is aware that the FIO is focusing its review on technical details in the law and regulation, and that there might need to be some clean-up made by the states after the reviews are completed. In summary, these have been constructive conversations with the FIO, and at this moment, the NAIC does not have reason for concern that this will lead to any federal preemption determinations. However, if any state is contacted directly by the FIO, please notify the NAIC.

Ms. Weatherford stated that the *Term and Universal Life Insurance Reserve Financing Model Regulation* (#787) becomes an accreditation standard on Sept. 1, 2022, with enforcement beginning on Jan. 1, 2023. As of July 8, when the last updates were received, 20 jurisdictions have adopted Model #787, with another four jurisdictions with action under consideration. Model #787 mirrors *Actuarial Guideline XLVIII—Actuarial Opinion and Memorandum Requirements for the Reinsurance of Policies Required to be Valued Under Sections 6 and 7 of the NAIC Valuation of Life Insurance Policies Model Regulation* (AG 48), and under the accreditation standards, a state may meet the requirements through an administrative practice, such as an actuarial guideline. Additionally, if a state adopts Model #787, it also will need to adopt Section 5B(4) of Model #785.

Commissioner Clark stated that the FIO reached out to Kentucky, and it appears it was primarily regarding drafting notes that are in place to abide by legislative procedures. Ms. Weatherford responded that the corrections from the FIO are typically highly technical and not related to the Covered Agreement. If there were concerns, states would hear from the NAIC and the FIO.

Having no further business, the Financial Regulation Standards and Accreditation (F) Committee adjourned.

SharePoint/NAIC Support Staff Hub/Member Meetings/F CMTE/2022Summer

NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

MEMORANDUM

TO: Financial Regulation Standards and Accreditation (F) Committee

FROM: Susan Bernard (CA), Chair, Financial Examiners Handbook (E) Technical Group
John Litweiler (WI), Vice-Chair, Financial Examiners Handbook (E) Technical Group

DATE: Feb. 9, 2022

RE: Consideration for Financial Accreditation Standards
2022 *Financial Condition Examiners Handbook*

The *Accreditation Program Manual* (Manual) includes Review Team Guidelines to be used for financial examinations performed using the risk-focused surveillance approach that is found in the NAIC *Financial Condition Examiners Handbook* (Handbook). This memorandum is to update the Financial Regulation Standards and Accreditation (F) Committee on changes the Financial Examiners Handbook (E) Technical Group has made to the Handbook in 2021.

Modifications are made to the Handbook each year, and a new edition is printed annually. This process allows for an efficient way to update the Handbook and ensures that users have the latest version. The Technical Group made several changes to the Handbook in 2021, the majority of which it considers non-significant; i.e., having no impact on accreditation guidance.

The Technical Group noted an opportunity to better align the guidance in the Handbook and the Manual as it relates to exam coordination. This change should be considered "significant" for accreditation purposes, which the Technical Group defines as a change that may immediately warrant a change to at least one accreditation standard or the Review Team Guideline(s) for said standard. Although this change is categorized as "significant" by the Technical Group, this is not meant to suggest the modifications are synonymous with the term "significant" within the accreditation context.

During 2021, the Technical Group made the following changes:

<u>Significant Changes to the Handbook Affecting Accreditation Standards and/or Review Team Guidelines:</u>

- Revisions to the Coordination Framework to clarify the roles and responsibilities of each state that has a company in a holding company group.

When reviewing the guidance contained in the Coordination Framework, the Technical Group noted that Handbook guidance requires the use of Exhibit Z – Exam Coordination when documenting coordination efforts for

Washington, DC 444 North Capitol Street NW, Suite 700, Washington, DC 20001-1509 p | 202 471 3990
Kansas City 1100 Walnut Street, Suite 1500, Kansas City, MO 64106-2197 p | 816 842 3600
New York One New York Plaza, Suite 4210, New York, NY 10004 p | 212 398 9000
www.naic.org

examinations of holding company groups *with insurers domiciled in multiple states*. This is inconsistent with the guidance in the Manual, which requires the use of Exhibit Z for examinations of holding company groups *with multiple insurers*.

To ensure a consistent approach to documenting coordination efforts, the Technical Group advises the Committee to consider revising the guidance pertaining to Accreditation Standard B2(e): General Examination Procedures and Accreditation Standard B2(g): Scheduling of Examinations, as well as the related questions on the Accreditation SEG/IAR Form regarding the use of Exhibit Z. The Technical Group suggests incorporating the tracked revisions below to reflect this change in the Manual:

Accreditation Standard B2(e): Use of Appropriate Guidelines and Procedures, Results-Oriented Guideline 1:

The examiner should utilize a risk-focused approach and prepare examination documentation in sufficient detail to provide a clear understanding of the work performed. The content and organization of the documentation should support conclusions reached and effective execution of the risk-focused approach. When assessing compliance with this guideline, consideration should be given to the following:

- Utilization of a risk-focused approach in establishing priority of accounts or operational areas.
- The clarity and accuracy of the documentation used to support examination conclusions.
- Extent of involvement with contract examiners if utilized.
- Utilization of audit work when relied upon to support an identified risk.
- Fulfillment of coordination efforts as determined by the state in Exhibit Z – Examination Coordination, and consistent with their role as described in the Examiners Handbook, for companies that are part of a holding company group with insurers domiciled in multiple states ~~that includes more than one insurer~~.

Accreditation Standard B2(e): Use of Appropriate Guidelines and Procedures, Process-Oriented Guideline 3:

If the company being examined is part of a holding company group with ~~multiple~~ insurers domiciled in multiple states, the state should complete the appropriate section of Exhibit Z, Part Two (or similar document) as follows:

- If the state is the exam facilitator conducting a fully coordinated group examination, Exhibit Z, Part Two, Section B (or similar document) should be completed.
- If the state is a participating state in a fully coordinated group examination, the state should complete Exhibit Z, Part Two, Section C (or similar document).
- If the state did not participate in a coordinated group examination or utilized existing work outside of a fully coordinated group examination, the state should complete Exhibit Z, Part Two, Section D (or similar document).

Accreditation Standard B2(g): Use of Appropriate Guidelines and Procedures, Process-Oriented Guideline 3:

The department should document the attempt to coordinate examination efforts with departments of other states consistent with the coordinated exam approach prescribed in the Examiners Handbook. Each company that is part of a holding company group ~~that includes more than one insurer~~ with insurers domiciled in multiple states should include a copy of the coordination plan, documented in Section A of Exhibit Z, Part Two (or similar document), in its examination file.

Accreditation SEG/IAR Form, Standard B2(e), Question 5:

For examinations of companies that are part of a holding company group with insurers domiciled in multiple states~~that includes more than one insurer~~, does the department complete the applicable section of Exhibit Z – Examination Coordination based on its role in the examination?

Non-Significant Changes to the Handbook:

- Revisions to the Reserves Repositories (Life, Health and Property/Casualty [P/C]), as well as the Underwriting Repository, to provide additional possible completeness and accuracy procedures for examination teams to consider that align with the testing approach used by external auditors. Additionally, procedures were added to enhance collaboration with the actuary to determine significant lines of business/data elements to focus on for testing purposes.
- Revised guidance related to information technology (IT) in the following areas:
  - Additional guidance for evaluating the accessibility and transferability of policyholder data was incorporated into the following sections of the Handbook: 1) Section 1-3 narrative guidance; 2) Exhibit C, Part Two – IT Planning Questionnaire (ITPQ); and 3) Exhibit C, Part Two – IT Work Program and Instructional Notes.
  - Ransomware guidance was incorporated into the following sections of the Handbook: 1) Section 1-3 narrative guidance; and 2) Exhibit C, Part Two – IT Work Program.

If there are any questions regarding the proposed recommendations, please contact either me or NAIC staff (Bailey Henning at *bhenning@naic.org*) for clarification. Thank you for your consideration.

NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

6Date: November 30, 2021

To: Superintendent Elizabeth Kelleher Dwyer (RI), Chair of Financial Regulation Standards and Accreditation (F) Committee

From: Commissioner Cassie Brown (TX), Chair of Receivership and Insolvency (E) Task Force

Re: 2021 Amendments to the *Insurance Holding Company System Regulatory Act* (#440) and *Insurance Holding Company System Model Regulation with Reporting Forms and Instructions* (#450)

On August 17, 2021, the NAIC Executive (EX) Committee and Plenary unanimously adopted revisions to the NAIC *Insurance Holding Company System Regulatory Act* (#440) and *Insurance Holding Company System Model Regulation with Reporting Forms and Instructions* (#450). The revisions help ensure efficient coordination with affiliates and to enforce the continuation of essential services by an affiliate to an insurer in the event of insolvency.

These revisions were drafted by the Receivership Law (E) Working Group under charges assigned by the Receivership and Insolvency (E) Task Force. These revisions, referred to as the "receivership revisions" do not include recent revisions to Models #440 and #450 for group capital calculation or liquidity stress test. The receivership revisions address the continuation of essential services through affiliated intercompany agreements with an insurer that is placed into receivership by: 1) bringing affiliate service providers deemed "integral" or "essential" to an insurer's operations under the jurisdiction of a rehabilitator, conservator, or liquidator for purposes of interpreting, enforcing, and overseeing the affiliate's obligations under the service agreement and give the commissioner authority to require that "integral" or "essential" affiliate service providers consent to such jurisdiction; 2) further clarifying the ownership of data and records of the insurer that are held by the affiliate; and 3) clarifying that premiums of the insurer held by the affiliate are the property of the insurer and rights of offset are determined by receivership law. See attachment A for a copy of the amendments.

The recommendation for Part A Accreditation Standards is that these receivership revisions be considered acceptable, but not required to be adopted by states. However, the revisions are considered important and all states are encouraged to adopt them. States may consider adoption of the changes in conjunction with opening their holding company laws to consider adoption of the Group Capital Calculation and Liquidity Stress Test revisions.

The Task Force will continue to encourage states to adopt these revisions based on the benefits these revisions add to state regulation, and to the goal of improving efficiencies in receivership and reducing costs to a receivership estate.

Washington, DC 444 North Capitol Street NW, Suite 700, Washington, DC 20001-1509 p | 202 471 3990 f | 816 460 7493
Kansas City 1100 Walnut Street, Suite 1500, Kansas City, MO 64106-2197 p | 816 842 3600 f | 816 783 8175
New York One New York Plaza, Suite 4210, New York, NY 10004 p | 212 398 9000 f | 212 382 4207
www.naic.org

NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

MEMORANDUM

TO: Superintendent Elizabeth Kelleher Dwyer, Chair of the Financial Regulation Standards and Accreditation (F) Committee

FROM: Commissioner Scott A. White, Chair of the Financial Condition (E) Committee

DATE: Nov. 19, 2021

RE: Use of Captives to Reinsure Variable Annuity and Long-Term Care Business

---

I received your April 14 memo requesting information on the extent the referenced captives are used, any trends on the use of the captives, reasons for such trends, and any relevant updates on work done in the areas of variable annuities and long-term care insurance (LTCI). Upon receiving your memo, I referred your request to the Financial Analysis (E) Working Group. Since the Working Group ultimately collected the information on the use of captives by surveying domestic states using the states' confidentiality standards, the Working Group's response memo will be submitted to the Financial Regulation Standards and Accreditation (F) Committee as a separate regulator-only document. However, for the purposes of this memo, I would note that one of the key takeaways from the Working Group is that the current impact to the risk-based capital (RBC) of the domestic insurers utilizing these captives is minimal.

I would also like to provide you with updates on work done on variable annuities and LTCI. In 2018, the Financial Condition (E) Committee adopted a revised framework for variable annuities, which became effective Jan. 1, 2020. The changes were specifically designed to remove the non-economic volatility within the previous framework, therefore removing the major reason for the use of captives for variable annuities. The Committee believes it is an appropriate time to remove the to be determined (TBD) effective date in the Accreditation Preamble and replace it with a reference to VM-21, Requirements for Principle-Based Reserves for Variable Annuities.

For LTCI, the Financial Condition (E) Committee has not developed any new standards that could be used to justify the removal of the TBD status. Although the impact of the use of captives for LTCI still appears to be minimal, the Committee recommends that this aspect of the Accreditation Preamble be retained and that the Financial Regulation Standards and Accreditation (F) Committee continue to monitor the use of captives for LTCI.

In summary, the Financial Condition (E) Committee recommends a replacement of the TBD in the Accreditation Preamble for variable annuities with VM-21 and retaining the TBD for LTCI.

Executive Office | 444 North Capitol Street NW | Suite 700 | Washington, DC 20001 | (202) 471-3990
Central Office | 1100 Walnut Street | Suite 1500 | Kansas City, MO 64106-2197 | (816) 842-3600
Capital Markets & Investment Analysis Office | One New York Plaza | Suite 4210 | New York, NY 10004 | (212) 398-9000
www.naic.com

Excerpt from Accreditation Manual – Part A Preamble

Captive Reinsurers
The following Part A standards apply to the regulation of a state's domestic insurers licensed and/or organized under its captive or special purpose vehicle statutes or any other similar statutory construct (captive insurer) that reinsure business covering risks residing in at least two states, but only with respect to the following lines of business:

1) Term and universal life with secondary guarantee policies that are applicable under Section 3 of the *Term and Universal Life Insurance Reserve Financing Model Regulation* (#787)(commonly referred to as XXX/AXXX policies). The application of this provision is intended to have a prospective-only effect, so that regulation of captive insurers, special purpose vehicles and any other entities that reinsure these types of policies will not be subject to the Part A standards if the policies assumed were both (1) issued prior to Jan. 1, 2015, and (2) ceded so that they were part of a reinsurance arrangement as of Dec. 31, 2014. [Drafting Note: This paragraph of the Preamble became effective Jan. 1, 2016]

2) Variable annuities valued under Actuarial Guideline XLIII—CARVM for Variable Annuities (AG 43) or VM-21: *Requirements for Principle-Based Reserves for Variable Annuities*. [Drafting Note: ~~This paragraph of the Preamble is not yet effective. Effective date for compliance to be determined.]~~ This paragraph of the Preamble was addressed through revisions to VM-21 of the *Valuation Manual*.]

3) Long term care insurance valued under the *Health Insurance Reserves Model Regulation* (Model #10). [Drafting Note: This paragraph of the Preamble is not yet effective. Effective date for compliance to be determined.]

With regard to a captive insurer, special purpose vehicle, or any other entity assuming XXX/AXXX business, regulation of the entity is deemed to satisfy the Part A accreditation requirements if the applicable reinsurance transaction complies with Model #787.

[Drafting Note: The Part A standards with respect to entities assuming ~~variable annuities and~~ long term care reinsurance business are intended to be effective with respect to both currently in-force and future business. However, the effective date~~s~~ for ~~variable annuities and~~ long term care insurance ~~are~~ is not yet determined, and ~~their~~ its application to in-force business need further discussion].